From Policy Problem to Political Weapon: Managing Canada's Federal Abortion Policy and Politics, 1966-2019

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Glossary of Acronyms

Acronym	Full Name
AG	Attorney General
ARTs	Artificial Reproductive Technologies
BC	British Columbia
CARAL	Canadian Abortion Rights Activist League
CBA	Canadian Bar Association
CC	Criminal Code
CIDA	Canadian International Development Agency
CLC	Campaign Life Coalition
CMA	Canadian Medical Association
CPC	Crisis Pregnancy Centre
CPC	Conservative Party of Canada
DOJ	Department of Justice
FEWO	Standing Committee on the Status of Women
FLQ	Front de Libération du Québec
FPD	Family Planning Division
IPPF	International Planned Parenthood Federation
LAC	Library and Archives Canada
MP	Member of Parliament
NDP	New Democratic Party
PEI	Prince Edward Island
PC	Progressive Conservative party
PS	Parliamentary Secretary
PM	Prime Minister
PMB	Private Members Business
PMO	Prime Minister's Office
PPFC	Planned Parenthood Federation of Canada
PROC	Procedure and House Affairs Committee
QP	Question Period
RCSW	Royal Commission on the Status of Women in Canada
SCC	Supreme Court of Canada
Serena	Service de Régulation des Naissances
SMEM	Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs
TACs	Therapeutic Abortion Committees

Notes on Spelling and Terminology

Spelling

Depoliticisation and politicisation are generally spelled with an 's' in the UK context or spelled with 'z's in an American context (depoliticization and politicization). Given that Canadian spelling generally follows the British model and given the significant development of depoliticisation literature in the UK, ***depoliticisation/politicisation*** is the spelling that will be used. Some of the literature cited in this dissertation will, however, use the American spelling in certain quotations. Additionally, when referring to both depoliticisation and politicisation together, the term ***(de)politicisation*** will be used, which is also used by other scholars working within this area.

Fetus and foetus as well as fetal and foetal also represent two accepted spellings. Both are found in Hansard. Fetus and fetal are the spellings used in this dissertation but some quotations from primary sources may use the other spelling at times.

Use of Terms Pro-Choice, Pro-Life

The designations for those who support or oppose abortion choice are contentious, with each side often preferring to use terms with more positive associations for themselves and terms with more negative associations for the other side. For instance, sometimes those supporting abortion choice will use the term "pro-choice" for themselves and "anti-choice" for those opposing abortion choice, whereas those opposing abortion choice may use the term "pro-life" for themselves and "pro-abortion" for those supporting abortion choice. Additionally, the term "anti-abortion" is sometimes used for those opposing abortion choice, and "reproductive rights" is also a term increasingly used by those supporting abortion choice. This thesis uses the terms by which each movement and side of the issue primarily self-identifies: ***pro-choice*** for those supporting abortion choice and ***pro-life*** for those opposing abortion choice.

Abstract

Literature, particularly institutional approaches, emphasizes that parliamentary systems like Canada have avoided controversial morality policy issues including – and perhaps especially – abortion. This, however, fails to account for historical and contemporary developments in Canadian abortion policy and politics at the federal level. More specifically, it fails to adequately conceptualize how governments engage with abortion in practice, such as with the introduction of the omnibus bills in the 1960s and C-43 in 1989, as well as the increasing use of abortion as a political weapon in election campaigns and party politics. Using framing theory and the concepts of politicisation and depoliticisation, this dissertation fills this gap by unpacking how Canada's federal governments have managed abortion policy and politics from 1966 to 2019, both in discourse and in concrete actions in parliament. More precisely, the federal government's evolving discourses (stories) and actions on the abortion issue were examined through sources that span the 1960s up to 2019, including parliamentary transcripts (Hansard), parliamentary committee transcripts (Evidence) and reports, cabinet documents, and interviews.

This dissertation presents an original typology to facilitate a more dynamic understanding of (de)politicisation. It categorizes politicising and depoliticising movements according to how actors use the dimensions of time, space, and capacity to delay, defer and establish limits to their agency in depoliticising procedural action or discourse, or to emphasize an issue on the agenda, claim jurisdiction or responsibility, and establish authority and capability in politicising procedural action or discourse. This yields a more dynamic understanding of how governments have managed the abortion issue over time, demonstrating how governments and their representatives have used – often simultaneously – both politicising and depoliticising actions and discourses. This management, which may be intended to dampen controversy, can also result in uneasy and even contradictory discourses and actions that may generate new sources of conflict. Capturing this dynamism affirms that governments do not simply "avoid" or "engage" with abortion, but that their positions are unsteady and often contradictory, moving back-and-forth – often simultaneously – in their efforts to manage the issue.

Using this typology, this dissertation maps out the evolving discourses and approaches through which the federal government approached abortion over time. It argues that, through the 1960s to 1980s, the government approached abortion as a policy problem that required a legislative solution. Beginning in the 1990s and becoming more prominent in the 2000 election and thereafter, the government began using abortion as a political weapon, which served to demarcate Liberal Party values against conservative parties, and vice versa.

This dissertation contributes by expanding (de)politicisation theory through its typology, creating a means to analyse the complex and interactive relationship between (de)politicisation, as well as contributing a Canadian case study to the primarily British and Eurocentric depoliticisation literature. This dissertation also bridges the gap between morality policy literature and (de)politicisation, which may be fruitful for additional study into how political actors manage morality policy issues. Empirically, this dissertation offers a comprehensive history of Canada's federal policy and politics of abortion over the past half century, documenting the significant shifts in the discourses and approaches of federal governments on this contentious issue.

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Dedication

For Antoine, whom I never held in my arms but will hold always in my heart. Tu me manqueras toujours. And for any future children we may be privileged enough to welcome into our family.

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* * * * * * * * * * * * *

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Chapter 1: Introduction

Involving scientific and philosophical questions of when human life begins and fundamental issues of women's rights to bodily autonomy versus fetal[1] rights to life, abortion remains a contentious issue throughout the world. Often connected to religious values and beliefs and attracting polarized interest groups and social movements, abortion has been a policy and political hurdle for governments and politicians, raising questions of legal rights and freedom of conscience, as well as presenting a challenge to achieving consensus in a pluralistic society.

Abortion in Canada presents public policy scholars with an interesting puzzle. Unlike most of the Western world, abortion has had no federal restrictions or regulations since the late 1980s (Sethna & Doull, 2013), when the Supreme Court of Canada (SCC) struck down the Criminal Code (CC) restrictions on the practice. Although the government subsequently introduced legislation, it was unable to pass it into law. Since that time, federal governments have not engaged with abortion legislatively, and it has been provinces, medical associations and hospitals that have regulated access to and public funding of abortion, resulting in varying access across the country. Despite this, abortion remains a live issue within federal politics, emerging regularly in Canada's federal parliament, in media headlines, and within federal election campaigns. Yet this abortion politicking is a far cry from what one would expect based on the academic literature on abortion in Canada.

As will be described further, the literature has painted what I refer to as the "traditional portrait of abortion", in which avoidance is the modus operandi of political parties and governments in Canada – and parliamentary systems generally – when it comes to morality policy

[1] See *Notes on Spelling and Terminology* (p. ix) regarding the spelling of words including fetus and (de)politicisation, and the use of terms such as pro-life and pro-choice.

issues like abortion. Avoidance behaviour from politicians and governments is understood to be triggered by conscience issues within Westminster systems (Cowley, 2001). Because issues like abortion were not traditionally the point of division between left and right parties in parliamentary systems,[2] moral matters became seen as "conscience issues" that defied party divisions or simply were not on the political agenda to begin with (Cowley, 1998b; Heichel, Knill, & Schmitt, 2013). Free votes are the main means by which parties and government address such issues, referring to instances where political parties relax party discipline and allow individual legislators to vote according to their conscience. As described by Pothier (1979), "The usual rationale for a free vote is that an issue that touches on fundamental moral principles ought to be decided according to the consciences of individual MPs, not according to the dictates of the party whips. Questions of morality, it is argued, are above partisan politics" (p. 80).[3]

However, avoidance does not fully capture the fact that, even in the 1960s and 1980s, the government did put forward legislation on abortion, even if somewhat reluctantly at times. And even when abortion is not on the government's parliamentary agenda, it is used consistently within election campaigns since 2000 to "wedge" and "attack" political opponents. How, then, did we end up in the present situation, with abortion lobbed about as a political weapon but untouched in federal legislation? Or, more precisely, how have governments *managed*[4] the

[2] In the genesis of Canadian political parties, the organizing principle was their differing economic approaches to nation-building (Engelmann & Schwartz, 1975, pp. 72–73).

[3] However, according to Pothier (1979), the definition of what constitutes such a conscience issue is "arbitrary", often meaning whatever parties want it to mean. Cowley (1998b), likewise points out that many if not most political decisions involve matters of conscience, from the impact of taxation on populations to the risk facing soldiers sent overseas on missions. However, despite the lack of coherent definition or categorization, the perception is that these issues exist and include such matters like abortion.

[4] A term like manage may, in this discipline of public administration, evoke the sub-discipline of public management and the operations of the public service. However, the etymology of the word derives from *manus* (hand) and suggests "manage" as referring to "train[ing] (a horse); handle; wield, conduct (an affair), control (a person)" (Hoad, 2003). As such, manage can be defined as including organization and control over things and persons to achieve certain ends, often overcoming challenges to do so.

abortion issue over the past half century, both in concrete actions in Parliament as well as in the language used (discourse) to explain, justify and understand the abortion issue, and how has this management transformed the abortion issue in policy and politics over time in Canada?

This dissertation answers these questions by analysing transcripts of Parliamentary proceedings (Hansard) from 1966 until 2019, as well as relevant committee and cabinet documentation (where available) and interviews with past and present decision-makers. The focus is on accessing the voices of elected parliamentarians as well as the political staffers and advisors that worked with them.[5]

This dissertation argues that Canadian governments' approaches to abortion cannot be understood as mere avoidance. Instead, a better conceptualization of the federal government's handling of abortion, both procedurally and discursively, is of a dynamic, back-and-forth approach that allows the government to manage the controversy of the issue, while sometimes paradoxically creating new sources of conflict and controversy. Additionally, in examining how governments have managed the issue over time, the evolving – and often contradictory – abortion narratives are documented, with a departure from treating abortion as a policy problem to be solved with legislation towards an increasing use of abortion as a political weapon, including within attack ads and as a wedge issue against political opponents. In using the term *manage,* this dissertation draws on *The Canadian Oxford Dictionary*'s fifth usage of the term as "cope with" (Barber, 2005) to express partial and ongoing efforts to handle issues that tend to invite controversy or conflict (Henry, 2002, discussing Kymlika, 1998). It stands in contrast to solving an issue in a final and definitive way, but rather emphasizes an ongoing coping practice. This

[5] As such, the House of Commons and political executive is the primary focus, with other parliamentary bodies like the Senate not being considered at this time; likewise, the bureaucracy is not studied. Other possibilities for future study, such as the Senate and the public service, are mentioned in Chapter 11.

term, accordingly, is appropriate to this dissertation's study of the handling of abortion policy and politics by Canada's federal government, emphasizing that the government's discursive positions and concrete actions never fully resolve the issue, but merely manage it.[6] For instance, while the P.E. Trudeau government placed abortion on its legislative agenda in the late 1960s, it diluted attention to the issue by including it within a massive omnibus bill. This format, however, produced criticism as well as debates on amendments calling for the bill to be split to allow for votes on individual moral issues like abortion.

The analysis rests on the theoretical foundations of framing theory, further detailed in Chapter 3, which deconstructs the language used by government actors to discuss abortion and reconstructs the frames (phrases that articulate understandings and arguments) as a means of understanding how the government's stories of abortion have served to manage abortion, as well their evolution over time. Looking at these stories includes examining how governments have presented both the problem of abortion as well as its proposed solution.

The concepts of politicisation and depoliticisation, referred to in this dissertation collectively as (de)politicisation, offer a means to analyse and capture the dynamics of this management. In brief, politicisation is movement that emphasizes and expands human agency and politics, whereas depoliticisation moves away from agency and politics, emphasizing and insisting on fatalism. This differs from how these terms are used in common parlance to denote the degree of partisanship found in issues. This also differs from politicisation in terms of the politics-administration dichotomy where, as discussed by Cooper (2018), it refers to the erosion

[6] Eva Mackey (1998), although she does not define the term, appears to use the word manage in similar ways in her exploration of multiculturalism as nation building in Canada, where she argues that "the development of a pluralism national identity was a flexible strategy developed to manage diverse populations", repeating usage of the term frequently in her book and even in chapter titles and subtitles (p. 26). Other authors have also used the term in reference to "managing diversity", such as Henry (2002).

of neutrality in the public service or to the use of political rather than merit criteria in public servant appointments by politicians. Instead, here, (de)politicisation conceptualizes how actors move issues towards or away from their sphere of control and responsibility and position issues as being necessary, unavoidable, or beyond their control. For instance, deferring an issue to an independent royal commission allows a government to defer responsibility to that body and away from themselves, constituting depoliticisation. Likewise, governments can politicise an issue by asserting their jurisdiction over it.

This dissertation presents an original typology that categorizes (de)politicising movements according to how actors use the dimensions of time, space, and capacity to delay, defer and establish limits to their agency in depoliticising procedural action or discourse, or to emphasize an issue on the agenda, claim jurisdiction or responsibility, and establish authority and capability in politicising procedural action or discourse. This yields a more dynamic understanding of how governments have managed the abortion issue over time, demonstrating how governments and their representatives have used – often simultaneously – both politicising and depoliticising actions and discourses. This management, which may be intended to dampen controversy, can also result in uneasy and even contradictory discourses and actions that may generate new sources of conflict. Capturing this dynamism affirms that governments do not simply "avoid" or "engage" with abortion, but that their positions are unsteady and often contradictory, moving back-and-forth – often simultaneously – in their efforts to manage the issue. Using these concepts and the typology to explore how successive Canadian federal governments have managed the abortion issue enables us to better understand the overall discourses and stories emerging and the conflict or backlash they can produce, as well as the evolving differences between Liberal and Conservative governments.

This introductory chapter provides a historical introduction to abortion policy, spanning the 1800s to the 1960s. This earlier history establishes the influence of Britain in Canadian federal abortion policy up to and including the reforms of the 1960s, contextualizing the parliamentary debates and political events that led to the liberalization of abortion in 1969 in Canada. A historical overview from the 1960s to 2019 is subsequently provided, briefly encapsulating the timeframe studied by this dissertation and highlighting its major legislative and judicial developments. This history can then be juxtaposed with the traditional portrait of avoidance that emerges from the literature review, discussed in section 1.2. This overview of the literature identifies the main limitations of abortion and morality policy literature, followed by the introduction of dissertation's theoretical framework in section 1.3, namely the combined use of framing theory and the concepts of (de)politicisation. Finally, an overview of the dissertation as a whole is provided in section 1.4.

1.1 Introduction to Abortion Policy, 1800s to 1960s

A conventional read of abortion history in Canada at the federal level might be summed up in four simple statements: before 1969 abortion is illegal; starting in 1969 reforms allowed abortion when a woman's health is endangered – but only in hospitals and with the approval of medical professionals; in 1988 the Supreme Court struck down the 1969 law, essentially decriminalising abortion; since 1988 no federal abortion law has been on the books. A more granular view of the history reveals a more complex situation.

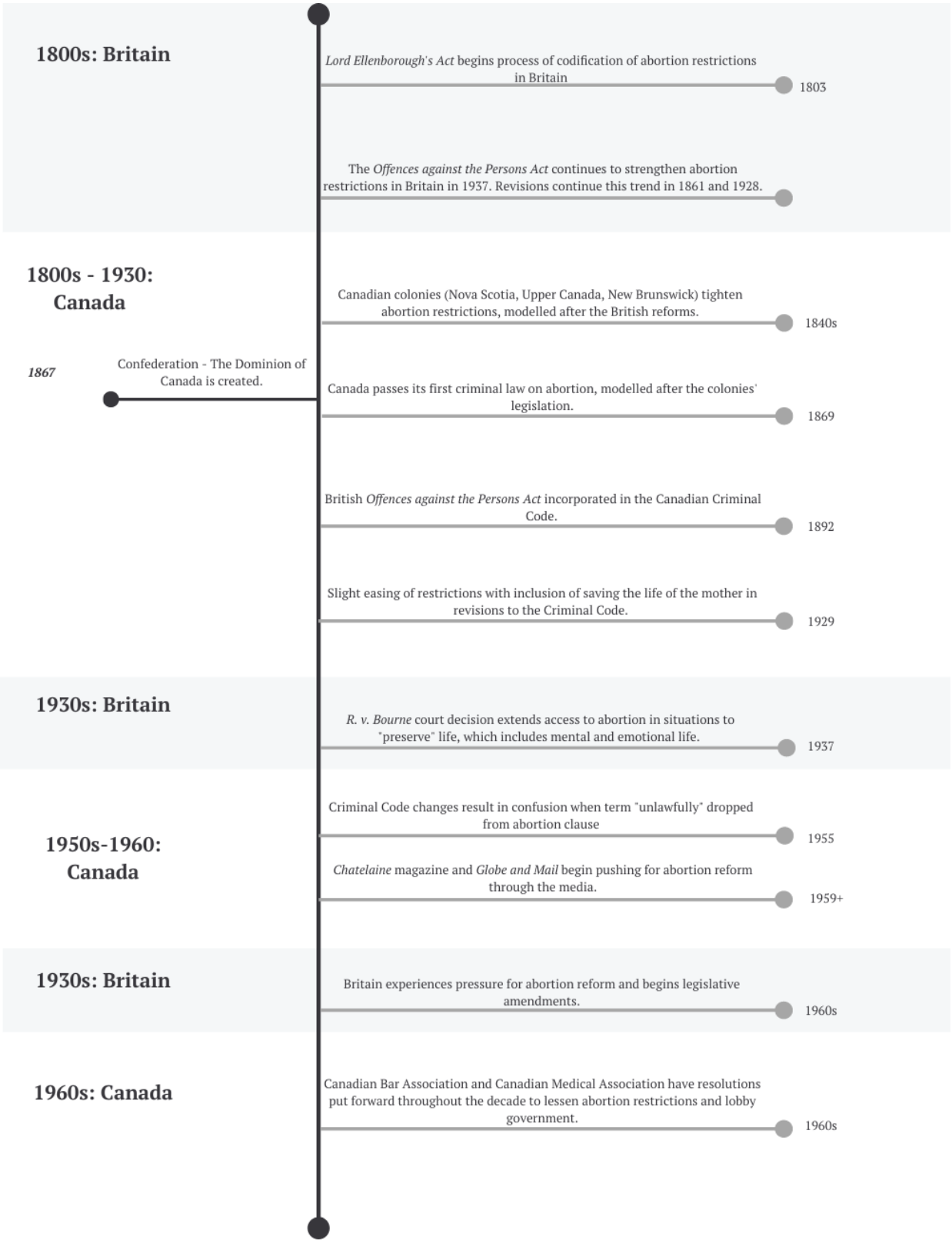
1.1.1 A Historical Review Abortion in Canada, 1800s to 1960s

As represented in Figure 1, Canadian federal abortion policy begins with British policy as Canada had inherited British abortion laws as well as the parliamentary system and institutions

that still structure the policy process today. Britain underwent a process of codifying[7] abortion laws beginning with Lord Ellenborough's Act of 1803 and continuing with the Person's Law of 1837 and its subsequent revisions in 1861 and 1928. Prior to 1803, English common law prohibited abortion at least at the point of quickening - when the movement of the fetus could be felt by the mother - which was usually around 20 weeks gestation (de Valk, 1974; Keown, 1988; F. L. Morton, 1992b) Codification, as De Valk (1974) writes, "merely made into statute what had been considered a criminal offense by custom" (pp. 1-2). The revisions to the law in 1837 and thereafter increasingly restricted abortion, eventually removing quickening as a distinction and including liability for the women involved, rather than only penalizing abortionists.

[7] Halfmann (2011) and Millns and Sheldon (1998) refer to this as criminalisation, but this term may obscure the fact that common law did place criminal penalties on abortions at varying points of pregnancy. Regardless of the term, restrictions on abortion in law did significantly develop and increase starting with Lord Ellenborough's Act of 1803.

Figure 1: Timeline of Canadian Abortion Policy from 1800s-1960s



Due to the establishment of British colonies in what is now known as Canada[8], Britain heavy influenced Canadian abortion law.[9] In 1810, New Brunswick was the first colony in what would become Canada to prohibit abortions by statute, largely adopting Lord Ellenborough's Act of 1803, but going further by prohibiting supplying medicine, drugs or instruments to women to procure a miscarriage (Penny Light, 2003, p. 34). The colonies of Prince Edward Island and Upper Canada followed suit, and – like in Britain – penalties and restrictions on abortion expanded through the 1800s (Penny Light, 2003). In 1869, shortly following Confederation, Canada passed its first national criminal law on abortion, which "incorporated pre-Confederation provincial statutes, and provided for a penalty of life imprisonment for the person procuring the miscarriage" (Dunsmuir, 1998, p. 3). The consolidated Criminal Code of 1892 added that women would be liable to imprisonment for procuring a miscarriage (Gavigan, 1986, p. 295).[10] The Code was amended to go further than the British model by including prohibitions on advertising, offering or publishing advertisements for medicine or items that could prevent conception or cause abortion (Gavigan, 1986).

Despite the general prohibition on abortion, an exception in cases to save the life of the mother was understood to exist in Canada, the United States and Britain. Judicial interpretation in Britain confirmed this and extended access to abortion in cases of rape through the British case of *R. v. Bourne* in 1937, where Dr. Bourne was acquitted for performing an abortion on a teenager

[8] This is not meant to negate or deny the presence of indigenous peoples throughout the territory, nor the losses and difficulties they faced through colonisation, but indicates the roots of the parliamentary governance model that was adopted. It should also be noted that this history of abortion in Canada is focused on abortion within federal policy and, as such, does not address any practices that pre-dated British colonisation.

[9] France was also responsible for colonisation in Canada, although Britain eventually wrested control away from it. However, the literature on early abortion history in Canada emphasizes only the British influence and, as such, the French influence is unclear or at least not well established in the English literature.

[10] Gavigan (1986) notes the challenge to explain why this change occurred, particularly since there is no debate over the change in Parliament. She writes, "the silence itself is striking: the amendment to the abortion section respecting a woman who administers to herself a substance in an attempt to induce her own miscarriage, whether or not she was pregnant, was not the subject of a single comment in either house" (p. 296).

who had been gang raped. Reflecting shifts in public views, the Bourne case expanded the interpretation of "preserving life," with the judge referring to the importance of the life of the mother as well as preventing her from being a "physical or mental wreck," which invoked social and economic considerations rather than only physical health measures (de Valk, 1974).

The Bourne case also highlights that, despite the law, abortions were being performed by doctors in Britain without legal reprisals. Bourne's case was not so much an exception to doctors escaping legal prosecution as it was an active effort on Bourne's part to challenge the law in court (Keown, 1988). As Keown (1988) writes,

> In spite of the apparent inflexibility of the law, medical men induced abortion according to criteria established by themselves. Moreover, provided practitioners abided by professional ethics, the risk of prosecution appears to have been negligible. There seems to have been no prosecution of a doctor who terminated a pregnancy in accordance with these standards before 1938. The prosecution of Dr. Bourne in that year was not really an exception to this prosecutorial policy of non-intervention, for he actively courted the initiation of proceedings (p. 78).

Until 1949, Britain was the final court of appeal for Canadian constitutional matters and "British legal precedents were authoritatively cited in most fields of Canadian law" (F. L. Morton, 1992b, p. 18). As such, the Bourne case applied to Canada and could be used to defend doctors charged with providing abortions under similar conditions. The Bourne case used, according to Brodie, Gavigan and Jenson (1992a), the "defence of necessity" for doctors conducting abortions (p. 10); this defence was also used by Dr. Henry Morgentaler's legal team against abortion charges in the 1970s and 1980s in Quebec (see chapter 6).

In Canada, the historical record also indicates that doctors were providing abortions with limited risk of prosecution. McLaren and McLaren's (1997) study of birth control and abortion from the 1880s onwards points to "the widespread advertisement and sale of abortifacients as well as abortionists' offers of aid" (p. 33). Additionally, in reviewing the historical record of the 1800s and early 1900s, limited court cases involving abortion appear; in the cases that do, the

doctors were prosecuted not merely for the abortion but for the injury to or the death of the woman, alongside that of the fetus (Backhouse, 1993; Chapman & Penny Light, 2017; McLaren, 1993). Even then, such cases were as likely to return a not guilty verdict as a guilty one. Overall, conclude Chapman and Penny Light (2017), "the successful prosecution and imprisonment of abortion doctors was extremely rare, even when a death of the patient ensued" (p. 184). Accordingly, abortions were happening in both Britain and Canada with low risk of persecution for properly trained doctors, who had some British case law that could defend them. However, the extent to which doctors, law enforcement, and Canadians in general fully understood their legal situation is unknown. This situation of ambiguity, coupled with shifting medical technologies and societal mores, likely helped to spur the reforms that occurred in both the UK and Canada.

In Britain, reform legislation was introduced by several private MPs starting in the 1960s. Then, in 1966, the Labour Government came to power, and while they avoided "direct and open responsibility for the new venture, the government allowed a private member of another party ... to introduce the Bill which was to become law in little more than a year" (de Valk, 1974, p. 4). The 1967 legal reforms retained abortion as a "residual crime", but allowed abortion in cases when pregnancy posed a health risk – broadly defined – to the mother, when there were fetal abnormalities resulting in physical or mental handicaps, when a child would overtax or overstrain the mother, or when the mother was very young or had been raped; these reasons were allowable up to 28 weeks of pregnancy (de Valk, 1974; Saurette & Gordon, 2015). It required abortions to be performed in a hospital or approved location and required a second opinion from another doctor, except in emergency situations (Keown, 1988, p. 86). The British 1967 Act essentially "placed therapeutic abortion on a statutory footing" as opposed to the case-law established by *R.*

v. Bourne and subsequent cases (Keown, 1988, p. 84). In other words, the reform was viewed as clarifying and codifying existing practice rather than approving of the practice per se; this emphasis on clarification and codification would also appear in forthcoming Canadian legislation. Also foreshadowing the Canadian legal reforms (see chapter 5), the British legal change was seen as a "compromise measure which pleased neither extreme of opinion" (Millns & Sheldon, 1998, p. 9).

Under the British 1967 law, abortion was largely dependent on doctors' professional judgement, but ultimately yielded abortion "virtually on demand" in the United Kingdom (excluding Northern Ireland) up to the 28th week of pregnancy (Saurette & Gordon, 2015, p. 99). This was not the intent of the bill, but the safeguards included in the bill were rendered moot "essentially because, like the Act as a whole, they are built on the premise of non-interference with clinical freedom" (Keown, 1988, p. 137). In other words, the maintenance of "clinical freedom" and "professional autonomy" for doctors made the law difficult if not impossible to enforce. Canada's 1969 abortion law, also founded on the principle of medical discretion, would likewise prove difficult to enforce.

The British influence extended to the Canadian reforms of the 1960s, where Britain's legal changes under their Labour Party inspired would-be reformers in Canada (F. L. Morton, 1992b; Studlar & Tatalovich, 1996; Tatalovich, 1997). De Valk (1974) notes that Canada was swept along in the changes of Britain as well as changes in the United States, with the influence of "legal theory and legal precedents" from the former and the mass media influence of the latter (p. 9). The legal changes in Canada would mirror many of those in the UK.

1.1.2 An Overview of Abortion in Canada from the 1960s to 2019

By the 1960s, abortions in Canada were occurring in hospitals, although at what rate and for what reasons remain unclear due to the general illegality of the practice and the resulting lack of record keeping. Collins (1982) describes the pre-1969 law situation as "informal" systems in some hospitals, where committees of three to five doctors met in camera (i.e., off the record) to approve abortions in various cases. Some hospitals had quotas on the maximum number of abortions that could be performed to avoid appearing "lenient" (Collins, 1982, p. 3). Fraud was used to cover up the performance of abortions as well, however, under the labels of "emergency appendectomies" and D&Cs (dilation and curettage procedures) for "menstrual irregularities" (Collins, 1982, p. 3).

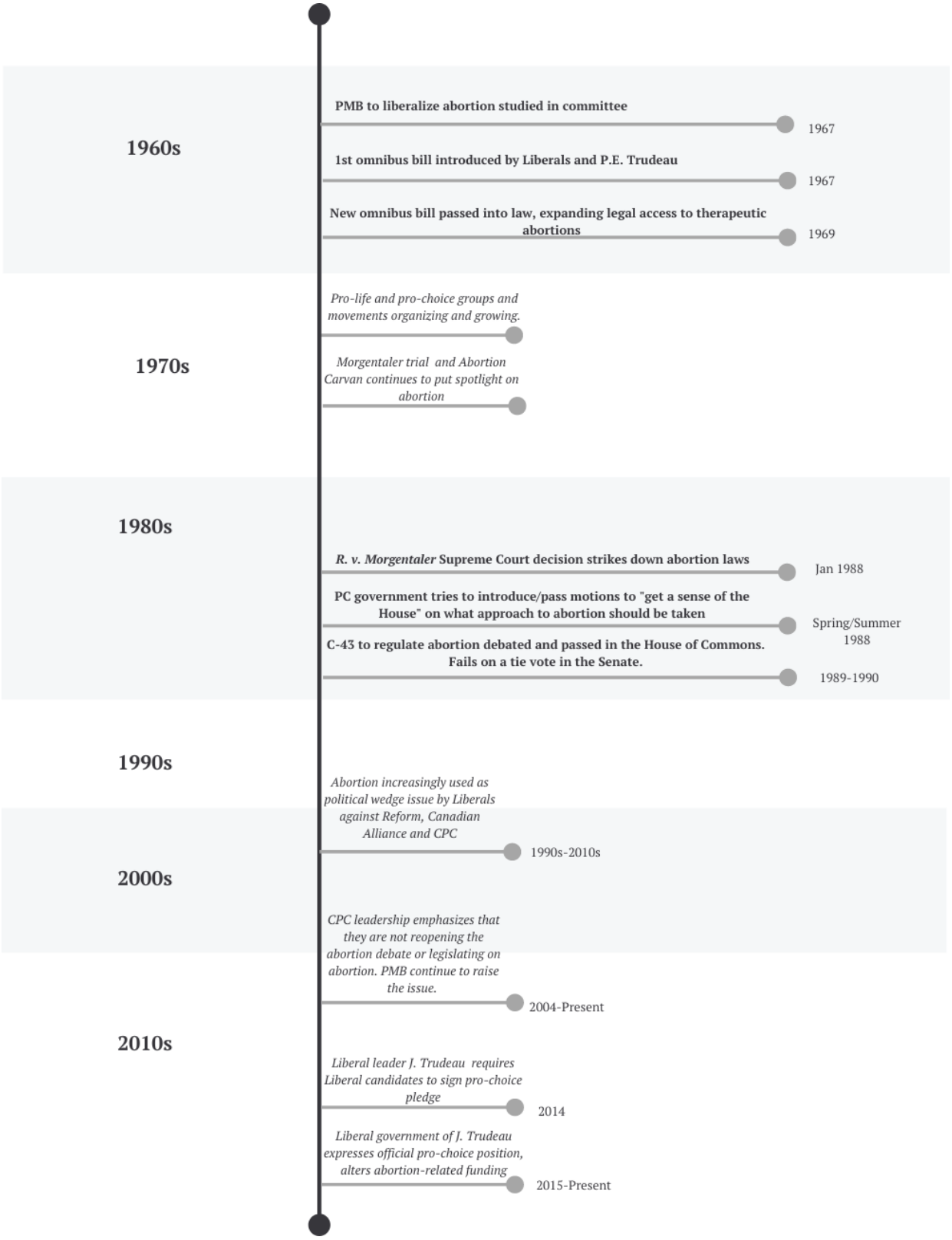
Canadian medical interests actively pushed for changes to the Criminal Code on abortion, mirroring similar lobbying efforts in Britain. One source of consternation for the Canadian medical profession was in response to a small – but potentially significant – change in the wording of Criminal Code in 1958. Section 303 (later section 237(1)) had originally prohibited the procurement of miscarriages, as well as the "unlawful" administration of drugs, instruments, etc. to achieve a miscarriage, but the 1958 amendment removed the word "unlawful". The concern from doctors was that this change "brought into question whether or not there were any situations in which an abortion could be 'lawfully' performed for therapeutic purposes" (Penny Light, 2003, pp. 160–161). This confusion yielded varying willingness among doctors to perform abortions, varied access to the procedure across the country, women traveling to the United States to procure abortions, as well as risks and causalities from unsafe illegal abortions (Litt, 2011). Additionally, Brodie, Gavigan and Jenson (1992b) point to "mounting demand" for the procedure during this period, which meant more and more doctors were having to confront the issue in regular practice (p. 11). The Canadian Bar Association (CBA) and Canadian Medical Association (CMA) began

looking at options to liberalize abortion in the 1960s. The influence of the CMA becomes clear when looking at the resulting 1969 legislation, given that it "largely followed the CMA's recommendations" (Halfmann, 2011, p. 73).

As represented briefly in Figure 2, below, abortion became a more prominent parliamentary issue in 1967 with the introduction of three private members' bills (PMB) from New Democrat Party (NDP) members and a Liberal backbencher. These bills were studied by the parliamentary Health and National Welfare Committee, whose subsequent recommendations for changes to the Criminal Code closely matched the government bill that followed in 1967.

This 1967 omnibus bill, which included amendments to the Criminal Code's abortion clauses, never went forward due to an election being called, but the bill was re-introduced in 1968 and passed in 1969. The bill expanded legal access to "therapeutic" abortions when pregnancy threatened the life or health of the woman, but otherwise maintained a ban on the practice. "Health," however, was not clearly defined and yielded varying interpretations of the law and access to the procedure across the country.

Figure 2: Timeline of Abortion from 1960s to 2019



Social movements supporting and opposing abortion choice arose in the period following the 1969 law, both of which placed pressure on the government to make further legal changes (Brodie, 1992; Cuneo, 1989; Tatalovich, 1997). However, the Liberal government defended the status quo, arguing that the 1969 law was the best "accommodation" that could be reached on such a fractious issue. This defence of the status quo continued into the 1980s, and during the 1984 election, Liberal leader and Prime Minister (PM) John Turner and Progressive Conservative (PC)[11] leader Brian Mulroney both supported the existing law (Jenson, 1992).

In January 1988, however, the Supreme Court of Canada (SCC) effectively decriminalised abortion in its decision *R. v. Morgentaler.* This watershed decision overturned the 1969 law, striking down the restrictions on abortion in the Criminal Code[12] and returning the issue to Parliament to craft new legislation. Unlike the earlier *Roe v. Wade* decision in the U.S., the SCC "refused to set any policy guidelines or restrictions for a new abortion law", leaving that to Parliament (Saurette & Gordon, 2015, p. 126).

Brian Mulroney's Progressive Conservative (PC) government attempted to respond to the SCC decision, eventually introducing Bill C-43, *An Act respecting abortion*, in November 1989. Considered a "compromise bill" by the executive, C-43 returned a general prohibition on abortion to the Criminal Code but allowed abortions with one doctor's approval if pregnancy endangered a woman's physical, emotional, or psychological health (Canada, House of Commons Debates, 34th Parliament, 2nd Session, 1989, Vol. 4). C-43 narrowly passed in the House of Commons in 1990 but failed in the Senate, where it died on a tie vote in 1991. As the Mulroney government had signalled prior to the House vote (33rd Parliament, 2nd Session, 1989, Vol. 5, p. 6342), it

[11] The Progressive Conservatives merged with the Canadian Alliance (formerly the Reform Party) to become the Conservative Party of Canada (CPC) in 2003.

[12] The restrictions, as briefly mentioned earlier, were the prohibition of abortion except in the cases of a threat to the life or health of the mother. They were outlined in section 251 of the Criminal Code at that time.

would not return to the issue within its mandate. This approach was maintained by PC Prime Minister Kim Campbell (1993) and Liberal Prime Minister Jean Chrétien (1993-2003), both of whom were clear that the issue of abortion would not be legislated on (Halfmann, 2011, p. 142).

However, under Chrétien, the government began referring to a "woman's right to abortion", contrasting their position with that of the Reform Party turned Canadian Alliance party, particularly during the 2000 election when running against Stockwell Day, the more socially conservative leader of the Canadian Alliance (Adams, 2000a, 2000b, 2000c; Clark, 2004; McIlroy, 2000). This rhetoric intensified under Paul Martin's Liberal government (2003-2006). Martin increasingly connected abortion rights with the protection of the Charter of Rights and Freedoms and attacked the new Conservative Party and its leader Stephan Harper on the campaign trail and in hard-hitting attack ads during the 2004 and 2006 elections (Chase, Lunman, & Fagan, 2004; Clark, 2006a, 2006b; Galloway, 2006a, 2006b; Halfmann, 2011; Laghi, 2004b; Laghi & Walton, 2004; LeBlanc, 2006).

As the Canadian Alliance had merged with the Progressive Conservatives (PC) to form the Conservative Party of Canada (CPC), party leader Stephen Harper had promised to allow free votes for his MPs but also committed to not introducing government legislation on the issue; this was stated in the 2004 election (Laghi, 2004b), echoed in subsequent elections in 2006, 2008, 2011, and 2015 (Clark, 2011; Curry, 2006; Taber, 2010, 2017) and is still found in party policy documents today (Conservative Party of Canada, 2018, p. 4). When in government from 2006-2015, Prime Minister Harper faced criticism from all sides for both restricting the debate on abortion when raised by pro-life backbench MPs and for not adequately quashing it (Dyck, 2013, p. 227).

More recently, Liberal leader Justin Trudeau's decision to ban pro-life candidates from running for office in 2014 confirmed a stronger stance on the issue (LeBlanc, 2014b; LeBlanc & Mackrael, 2014; Payton, 2014). Preceding governments and parties had typically allowed individual MPs to vote their conscience on the matter, even if it contradicted the party line, but Trudeau signalled a clear end to this approach. Upon forming government, Trudeau's Liberals restored abortion funding internationally and cut funding for domestic Canadian pro-life organizations in 2017, signalling a stronger pro-choice policy position,[13] although the unregulated legal status of abortion at the federal level has not changed (Blanchfield, 2017).[14]

This history, highlighting how the Canadian government did legislate on abortion in the 1960s and attempted to do so in the 1980s, along with the evolution in language and posture of the Liberal party and its governments, does not conform to the traditional portrait of a pure avoidance strategy painted by the literature on how governments address abortion. While a detailed review of the literature can be found in Chapter 2, the following section outlines the approaches taken in the abortion policy literature to expose the conflict between this portrait of avoidance and the history of the abortion issue discussed above. This provides the rationale for the focus of this thesis on the specific role of the federal government and, by extension, its contribution.

[13] This Liberal position has not been investigated academically but has been documented in the media.

[14] Despite a lack of federal regulation or legislation, some regulation can be found at the provincial level as well as within hospitals and medical associations, such as guidelines on how late abortions can be provided in a hospital. Currently abortion is generally covered by provincial health care plans in both hospitals and clinics, although barriers to access have been identified in the Maritimes (Foster et al., 2017; Sethna & Doull, 2013). Some barriers can be a result of limited available clinics particularly in more rural areas, and others are tied to regulations, such as those that restricted surgical abortions in PEI until recently or limited provincial health insurance coverage from funding abortions done in clinics, as in New Brunswick. Further information on abortion within the provinces can be found in the work of Johnstone (2017a, 2017b, 2020; Johnstone & Macfarlane, 2015).

1.2 A Clash with the Traditional Portrait: The Gaps in the Literature

As noted above, parliamentary governments generally and Canada's government specifically have traditionally been portrayed in the literature as "avoiding" abortion as much as possible. The roots of this portrait lie in institutional literature, both in studies focused on abortion and in studies of other value-based and moral issues (morality policy) more generally.

Institutional literature emphasizes how the parliamentary system's more closed processes enable stronger party discipline and agenda control, in contrast to the more raucous abortion politics of the U.S. This literature explains that because the parliamentary system is more hermetic to interest groups than the U.S. system, the Canadian government is more insulated from social movement and special interest pressures (Halfmann, 2011; Haussman, 2001, 2005; Schwartz & Tatalovich, 2009; Tatalovich, 1997). The fusion of the legislature and executive contributes to significantly stronger party discipline within the parliamentary system, which limits the advocacy that individual legislators may take compared to the U.S. (Halfmann, 2011; Haussman, 2001, 2005; Schwartz & Tatalovich, 2009; Tatalovich, 1997). When governments are confronted with abortion, they may use measures like free votes, as mentioned earlier.

Free votes are not the norm of parliamentary behaviour. Instead, the strength of party discipline in Canada's parliamentary system, by and large, requires individual legislators to adhere to the party position on a given issue, especially during votes. However, the traditional understanding of how political parties address the abortion issue in Westminster parliamentary systems has revolved around this category of conscience issues, which is likewise applied to the handling of other moral issues (Cowley, 2001; Halfmann, 2011; Plumb, 2013; Ross, Dodds, & Ankeny, 2009; Studlar & Tatalovich, 1996; Warhurst, 2008).

Morality policy literature, which studies abortion among other moral issues, also emphasizes institutional factors in its comparative studies of why moral issues trigger significant conflict in some countries and less so in others. Overall, the conventional understanding of how Canadian political parties and governments largely avoid abortion morality policy issues has been generally consistent with political parties in other parliamentary systems (Cowley, 2001; Halfmann, 2011; Plumb, 2013; Tatalovich, 1997). A prominent approach within this is the Two Worlds model, which argues that political systems that traditionally have had confessional or religious-based parties (i.e., Christian Democrat parties) possess a religious "cleavage" within their systems that produce political conflict on moral issues (Engeli, Green-Pedersen, & Larsen, 2012). This "religious world" is contrasted to the "secular world", which does not have a traditional of confessional parties and avoids such conflicts on moral issues.

Yet this traditional institutional portrait of avoiding abortion policy runs into a few issues, as will be detailed in chapter 2. In brief, it inadequately captures the history of abortion policy in Canada described in section 1.1, in that Canadian federal governments still have acted on abortion and that increasingly different tacks have been taken by Conservative and Liberal governments over time. As such, painting federal abortion policy with the broad brush of "avoidance" fails to account for differences between successive governments' approaches to abortion. In so doing, it is unable to account for the agency of government and political actors which has shaped policy decisions and political discourse on abortion.

Accordingly, a more granular and comprehensive examination of the matter is required to better conceptualize how governments and parties manage abortion policy and politics. This project updates the literature on federal abortion policy in Canada by analysing multiple sources and materials over a period of nearly sixty years, covering 1966-2019. It represents a significant

history of the political management of abortion within Canada's federal government. Additionally, as discussed below, it offers a new typology with which to analyse the dynamic management of controversial issues.

1.3 Reconceptualizing how Governments Manage Morality Issues: Politicisation and Depoliticisation as Management

To address how governments manage abortion, this study examines both the discursive and procedural actions that enable the government to avoid or act on abortion – and even a measure of both at the same time. Framing theory forms the foundation of the theoretical approach, with framing understood as a process of "selecting and highlighting some facets of events or issues, and making connections among them so as to promote a particular interpretation, evaluation, and/or solution" (Entman, 2004, p. 5). By examining how language is used by actors to present, justify, and explain both their understandings of an issue and their own actions, we can recreate actors' frames over time and explore how they contribute to problematizations of an issue, as well as the solutions and actions advanced to solve these problems.

Adopting the concepts of (de)politicisation, introduced briefly earlier, enables us to probe the effects or desired effects the government's (de)politicising discourses and actions can have, allowing for an analysis of how government actions and language can facilitate the management of contentious issues like abortion. Within depoliticisation literature, distinctions have been drawn between different mechanisms or vehicles of depoliticisation, such as discursive depoliticisation (framing) or governmental depoliticisation. This dissertation draws on this literature (Bates, Jenkins, & Amery, 2014; Beveridge, 2012; Burnham, 2001; Neal, 2019; Tilli, 2009; Wolf & Van Dooren, 2018; Wood & Flinders, 2014) but also develops it through the introduction of a new typology of (de)politicisation, which differentiates between three types of (de)politicising movements: ***spatial*** movements include how governments push or pull an issue

into their sphere of responsibility (i.e., jurisdiction); ***temporal*** movements involve the use of time (i.e., delay) to move an issue towards or away from the government; and ***capacity*** movements are the degree to which the government has the capacity or lack thereof to act on the matter, whether concretely or as a matter of perception.

Using the lens of (de)politicisation allows for the conceptualization of how the Canadian federal government both acts on abortion and tries to keep its distance.[15] By understanding these actions and avoidance as politicising and depoliticising movements, governments can be seen as moving back and forth on the issue as a means of managing the conflict and controversy that abortion engenders. As will be demonstrated through the analysis, these procedural and discursive movements of the government help to both explain the solutions and approaches of the government over the past half century, which includes - but is not exclusive to - avoidance behaviours. This framework also sheds light onto the fractures and contradictions that emerge, and which can result in outcomes that were not foreseen and certainly not desired by the government.

1.4 Outline of the Dissertation

This thesis is divided into three main parts. The first part consists of the chapters (2-4) that establish the approach of this project. Chapter 2 provides a literature review, arranging the literature into three main categories: institutional approaches, interest approaches and idea approaches. The institutional approaches explore further the literature mentioned briefly in

[15] It is also important to acknowledge that this thesis is not passing judgement on whether politicisation or depoliticisation are good or bad nor appropriate or inappropriate. Value judgements could, of course, be made, and would likely depend greatly on the context of the issue. For instance, governments regularly contend with a myriad of issues on the political agenda, while having only limited time and resources to achieve their agenda, resulting in a need to prioritize some issues over others. As such, depoliticising movements are not necessarily nefarious or inappropriate in a broader context of agenda management, although the sorts of depoliticisation could, of course, be more or less democratic, transparent, etc. This thesis, instead, is interested in understanding ***how*** and ***why*** governments move towards and away from the abortion issue as part of managing the issue, rather than judging if they should or should not be doing so.

section 1.2. The role of interests in abortion policy literature is also explored, specifically medical interests and social movements, as well as voting behaviour of politicians. Finally, idea approaches to the literature are discussed, emphasizing the studies of discourse and framing, including morality policy literature on framing. Chapter 2 concludes by arguing that the traditional portrait of parliamentary governments avoiding issues like abortion is too broad to allow us to adequately address the question of how governments have managed the abortion issue, let alone to explain how it has evolved over time. This forms the rationale upon which the thesis rests and leads to chapter 3, which delves further into framing theory to explain how language can be used to explore how the meanings and understandings of policy evolve over time. The concepts of (de)politicisation are explored in further detail, as is the typology introduced in section 1.3, which serves to better conceptualize the dynamic movements of governments towards and away from the abortion issue in their attempts to manage it. Chapter 4 then presents the methodology used to collect and analyse the frames and other data. This describes the use of frame analysis of parliamentary transcripts (Hansard) spanning 1966-2019, focused specifically on government speakers and actors, as well as content analysis to examine committee transcripts, cabinet documents when available, media reports, and 28 original interviews, which all complement the Hansard analysis.

The second and third parts of the thesis present the analysis, drawing on frame analysis and concepts of (de)politicisation to analyse the research materials. However, these chapters (5-10) also offer a detailed account of the government's management of abortion, which is necessary to chart out the dynamism of the government's approaches to abortion within each time period as well as over time. These chapters, as such, involve both descriptions of the history as well as analysis.

The second part of the thesis consists of the first three empirical chapters (5-7), which emphasize how the government approached abortion primarily as a policy problem and continued to offer legislation as the solution. Chapter 5 covers 1966-1969 and the adoption of the omnibus bill under the Pearson and then P.E. Trudeau Liberal governments, while chapter 6 addresses the remainder of the Trudeau Liberal governments' mandates, from 1970-1984, as the omnibus bill is defended as the status quo against rising concerns over its operation. In chapter 7, addressing the period from 1984-1993, Mulroney's Progressive Conservative (PC) government comes to power and continue to defend the status quo along the same lines as the Liberals had. However, starting in 1988, they must contend with the SCC *R. v. Morgentaler* decision, which struck down the abortion laws, resulting in parliament having to find a new legislative solution. This chapter details their response, the process by which they tried to develop legislation, and the eventual debates and defence of this legislation.

The third part covers the remainder of the period under analysis, with these chapters (8-10) showing the movement away from abortion as a policy problem and towards the use of abortion as a political weapon and wedge. Chapter 8, 1993-2006, examines the return to power of the Liberals under Chrétien and then Martin, with the noticeable shift in language towards abortion as a woman's right and a Charter right. Here, abortion is used increasingly as a wedge issue against the ascendency of more right-wing populist Reform and Canadian Alliance parties, which subsequently merged with the PCs to form the current Conservative Party of Canada (CPC). Chapter 9 examines the Harper Conservative government, from 2006-2015, and their uneasy balancing act between distancing themselves from the "no-win" abortion issue and contending with a significant split within caucus and their electoral base over the issue. Chapter 10 then discusses the return of the Liberals to government under J. Trudeau in 2015, with their

avowedly pro-choice and feminist branding and efforts to squeeze out remaining pro-lifers within caucus.

Finally, chapter 11 reviews the main arguments of this dissertation, which, as mentioned earlier in this chapter, point to a shift from treating and speaking of abortion as a policy problem to be solved with legislation towards abortion as a weapon. The typology introduced briefly in section 1.3 is also discussed in terms of how it enables a more nuanced understanding of the dynamics of (de)politicisation and the mechanisms of how they operate. The contributions of the dissertation are then discussed, including the theoretical and empirical contributions to morality policy, (de)politicisation literature, and abortion literature. The methodological contributions and limitations are also reviewed, including other possible avenues for future research, as well as the social contributions offered.

Chapter 2: Literature Review

Given its intersection with culture, religion, politics, social movements, the law, healthcare and ethics – among other fields, it is unsurprising that abortion is studied with diverse approaches and in diverse fields. Public policy finds itself in a challenging position at the nexus of many of these fields and approaches, with researchers often borrowing ideas and concepts from a range of disciplines, from sociology to political science to psychology to history to feminism. This offers rich conceptual and theoretical depths to draw on, but makes it difficult to delienate abortion policy literature from its many corrollaries. Adding to this complexity is that abortion is frequently grouped with other issues, referred to as morality policies. Such policies, like abortion, involve questions of the "right" or moral way to live, which spark "fierce debates" over these matter (Euchner, 2019).

This chapter faces the challenge of trying to organize the wide array of varied literature surrounding abortion and morality policy in a way that shines light on the research question, which asks how the Canadian federal government has managed abortion policy from 1966-2019, while also situating and differentiating this research project within this context. This chapter organizes the literature into three broad categories: institutions, interests and ideas.[16] These categories, often referred to as the "three I's", are used in public policy as a broad framework for categorizing literature according to the mechanism or main variable used by scholars to explain public policy and political science (Heclo, 1994; Palier & Surel, 2005). Institutional approaches emphasize the structures and organizations within society that guide and constrain both actors and policy itself, whereas interest-based approaches focus on actors, groups and networks whose

[16] It is important to note that these broad categories of institutions, interests and ideas are not intended to be understood as mutually exclusive, with some literature blurring categories. However, these categories offer a framework for understanding the thrust of the approaches.

"interests" drives public policy through their actions. As Heclo (1994) describes it, interest-based approaches are "usually interpreted to refer to the self-interested and purposive pursuit of material goals" (p. 375). Ideas-based approaches, in turn, investigate how "theories, conceptual models, norms, world views, frames, principled beliefs, and the like, rather than self-interests, affect policy making" (J. L. Campbell, 2002, p. 21), which often includes a focus on discourse and language as a means of accessing these ideas.

This chapter proceeds by first reviewing the institutional literature, demonstrating how it has advanced the avoidance portrait, both for morality policy more broadly and in studies of abortion specifically. Next, interest literature is discussed, highlighting literature on medical interests, social movements and voting behaviour. Thirdly, idea-based literature is covered, with an emphasis on discursive approaches that consider how framing impacts abortion policy and politics, as well as in morality policy more generally.

2.1 Institutional Approaches

Institutional approaches to abortion policy and politics have been prominent in the literature, both in comparative studies of abortion regimes across multiple countries and within morality policy. Within these studies, the institutional arrangements of countries, such as parliamentary systems, are used to explain diverging and converging abortion policies and politics. The main approaches are often historical institutionalism, but with some influence of sociological institutionalism.[17] Historical institutionalists define institutions as, "formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy" (Hall & Taylor, 1996, p. 938). Sociological institutionalists broaden this to include culture as an institution, involving "not just formal rules, procedures or

[17] Rational choice institutionalism, understood as the other main new institutionalist approach (see Hall & Taylor 1996), does not appear to be a major approach within abortion literature.

norms, but the symbol systems, cognitive scripts, and moral templates that provide the 'frames of meaning' guiding human action" (Hall & Taylor, 1996, p. 947). Accordingly, from procedures to symbols, institutions function as a system of rules that constrain and enable the choices the policymakers face, contributing either directly or indirectly to the abortion policy outcomes.

In this section, we review literature focused specifically on abortion, as well as that looking more broadly at morality policy. The significance of different types of institutions can be seen, particularly political institutions and religious institutions. The means by which these contribute to the traditional portrait of avoidance is discussed, looking at how institutions in parliamentary and secular systems are presented as offering both the tools and incentives for government to avoid having to manage abortion.

2.1.1 Institutional Approaches to Abortion Policy

Institutional approaches to abortion policy have included a number of major studies comparing the Canadian case to the U.S. and other countries, pointing to differences in political institutions to explain distinctive abortion politics and policies within the countries. More specifically, the parliamentary system helps insulate politicians from interest group pressures outside of parliament and generates strong party discipline that enable governments to exercise a greater degree of control over the political agenda and individual legislators. For instance, Tatalovich (1997) and Studlar and Tatalovich's (1996) work finds that the U.S. system, with a separation-of-powers government, tends to have a larger scope of conflict, as its less rigid party system allows legislators to advocate on abortion, and the more dispersed system of government allows social movements and these free-agent legislators to continue to raise and pursue the issue. In Canada, by contrast, the more united parliamentary government enables stronger party

discipline, minimizing the advocacy potential of individual legislators, and the system possesses fewer policy venues for social movements to target for lobbying (Tatalovich, 1997).

Halfmann's (2011) study also compares Canada and the U.S., as well as the U.K., but takes a broader approach to the role of institutions, drawing on historical, sociological and what he refers to as "political institutionalism" to "analyze the effects of macro-level political institutions such as health-care political, electoral and party systems, and policy venues on meso-level collective actors such as medical interest groups, political parties, and social movement organizations" (p. 5). His approach emphasizes how "political institutions powerfully shaped abortion policies" (p. 5) as well as shaping "the very interests, identities, discourses and practices of these actors" (p. 7), although actors do retain some "room to maneuver" (p. 7). Halfmann proposes a typology that organizes types of abortion policy based on the gatekeeping regime that restricts abortion or not. He links each type with particular post-legislative reform politics, including, general avoidance politics in the cases of Canada, the UK and the U.S.

Haussman (2005) studies abortion within the U.S., Canada and Mexico, examining how the varying forms of federalism in these countries create different political opportunities for social movements and produce variable abortion access across the continent. Haussman (2005) similarly portrays the Canadian system as fairly closed off to interest groups, which are then pushed into a more "reactive mode" rather than being able to work more directly with government (p. 10). Describing the development of abortion policy and access in Canada, the author emphasizes major factors that created opportunity structures for interest groups, including the establishment of national health care insurance in the 1960s, the institution of the Charter of Rights and Freedoms in the 1980s, and major shifts in political party arrangements such as the 1980s rise of the PC party. Haussman's (2000, 2001) other studies on the women's movement more specifically

examines how the movement interacted with these opportunity structures during Canadian abortion debates and how these structures conditioned their impacts on abortion policy debates. More recently, Haussman (2015) uses a historical institutionalist perspective to understand "the ways in which two long-established federal states, Canada and the United States, have layered recent policy issues of women's rights to reproductive services into their federal arrangements on health care" (p. 161). This layering of abortion onto political and healthcare institutions produced "an uneven, unequal pattern of access" to abortion services across a "patchwork of access regimes" in Canada (p. 162).

Recent research has continued to emphasize structural factors but considers societal structures more broadly, such as Tatalovich and Schwartz's (2017) examination of the "lifecycle", or rise and fall, of moral issues on the political agenda over time.[18] Addressing the U.S. specifically, Tatalovich (2018) identifies key variables for the "death" of moral conflict, including "an authoritative legal enactment, the political opportunity structure, the potency of counter-movements, and also the organized interests that support the policy status quo" (2018, p. 694). Definitive court decisions can contribute to shutting down an issue, and court decisions that are more open-ended, like *R. v. Morgentaler* or *Roe v. Wade*, can spur continued conflict. The effects of such decisions are also influenced by whether an organized opposition is in place to continue its campaign, as well as the structure of the political system in terms of the degree to which it allows actors to access the political system.

Access to abortion has also been studied relative to geographical considerations and borders. The Maritimes have garnered increased scholarly attention, having contended with more

[18] Tatalovich and Schwartz (2017) organize the "life histories" of issues into the stages of emergence, establishment, decline, resurgence, and resolution. The lifecycles are reconstituted by tracing the media coverage of an issue as a measure of public attention and then explained with reference to changing demographics, the configuration of civil society and dominant societal values, political institutions, and even the "natural environment" of a nation.

barriers to abortion compared to other parts of Canada. Foster et al. (2017) studied women obtaining abortions in New Brunswick before and after the provincial government lessened its restrictions on qualifying for publicly funded abortion in 2015. Others have also studied the experiences of women who have had to travel in order to access abortions; this practice of travel is sometimes called "abortion tourism", or "abortion refugees" (Sethna & Davis, 2019; Sethna & Doull, 2013; Stettner, Ackerman, Burnett, & Hay, 2017). This travel is studied internationally, including in Sethna & Davis' (2019) edited volume, but also has addressed the specific challenges of the Maritimes, including PEI specifically (Chambers, Macquarrie, & Macdonald, 2019).

2.1.2 Institutional Approaches to Morality Policy

Alongside these comparative institutional studies on abortion are those that compare and study abortion with other morality policy issues. These approaches often examine differences and similarities across several issues. Morality policy literature is concerned with issues of fundamental values or "first principles" (Mooney, 2001, p. 3), that is, issues of "right" versus "wrong" and the value conflicts they can engender (Knill, 2013; Mooney, 1999; Mooney & Lee, 1999). This commonly includes issues such as stem cell research and artificial reproductive technologies, euthanasia and assisted dying, prostitution and same-sex marriage as well as abortion (Engeli et al., 2012; Engler & Dümig, 2016).[19] Abortion is often an exemplar of such policies, characterized by one author as "by far the most pervasive morality policy concern" (Studlar, 2001, p. 45). Although morality policy has rarely been applied to Canadian cases,[20] a significant amount of research has considered morality policy within parliamentary systems more generally.

[19] The precise delineation of what is included in morality policy has been much debated and will be discussed further in this chapter, but the issues mentioned are those most associated with the policy area are mentioned here.
[20] Of the few studies that do focus on Canada, these have covered reproductive technologies (Snow, 2009, 2015) and medical assistance in dying (Burlone, 2020; Burlone & Richmond, 2018), but not abortion.

Morality policy is traditionally understood to possess key features, including technical simplicity, public salience, and high participation. It is considered "technically simple" in that "almost anyone can legitimately claim to be well informed" due to it hinging on matters of beliefs and morals, rather than requiring evaluation of statistical or scientific data, for instance (Mooney, 2001, p. 7). Tied to this is the salience of the issue for the public since laypeople can not only understand the issue but likely see it as having personal relevance to their belief systems; expert influence is thus more limited, as contrasted to complex economic issue, for example (Wagenaar & Altink, 2012, p. 283). Public participation, consequently, can be higher in such instances due to the issue's increased visibility in the media and in terms of political engagement (Haider-Markel & Meier, 1996; Studlar, 2001, p. 39).

Morality policy is also characterized as issues that endure over a long period without resolution. Bowen (2012), for instance, describes how it features "ongoing debate surrounding the issue, even after legislation has passed" (p. 126). Such issues also resist compromise because they focus on indivisible values and involve highly polarized interest groups (Vergari, 2001). These policies also push legislators away from a "rational model" of decision making, in terms of attention being focused on the values involved rather than on expert advice or scientific evidence (Bowen, 2012; Goggin & Mooney, 2001). Similarly, morality policies have been understood as tied to implementation challenges due to their focus on the symbolic nature of the policy rather than the feasibility of enforcement or practical details of deployment (Mooney, 2001; Mylchreest, 2001; Vergari, 2001; Wagenaar & Altink, 2012). As described by Wagenaar and Altink (2012), "The purpose of the [morality] policy is to send out a signal to the world—both to supporters and opponents—those proponents of a certain policy proposal hold the right position on the issue" (p. 284).

However, the characteristics described above have been questioned within morality policy literature, with scholars still wrestling over the definition of what constitutes morality policy. While issues involving abortion, sexuality, euthanasia, capital punishment, etc. are always first on the list of morality policy issues, scholars have also questioned whether other issues involving values and controversy, such as drug policy or environmental policy, could also be considered morality policies. And, more fundamentally, since all policies do involve values, what separates a "normal" policy from a "morality" one?

Morality policy is defined in the literature in two main ways: using a substance definition or a framing definition. Substance or content definitions emphasize the moral content of the policy, and it is this substance which makes the policy area different from others (Camobreco & Barnello, 2008; Clifford, Jerit, Rainey, & Motyl, 2015; Engler & Dümig, 2016; Heichel, Knill, & Schmitt, 2013; Mooney, 2001). As noted by Mooney, "Public policies in these areas are, therefore, no less than legal sanctions of right and wrong, validations of particular sets of fundamental values" (2001, p. 3). By contrast, framing definitions argue that morality policy issues do not have a particular substance or *a priori* existence but are constructed through the frames of actors who consider these policies to have a moral essence (Haider-Markel & Meier, 1996; R. J. Kreitzer, 2015; Mucciaroni, 2011; Omori, 2013; Rapp, Traunmüller, Freitag, & Vatter, 2014). A moral frame presents an issue as implicating fundamental values and/or matters of "sin" (Meier, 2001). Frames are used by actors who perceive a threat to their values and use moral terms to express that concern (Rapp et al., 2014, p. 422).

The dichotomy between these definitions has often been critiqued, however. Even those using substance definitions highlight the significance of framing, since the substance ultimately depends on peoples' perceptions of the substance (Engeli et al., 2012b, p. 24). For instance,

Mooney (2001), who defines the issue as one of first principles (its substance), also emphasizes framing choices of actors by noting that, if "at least one advocacy coalition involved in the debate defines the issue as threatening one of its core values, its first principles, [then] we have a morality policy" (Mooney, 2001, p. 4). As such, given the significance of framing within substantive definitions, it is not clear how to maintain a distinction between the categories.

Some authors have tried to bridge the definitional divide by adding additional categories. For instance, Knill, Adam and Hurka (2015) differentiate "manifest" and "latent" morality policies, with manifest being those issues that typically produce value conflicts and latent being those that generally do not but can under certain conditions. Another approach comes from Permoser (2019), who defines morality policy as rooted in religious values conflicting with liberalism. Ultimately, however, according to Vossen, de Potter and Meier (2022), the definitional quandary is rooted in an ontological conflict between positivists and constructivists. Here, the substance definition represents a positivist approach because it rests on these issues having a moral essence, whereas the framing definition represents a constructivist approach as a "generative process where issues become morality policy through moral framing" (Vossen, de Pooter, & Meier, 2022, p. 188) (p. 188). However, as noted by Gierycz (2021), although some scholars use this framing or constructivist approach to assert that any issue can be moralized or not, it is important to recognize that, "not each one political decision has similar potential to become a moral problem….Everyday experience shows that people rarely propose to 'morally frame' a discussion about the development of railway infrastructure, while discussion about euthanasia does not need 'framing' to become a moral discussion" (p. 241). Accordingly, those adopting a framing definition of morality policy, as this dissertation does, should recognize that while issues may be constructed to be moral or not, these constructions do not occur in a vacuum,

but rather emerge through a deeply historical process that has developed moral understanding of issues over many years, and which cannot be created or dislodged simply or easily because they are deeply entrenched in culture, religion, and identity. Put another way, even if an issue like abortion is not *a priori* moral, it has developed a moral essence through long histories of culture, religion, etc.

Leaving aside the definition of morality policy, its study has often included comparative approaches of morality policy issues within and across countries; some studies do not address abortion specifically, but because of abortion's inclusion in the category, the findings are often generalized across morality policy. These studies generally examine the structural factors within society and government that yield varying policy outcomes. This often includes a focus on the role of religious institutions (role of denominations, religiousity, etc.), political institutions (parliamentary government versus presidential, etc.), and political parties, as well as interactions between religious and political institutions. For instance, Fink (2008) examines how the structures and hierarchies of Catholic versus Protestant religious institutions affect morality policy in European countries, with Christian nations – and particularly Catholic nations – having stricter laws. He attributes this to the Catholic Church's more unified position thanks to its hierarchical structure as well its mobilization ability. Similarly, Calkin and Kaminska's (2020) comparison of abortion policy in Ireland and Poland attributes differences in policy change to the institutional settings of the Catholic Church in each country, with Poland's church possessing a stronger ability to veto abortion reform compared to Ireland. Reuterwärd (2021) also highlights how pro-life movements are best able to succeed in abortion reform in the Mexican case study when able to "tap" into religious institutions and alliances.

Other cross-national morality policy studies have been part of the MORAPOL project, or

the Comparative Analysis of Morality Policy Change project,[21] and have analysed numerous countries and issues to identify the institutional factors, such as religion, party structures, etc. that can explain convergence and divergence among policy outcomes as a means of testing models of morality policy. This has highlighted religious institutions, such as Budde, Knill, Fernàndez-i-Marín and Preidel (2018), who find that although strong religious institutions in a country can slow policy reform or result in more restrictive policies, over time these policies still become increasingly permissive (p. 58). Knill et al. (2020) also point to a general trend towards permissiveness in morality policy over the past 50 years, but identify a "bottleneck effect" of religion, whereby religious opposition to a more permissive policy is most significant early in the policy process but then decreases when the issue has been defined and set on the agenda. Knill, Adam and Hurka (2015) affirm a trend towards more liberal regimes, but also find unexpected "counterbalancing" trends towards restriction as well, where permissive regulation is compensated with stricter enforcement of this regulation and restrictive laws are compensated with lighter or less enforced penalties (Adam, Knill, & Hurka, 2015, p. 56).

The most important approach within this body of literature is arguably the Two Worlds of Morality Policy framework, developed by Engeli et. al. (2012b). Engeli et al. (2012b) undertake a cross-national comparison of five European countries plus the U.S. and five morality policy issues, including abortion, arguing that moral conflicts are triggered depending on whether the party system in a country possesses historical religious "cleavages." Countries with distinctions between religious and secular-based parties (usually systems involving Christian democrat

[21] This project, which ran between 2010 and 2016 examined nine morality policy issues, including abortion, across 25 countries, mainly but not exclusively European, over 50 year time period (1980 to 2010). The data was developed based on surveys completed by experts in the countries and policies under study (Euchner, 2019). The studies using this data are primarily quantitative based studies, with regression analysis used to identify the significance of various factors and to control for others.

parties) are part of the "religious" world category and trigger moral conflicts, while countries without such social cleavages are part of the "secular" world category and do not trigger moral conflicts. Here the significance of both political and religious institutions – and the melding of the two – comes to the fore.

The logic is that in the religious world, with a cleavage between religiously-based and secular parties, such parties will put issues of morality policy on the agenda, whereas in the secular world, this tends to be avoided. Green-Pedersen and Little (2021), for instance, note how this was the case in Ireland, with the "strategy of Irish parties towards morality issues . … has been to ignore them to the extent possible" (p. 1405). However, other studies have pointed to a more complex situation. For instance, Griera, Martínez-Ariño and Clot-Garrell (2021) describe how such cleavages can be latent or dormant for a time, but reactivated when religion is brought back into the public sphere. In their examination of Spain, for instance, they refer to the country as "fully secularized" but having had morality policy reigniting conflict between left-leaning parties who are using morality policies and secularism as "a political emblem", which then remobilizes religious institutions and actors (Griera et al., 2021, p. 10).

Expansions of the two worlds model further interrogate the role of religious institutions.[22] Knill and Preidel's (2015) comparison of Ireland and Italy, for instance, questions why Italy has been slower to adopt same-sex partnerships than Ireland, even though both are Catholic and Ireland is considered to have a more practicing Catholic population than Italy. They argue that the distinction is found in what they refer to as the "institutional opportunity structures, defining

[22] Some research has focused on one or two countries, usually to explore some sort of anomalous situation that does not fit into a model, and then expanding the 2-world model into 3 or 4 worlds to fit their case. Other examinations of the model have critiqued rather than expanded on it. Using a wide data set across 16-24 countries, some studies have found only weak confirmation of higher institutional conflict within religious party systems (Studlar & Cagossi, 2018). Studlar, Burns and Cagossi (2018) posit that the model might be only applicable to Western Europe, rather than being applicable to the world more broadly.

the chances of the Catholic Church to veto permissive policy approaches and the choice of governmental policy styles" (Knill & Preidel, 2015, p. 375). The strength of political leadership and the institutional access that the Church has in the two countries helps explain why Ireland, where the church could not veto policy changes, adopted more permissive policies than Italy, where the church has more opportunities or access points to intervene in the more "fragmented" government structure. Green-Pedersen and Little's (2021) study of Ireland as a case of a historically highly religious country with a secular party system also seeks to explain how Ireland remained an outlier as a secular world country with highly restrictive abortion laws, before rapidly "converging" to permissive policies, pointing to changes in the role of the Catholic Church and its lack of strong partisan connections with political parties.

Also investigating the role of religious institutions in the two worlds model, Van Kersbergen and Lindberg's (2015) examination of the Faroe Islands considers how this secular state has yielded such restrictive policies. They put forward a "supply-side theory of religion", whereby "religious activity is determined by the structure of the religious market: the more religious suppliers on this market and the more competitive the market is, the more religiousity flourishes" (Van Kersbergen & Lindberg, 2015, p. 786). In countries not dominated by one main church or a state-church, christian denominations "compete" for adherents and people can "shop around" for another denomination of church that is more "to their liking," rather than moving away from religious adherence altogether. This, then, incentivies political parties to stay attentive to the religious values of their population within their policies.

This model of the religious world and secular world is compelling from a comparative standpoint as a means of understanding heightened morality policy conflict in some countries compared to others. It has not, as of yet, been applied to the Canadian case, although Canada

would likely be understood as part of the secular world and would, according to this model, have less conflict and avoid morality policy issues. However, although these religious cleavages enable cross-country comparison, they are unable to help us understand the dynamics and evolution of how governments have managed the abortion issue over time within a single country. For even if Canada does not produce the heightened morality policy conflict of other religious world countries, its policy and political evolution and conflict still merit study.

Altogether, this section has addressed the literature's heavy focus on institutions as creating structures that enable governments to avoid abortion and morality policy issues, particularly in parliamentary systems. We now turn to other approaches to abortion and morality policy, first considering the role of actors and their interests in driving policy and politics in this area.

2.2 Interest Approaches

Studies of actors and interests have been a significant means of studying abortion, particularly medical interests and social movements, as well as micro-level approaches looking at the decision making and voting behaviour of individual politicians. Medical interests are widely associated with Canada's liberalizing reforms to abortion law in 1967-1969, but their involvement goes back further to the 1800s. Pro-life and pro-choice social movements, largely arising following the 1960 reforms, are also a focus within Canadian abortion literature. This section will review this literature, first looking at medical interests, followed by social movements, while highlighting how the themes of identity and professionalization are prevalent. Subsequently, voting behaviour is examined, which emphasizes how MPs understand their interests vis-à-vis those of their political parties.

2.2.1 Medical Interests

The importance of medical interests in abortion history broadly and Canadian history specifically is also well documented in the literature, emphasizing the connections between abortion and the professionalization of medicine, as well as how the legal reforms of the 1960s are associated with doctors' interest in protecting themselves from prosecution. The codification of abortion and increasing restrictions of the 1800s noted in Chapter 1 were, in large part, influenced by medical interests and the professionalization of medicine (Backhouse, 1994; Halfmann, 2011; Keown, 1988; Luker, 1984; Penny Light, 2003). Throughout the 1800s, physicians advocated in favour of restricting abortion, which authors link to their desire to "discipline" the practice of medicine by "suppressing irregulars" (Keown, 1988; Luker, 1984; Halfmann, 2011). Whereas professional physicians were middle and upper-class university-educated men, the "irregulars included lower class men and women who practiced medicine without university training (Halfmann 2011, p. 36). Only professionally trained doctors should provide abortions, argued physicians at the time, since only they could determine when abortion was medically needed, although Chapman and Penny Light refer to this "differentiation…[as] more rhetoric than reality" (2017, p. 185). Restricting abortion enabled physicians to squeeze out "irregular" practice, making physicians more competitive in the overcrowded medical arena of the 1800s, thus also protecting their economic wellbeing and social status (Penny Light, 2003, pp. 39–41). This process of professionalization is also found many decades later in the more recent Polish case, which has had increased abortion restrictions following the less restrictive abortion regime under the communists (Krajewska, 2021). Krajewska (2021)[23] indicates that the "majority of Polish physicians treated reproductive rights instrumentally in pursuit of such aims,"

[23] Krajewska's (2021) approach combines a sociological approach with feminist historical institutionalism, examining the connections between the medical profession and state institutions.

connected with professionalization processes (p. 326).

Alongside this differentiation based on education and training was a moral claim to superiority among physicians. According to Luker's (1984) sociological study on abortion in the United States, using the issue of abortion, doctors "could claim both *moral stature* (as a high-minded, self-regulating groups of professionals) and *technical expertise* (derived from their superior training)" [author's emphasis] (p. 31). This moral dimension also related to a concern with promoting "true womanhood" and ensuring that women fulfilled their proper roles as mothers, particularly amidst the declining birth rate among the more "respectable classes", contrasted with the continuing fecundity of French Canadians, the Irish and other non-English immigrants to Canada (Backhouse, 1991, p. 149; Penny Light, 2003, p. 47). "Technical expertise" was used by doctors to shore up their own status and knock irregulars out of practice, even if their practices did not substantially differ (Penny Light, 2003, pp. 27–29). With the advancing scientific understanding of pregnancy and fetal development, doctors located the start of fetal life much earlier than quickening, with many placing the start of life at conception and arguing, consequently, for an expansion of the protection for fetal life (Keown, 1988).

Another dimension driving medical interests in the late 1800s and into the 1900s was doctors' preoccupation with protecting themselves. Studies of historical Canadian medical journals indicate that doctors were discussing how to manage requests for abortion as well as addressing legal concerns when treating patients who had self-induced (McLaren & McLaren, 1997, p. 36; Penny Light, 2003). This concern would be echoed as the 1960s progressed, although the focus was now on legal liability and more precisely defining what was and was not legal, driving the medical profession's interest in liberalizing the abortion law – but doing so in such a way that maintained their medical discretion and control over the procedure. Overall, pressure for

a new law on abortion came not from feminist groups or the women's movement, which were not yet in full swing in Canada, but from professional associations, including, notably, the Canadian Medical Association (CMA). This is described as a "top-down" approach by Morton (1992b), whereby the educated and wealthier segment of society led the drive for reform. Like what drove their efforts to restrict the law earlier in British and Canadian history, the literature documents the medical profession's advocacy to liberalize the procedure as being motivated, at least in part, by "professional self-interest: to protect doctors against the legal uncertainties of the current law" (Morton, 1992b, p. 19). Consequently, the reforms of the 1960s remained distinctly medical in character thanks to the central role of medical associations, not only in Canada but also in the UK and the US in this same period.

Medical interests are emphasized, therefore, as not only lobbying the government for reforms, but also playing an important agenda-setting role. Indeed, as will be discussed further in chapter 5 on the 1967-1969 omnibus bills, the clauses on reforming abortion legislation were nearly identical to the CMA's proposals. A medical discourse on abortion also featured prominently within parliamentary debates, as we shall see in subsequent sections.

2.2.2 Social Movements

Social movements, generally understood as looser networks of organizations and individuals in pursuit of a social goal, are also studied in relation to abortion, examining how pro-life and pro-choice movements have contributed to abortion policy in Canada and abroad. Studies of social movements and abortion also point to the significance of meanings and identities in driving mobilization and participation in advocacy. Luker's sociological study (1984) of abortion in the U.S. and pro-life and pro-choice movements in California argues that abortion is so fraught and emotional because women are divided into two "constituencies", with women embracing

traditional gender roles and women pursuing equality in the public sphere with men possessing contradictory experiences and resources. Abortion is fundamentally, therefore, about the "*place and meaning of motherhood"* [author's emphasis] and that of women's lives more generally (p. 193). It is a clash of fundamental worldviews that "illuminates our deepest, and sometimes our dearest, beliefs" and it threaten values and beliefs previously taken for granted, making "individuals feel that an entire *world view* is under assault" [author's emphasis] (Luker, 1984, p. 158).

Cuneo's 1989 study examines Canada's pro-life movement but differentiates itself from Luker by rejecting a homogenous view of these movements, arguing that Luker is defining the movement based on the psychological, demographic, or cultural makeup of the members rather than looking at the "claims" of abortion itself (Cuneo, 1989, p. 82). Instead, the author organises the Canadian pro-life movement into three camps he describes as "competing factions," who understand abortion in different ways, despite all being opposed to the practice: 1) civil rights activists, who see abortion as an affront to the human rights of the fetus; 2) family heritage activists, who are concerned with the erosion of the traditional family and motherhood especially; and 3) revivalist Catholic activists, who see fighting against abortion as part of a crusade to save the Church from itself, concerned with a creep of secularism and watering down of traditions and norms (Cuneo 1989). His study also highlights the tension between the movement and the Catholic Church, calling the abortion issue "the symbolic point of fracture for a widening ideological dichotomy within Canadian Catholics" where, "the movement is to a significant degree a conventicle of lay dissent against forces of change and modernization within the wider culture, and more important, within Canadian Catholicism itself" (Cuneo, 1989, p. ix).

Lima's more recent history of the Canadian pro-life movement charted the development of a varied organizational infrastructure, as well as exploring the fractures that have occurred – and remain – within the movement, including personality conflicts as well as "infighting over strategies and goals" (Lima, 2010, p. 1). For instance, some activists consider gestational legislation that would restrict abortion at later stages to be unacceptable, whereas other activists see such measures as incremental and contributing towards eventual full protection of fetal life. Similar splits are also identified in the American pro-life movement by Flowers (2019, 2020).

Exploring the other end of the spectrum, Palmer's (2012) study of the Canadian pro-choice movement from 1969-1988 accounts for the strategies used by activists to address barriers and opposition to abortion choice, including demonstrations and protests, as well as challenging hospital board decisions, and facilitating access through referral and shuttle services as well as establishing abortion clinics. Using a broader understanding of public space and, consequently, a broader understanding of activism as expanding far beyond protests, Palmer highlights the role of abortion as a focal point of the feminist movement, enabling a diverse multiplicity of actors with varying approaches and priorities to coalesce around a shared goal.

2.2.3 Voting Behaviour

Studies of free votes test how party discipline impacts individual legislators' behaviour due to how these votes offer "opportunities to peer inside the normally opaque black box of parliamentary party cohesion (Engler & Dümig, 2016; Raymond & Overby, 2016, p. 315). This literature examining free votes has consistently pointed to the influence of the party in conditioning individual legislators' votes. In relation to abortion in Canada, Overby, Tatalovich and Studlar (1998) study the series of 15 votes that occurred during the process of Mulroney's Bill C-43 in order to measure the impact of different factors, including personal characteristics

(religion, gender, marital status, prior profession, education, etc.), constituency characteristics (ethnic make-up, income, education, rural versus urban, etc.), and political characteristics (partisanship, cabinet membership, and "electoral security") (1998, pp. 385–386). Overall, Overby et al. (1998) found that legislators still usually vote with the other members of their caucus, even during a free vote. This finding aligns with other studies of morality policy in parliamentary systems, where partisanship is indicated as the best predictor of voting behaviour even under free votes (Engler & Dümig, 2016; Overby, Raymond & Taydas, 2011; Plumb, 2013; Raymond & Overby, 2016; Studlar & Tatalovich, 1996, p. 80). Overby et al. (1998) suggest that this means "that free voting is never entirely removed from the pressures of the party", and that "free votes generally encourage only those MPs most personally committed to a particular cause to deviate from party" (p. 389).

Work by Plumb (2013, 2015) and Plumb and Marsh (2011, 2013) points to some variance in party cohesion across parliamentary democracies on conscience issues. Plumb and Marsh (2011, 2013) draw attention to varying cohesion within Britain's parties, depending on the issue and on the time frame. For instance, on the issue of fox hunting in the UK, the Labour party was split between backbenchers and party leadership, with the former interested in banning the practice and the latter hoping for a compromise solution; meanwhile the Conservative party became more cohesive on the issue than they were in the past, but now were united in favour of maintaining the fox hunt in reaction to Labour MPs stance (Plumb & Marsh, 2013). Likewise, Plumb's (2013) review of Canada, Britain, Australia and New Zealand on multiple conscience issues, including abortion, concludes that, despite party affiliation still being a good indication of how legislators will vote under free vote conditions, there is not total party cohesion. The most cohesive parties were the centre-left parties, with centre-right parties having the biggest

ideological splits to contend with on these issues. These splits were consistent across the four countries, though Plumb (2013) points out that the research does not explain why this is the case, pointing to a need for further investigation.

As such, although the conclusion is clear – party lines prevail even on free votes, parsing out the reason for this is more difficult. MPs may vote with their party on free votes due to general ideological similarities among members and/or due to members' wishes to ingratiate themselves to the party leadership and/or due to pressure behind the scenes. Pattie et. al. (1998) quips that, with free votes, "the surprise is that any intraparty disagreement occurs at all" (p. 172).

Nevertheless, in cases where members do deviate from the party position, religion appears to be a significant factor. Mondo and Close (2018), for instance, note how European Parliament legislators explained their voting behaviour on abortion and other issues by referencing the role of voters' religiousity and their country's national culture, both of which connect back to their interest in re-election. Considering legislator behaviour more broadly than voting, Euchner and Preidel (2017, 2018a) examine how legislators within Germany behave on morality policy issues. In one study, Euchner and Preidel (2017) investigate whether individual members of German Christian Democrat parties maintain avoidance, thus following the "collective strategy" on such issues, or whether they pursue the issue. They conclude that, when free votes for morality policies occur, it is the "social identities" of MPs that drive their behaviour, whereby their alignment with groups, particularly religious groups and gender groups, has them eschewing the normal "tactical considerations" of avoidance to instead advocate on behalf of the issue. Euchner and Preidel (2018) also explore how Catholic and non-Catholic dynamics play out within Germany's political system, concluding that Catholic MPs are less likely to "take a public stance" on the issues – exept when party discipline is relaxed and, under those conditions, they tend to propose restrictive

policies (Euchner & Preidel, 2018, p. 243). Protestant religiousity does not seem to have the same kind of influence, which may be due to the less hierarchical church structure and less precise doctrinal pronouncements from church authorities.

These studies on voting behaviour point to the factors contributing to the interests of individual MPs and their voting decisions on matters like abortion, as well as how their interests interact with that of the party.

2.3 Idea Approaches

Idea-based approaches often focus on the role of discourse and framing in public policy, examining the significance of language in political and policy processes and outcomes. This section describes how framing has been used in both morality policy generally and then abortion policy more specifically, identifying the need for a comprehensive study of the discourse of the Canadian federal government specifically, which otherwise lacks coverage. As mentioned briefly in chapter 1 and as will be discussed in more detail in chapter 3, framing refers to how language can be used to select and emphasize certain aspects of an issue, contributing to how an issue is understood and acted upon.

2.3.1 Morality Policy and Framing

Although abortion's inclusion in the morality policy category is undisputed, deliniating more precisely what morality policy is and is not has remained a point of contention within the field, which includes a debate over the role of framing in defining morality policy. As described earlier in section 2.1.2, some definitions of morality policy argue that it is the framing choices of actors that make an issue morality policy or not. In other words, if actors consider and/or frame an issue with moral language, it become a morality policy issue. For instance, Kreitzer et al. (2019) argue that a policy is "moralised" when a morality frame is successfully installed, whereas

it is "demoralised" when this frame is supplanted with another, non-morality frame. Reviewing the literature, Kreitzer et al. (2019) point to the use of moral frames as the criteria for what constitutes a morality policy and suggest that focusing on morality policy as a static category may miss out on the temporal framing processes that result in the evolution of issues over time.

For Mucciaroni (2011), issues can be "fully framed" by actors as moral or instrumental, depending on whether moral or instrumental-rational frames as used, or can be hybrid policies, where "one side frames an issue using moral principles and the other uses instrumentally rational criteria" (Mucciaroni, 2011, p. 193). In this way, the framing choices of actors can be based more on "strategic considerations" of what frames will be successful or not, rather than on the substance of the issue itself (Mucciaroni, Ferraiolo, & Rubado, 2019). Ferraiolo (2013, 2014) advances Mucciaroni's 2011 framework, but points to the co-existence of morality and rational-instrumental frames, noting that morality frames are increasingly turning from targeting private behaviour to responsibilizing the government. For instance, when examining drug policy across three states, Ferraiolo (2014) found that private behaviour morality frames were eschewed in favour of more "social behavior" morality frames, highlighting the negative effects of decriminalizing marijuana on public goods, rather than the moral goodness or badness of the individuals in question.

Literature also explores the effects of frames on morality policy. More specifically, the literature has included the use of morality frames by legislators, interest groups and within public opinion, as well as comparing the use of moral frames to non-moral frames (rational-instrumental). Drawing on Mucciaroni (2011) and Ferraiolo's (2013) concepts of framing, Burlone and Richmond (2018) deconstruct the arguments found in letters to the editor from Quebec newspapers as a means of understanding the debate over the ten years prior to the

implementation of the Act Respecting End-of-Life Care in 2015 in that province, which introduced voluntary euthanasia alongside assisted dying. Burlone and Richmond's (2018) analysis highlights how public opinion - on both sides of the issue - "moralize and demoralize the issue to influence both the direction of the debate and the outcomes of the decision-making process" (p. 328).

2.3.2 Abortion Policy and Discourse

Regarding abortion policy specifically, framing approaches have considered several actors and aspects of discourse and its relationship to policy outcomes and politics more generally. This has included notably the discourse of social movements, both pro-life and pro-choice and their relationships with politicians, as well as the impact of medical discourse. The significance of medical discourse is found in how it establishes problem definitions as well as jurisdictional realities, with authority allocated to medical professionals (Halfmann, 2011). This was emphasized as significant within key moments in abortion policy history.

Tracing the evolution of discourse within the Canadian medical community, Penny Light (2003) stresses the reciprocal relationship between doctors' discourses and the context in which they lived, both of which mutually shaped each other. The discourse, although continuing to emphasize abortion as a medical matter, evolved over time and in response to the cultural and political contexts of the time. Technical expertise also contributed to the discourse of doctors as they used science rhetorically to shore up their own status and assert their authority as professionals over the practice of irregulars, such as midwives (Penny Light, 2003, pp. 27–29). In relation to abortion specifically, with the advancing scientific understanding of pregnancy and fetal development, doctors argued for an expansion of the protection for fetal life (Keown, 1988, pp. 22–23). Medical discourse in Canada – like in Britain and the United States – thus shifted

towards abortion as murder and immoral in an absolute way, while also maintaining the discretion of the medical profession to provide abortion when they determined it to be needed (Chapman & Penny Light, 2017). This medical discourse also, consequently, made doctors and policymakers the "sole legitimate participants of the debate, and as such, controlled the scope of the debate and the means for policy change" (Philbrook-Thomson, 2014, p. 235). Technical expertise and moral superiority were also, according to Thyer's (2020) analysis of the New York Times advocacy for abortion's criminalization in the 1870s, linked to their class positions. Where, "The action by regular physicians, who were largely wealthy, native-born white men, over 'irregulars', who were often working-class immigrants and women, also played into anti-immigrant, nativist sentiments by underscoring class differences" (Thyer, 2020, p. 614). Amery (2014), however, emphasizes the partial and incomplete process of medicalization discourses and processes, as well as the way in which this connects to broader governmentalization in the state.

In the 1960s, the liberalization of the abortion law in Canada in the 1960s featured a heavily medicalized discourse, which then was challenged – but not entirely removed – by a rights-based discourse following the SCC Morgentaler decision (Brodie et al., 1992a). Language shifts, in the analysis of Jenson (1992), "undermined" the dominant medical discourse, and the space created by the lack of legislation following Morgentaler allowed the opposing sides to establish new understandings of the issue (p. 17).[24] These understandings moved from abortion's "previous medical and technical guises and recast the issue as a social and moral debate" (Brodie, 1992, p. 59). However, even following Morgentaler, the legislation introduced by the Mulroney government continued to maintain the prominence of medical discretion and, thus, medical

[24] This stands in contrast somewhat to Philbrook-Thomson's (2014) assertion that the Morgentaler decision reinforced the medical discourse, as opposed to the U.S. *Roe v. Wade* decision that explicitly adopted a rights-based discourse.

gatekeeping within the abortion regime, as had the 1969 omnibus bill.

The *Morgentaler* decision then "legitimized" the medical discourse rather than the rights-based discourse adopted by the U.S. *Roe* decision, while also affirming parliamentary responsibility for legislation on abortion; yet politicians largely deferred to doctors through the medical discourse (Philbrook-Thomson, 2014, p. 232-233). This, then, presents a challenge for pro-choice groups who, according to Philbrook-Thomson (2014), "need legislation – or even potential legislation – to bring the issue back to the forefront of Canadian politics", rather than its current position on the "fringes" (p. 233). However, even a rights-based discourse can be problematic, according to Johnstone's (2017a) study of abortion access in Canada at the provincial level, where she interrogates the rights-based language that helped to advance abortion access but also presented certain limitations. A broader, more holistic approach to abortion is needed, where abortion should be connected to citizenship, with abortion "inextricably tied to the status of women citizens" (Johnstone, 2017a, p. 15).

Social movements studies, including recent studies, have examined the discourse of pro-life and pro-choice movements. Regarding the pro-life movement, research by Saurette and Gordon (2013, 2015) has focused on both the speech and writings of pro-life organisations as well as that of pro-life members of parliament. They find that the discourse of the movement has shifted towards pro-woman language and arguments, a finding echoed in the American context by Roberti (2021b, 2021a), looking at both movement activists as well as Conservative female legislators introducing anti-abortion policies in U.S. States.[25] Similarly, Bourgeois (2014) examines the discourse of the Canada pro-life movement, also looking at selected organisations and MPs. Bourgeois identifies how narratives of choice, femininity and sexuality reinforce

[25] Other recent American studies of the pro-life movement include Flowers (2019, 2020), Hussey (2020) and Thomsen et al. (2022).

traditional family structures and gender roles that silence and homogenize women's experiences and realities (2014, p. 23). The work of Hunt (2019, 2021a) examines social movements both for and against abortion rights in Canada, alongside other select countries, looking specifically at their use of social media[26] (K. Hunt, 2019), as well as the use of Twitter in "exploiting" the crisis of COVID-19 in relation to abortion (K. Hunt, 2021a). Hunt (2021b; 2015) identifies human rights frames as important within movements on both sides of the debate, as well as examining the connections between these framing choices and the attention they receive in the news media, which then relays these frames and impacts the national discourse.

The pro-choice movement's discourse has also been studied, examining how medical discourse sidelined women's groups in the late 1960s and into the 1970s, which maintained doctors' control both over the procedure and the debate (Philbrook-Thomson, 2014). The dominance of the medical discourse also contributed to the challenge facing women's groups, as they used a rights-based discourse, which resulted in their "difficulty establishing themselves as legitimate actors in the abortion reform debate" (Philbrook-Thomson, 2014, p. 237). However, Stettner (2012, 2017) points to the contributions and participation in the Royal Commission on the Status of Women, which occurred between 1967 and 1968, to argue that women's voices were still significant in the conversation occurring on abortion. Stettner (2017) writes, "By understanding the personal as political and accepting that individual voices can be powerful in shifting dominant understandings of the place of abortion in a modernizing society, we can suggest that women's voices in this decade were central to placing the abortion debate in the public sphere and contributing to change" (p. 98).

Such studies, alongside works like Saurette and Gordon (2015), Gordon and Saurette

[26] A recent U.S.-based study also looked at framing from abortion rights supporters on Twitter to oppose a bill restricting abortion in Georgia (Doan, Bogen, Higgins, & Orchowski, 2022).

(2017) and Johnstone (Johnstone, 2017a), also include a reproductive justice framework, which stresses the need for intersectional approaches that illuminate the "many histories and multiple and diverse voices and experiences occurring simultaneously" (Stettner, Burnett, & Hay, 2017, p. 3). This involves addressing issues beyond abortion to pressure both state and society to provide everyone with "the social, political, economic, and cultural conditions that are necessary for implementing and living one's choices" (Stettner, Burnett, et al., 2017a, p. 16). Burnett (2017), for instance, examines the reproductive practices of indigenous communities in the Alberta and Montana areas from the 1880s to 1940s, examining how colonialism impacted indigenous reproductive knowledge and how colonial processes have continued to reproduce this oppression within health care. Burnett (2017) insists upon reproductive justice as requiring decolonialization to address past and ongoing suppression of Indigenous knowledges in relation to reproduction. Beausaert (2017) is also attentive to the intersections of abortion and racial politics, examining an 1882 trial of a black female suspected of providing abortions, who was found not guilty by the trial jury yet vilified by local media. Ackerman's (2017) work addressed women's narratives of their Maritime abortion experiences from the 1970s and 1980s, emphasizing the multi-faceted barriers present within medicine and society. An increasing international research interest in the experiences of those procuring abortions can also be found, such as how people make sense of the availability of abortion and view possible restrictions or barriers (Kimport & Littlejohn, 2022), or on the experiences of those procuring and providing multiple abortions for individual women (McKnight, 2020), or transnational travel to access abortion, as discussed above. This focus on women's' experiences privileges the voices and narratives of the women involved.

As has been seen, however, much of the discourse-related approaches have not been levelled at federal policy and politics. The exception to this is Brodie, Jenson and Gavigan's

(1992b) volume, which discusses how the Morgentaler decision opened "political space" to "recast" the issue of abortion (p. 5). They present how the initial 1969 legal reforms centred on medicine and liberalism but began to shift following the 1988 Morgentaler decision to focus on rights. Language shifts, in the analysis of Jenson (1992), "undermined" the dominant medical discourse, and the space created by the lack of legislation following Morgentaler allowed the opposing sides to both work to establish new understandings of the issue.[27] These understandings moved from abortion's "previous medical and technical guises and recast the issue as a social and moral debate" despite political attempts to maintain a medical approach (Brodie, 1992, p. 59).

Although Brodie, Jenson and Gavigan's (1992) study is sensitive to the meanings involved and the importance of shifting language and discourse, it provides a wider view of the issue and offers limited perspective on how governments specifically navigate abortion. Furthermore, their study is restricted to abortion policy up until the early 1990s, highlighting the need for an updated analysis. This dissertation updates this research but also draws attention to how government actors, specifically, are framing abortion and positioning the government on it.

2.4 Synthesis of the Literature

As noted above, the characterization found within much Canadian and parliamentary literature on abortion and morality policy emphasizes that centrist parties and governments avoid the issue. This characterization comes from comparative literature whose institutional focus has, in many respects, dominated the general understanding of abortion politics in Canada, highlighting the role of institutional factors that can, in Canada's case for instance, dampen the volatility of the issue and enable firmer party control over its agenda. Even in more recent

[27] This stands in contrast somewhat to Philbrook-Thomson's (2014) assertion that the Morgentaler decision reinforced the medical discourse, as opposed to the U.S. *Roe v. Wade* decision that explicitly adopted a rights based discourse.

literature, particularly with morality policy, a focus on institutions is still evident. Moreover, this literature offers higher level presentations of general trends, such as avoidance or permissiveness, whereas the research question pursued by this dissertation is interested in the more specific and dynamic movements of a singular country's government.

This institutional literature indirectly explains governments' management of abortion by pointing to avoidance made possible thanks to the features of the parliamentary system that helps insulate the executive from the pressures of social movements as well as the strong party discipline that enables the executive to maintain control over the legislative agenda. Also, as mentioned in chapter 1, the government used free votes and employed strategies to dilute blame and responsibility when required to take action on abortion, and otherwise maintained a hands-off strategy, preferring the status quo (Halfmann, 2011). Yet, also as discussed in chapter 1, avoidance is an inadequate characterization of governments' approaches when considering that governments have still reluctantly acted at times, nor does it account for more recent higher levels of engagement on abortion, particularly from the Liberal Party over the last decade.

Another significant gap is the minimal treatment of political parties and governments within abortion policy research outside of institutionalist perspectives. While research – particularly the recent increase of scholarly attention – has brought needed attention to the role of social movements and medical interests in abortion politics and policy, as well as a recent focus on the experiences of women in accessing abortion procedures, they do not unpack how governments manage abortion within their caucuses, in parliament, and on the political agenda writ large. Although discursive approaches are, in many respects, closest to the approach of this dissertation, their research objects have primarily been the discourse of social movements and medical interests, rather than examining discourse as a tool and an influence on federal

governments in managing abortion on the public agenda. As such, this study complements the existing research by focusing in on the gap of federal government discourse. Historically, we have Brodie, Gavigan and Jenson's volume (1992a), but considerable time has passed since the early 1990s, warranting attention to the following decades. Additionally, their approach focuses on the overall discourses emerging from both sides of the issue, namely pro-choice and pro-life, whereas this project narrows in on the discourse of government actors, combining this with the concrete actions of the government to better conceptualize how governments manage abortion.[28]

The next chapter expands on framing theory, alongside the concepts of depoliticisation and politicisation, which serve to better conceptualise the procedural and discursive behaviours of government actors in managing abortion.

[28] An increase in medical literature addressing access issues and provision of abortion, as well as the experiences of both patients and providers of abortions has also arisen. However, much of this research, although studying important developments and realities within the practice of abortion and the experiences of those implicated in these practices, is not rooted in the theoretical approaches of political science and public administration. For instance, this has included examining travel patterns and the geography of accessing abortion (Sethna & Doull, 2013), assessing escort policies (Mark et al., 2022), and reviewing wider access to medical abortion. Medical and health policy scholars have also examined the rollout of Mifepristone for medical abortions in Canada as well as women's experiences using it (Hukku et al., 2022; Laroche & Foster, 2020; LaRoche, Wylie, Persaud, & Foster, 2022; Norman & Soon, 2016; Vogel et al., 2016; Yalahow, Doctoroff, Mark, & Foster, 2020). Recently, the impacts of COVID-19 on abortion have been examined, both from a medical practitioner (Bateson et al., 2020; Ennis et al., 2021) and patient perspective (Ahluwalia, 2020; Hukku, Ménard, Kemzang, Hastings, & Foster, 2022; Monchalin, 2021), addressing the challenges and barriers exacerbated by pandemic conditions.

Chapter 3: Theoretical Framework

As noted in chapter 1, this dissertation asks how successive Canadian federal governments have managed abortion, interrogating both the concrete actions taken by governments (legislation, creation of commissions, parliamentary procedures, etc.) as well as the language used to discuss the issue. Framing theory is used to analyse the governments' use of language and, by examining how language presents, justifies and explains government actors' understandings of and approaches to the abortion issue, this dissertation reconstructs the frames the underpin evolving stories of how the problem of abortion is defined as well as its proposed solutions. Accompanying framing theory are the concepts of politicisation and depoliticisation, referred to here as (de)politicisation, which allow for the analysis of how both actions and language can serve to enable management of controversial issues. Discursive (de)politicisation, specifically, connects closely to framing theory, but provides a link to understand the *effects or desired effects* of those (de)politicising frames and the mechanisms by which they operate. Non-discursive (de)politicisation or procedural (de)politicisation, referring to actions by government, allows for a view of the interactions between discourse and action, and vice versa.

This chapter first defines frames and framing, discussing the contribution of using a framing approach and reviewing its application in this dissertation, with specific attention to the theoretical concepts applied, namely stories. The concepts of (de)politicisation are introduced as a means of examining both these concrete actions as well as the language or discourse of government actors. This chapter describes these concepts and the way they are modelled in the literature. This dissertation, building both on the literature and on the research of this project, proposes a novel typology of (de)politicisation, which differentiates between procedural and discursive (de)politicisation as well as between types of (de)politicising movements, offering a

more nuanced means of tracking and understanding the dynamics of managing the abortion issue. These movements are: ***temporal*** or time-based movements that function to delay or speed up an issue; ***spatial*** movements that function to push or pull responsibility away from or towards the government and towards or away from other actors/entities; and ***capacity*** movements, which push or pull an issue towards fatalism or contingency (in other words, from an ability or capacity to act to an inability or lack of capacity to act). By categorizing (de)politicising movements in this way, the mechanisms by which (de)politicisation operate become clearer: delaying, deferring, and establishing limits to their agency in depoliticising procedural action or discourse, or emphasizing an issue on the agenda, claiming jurisdiction or responsibility, and establishing authority and capability in politicising procedural action or discourse.

3.1 Framing Theory

As noted in chapter 1, framing theory is a theoretical approach used to unpack change processes in policies – in this case, abortion. This section overviews what framing is, why it is an important means of studying issues like abortion, and the specific ways that framing theory is used in this dissertation to study abortion policy and the federal government's evolving approach to managing it over the past half-century.

3.1.1 Defining and Studying Frames and Framing

Frames and framing are concepts that are approached in a myriad of ways and with many different nuances in definitions. Some researchers focus more on the psychological and cognitive angles involved, whereas others take a socially constructivist approach. This dissertation falls into this latter category, with the ontological, epistemological and methodological foundations of this research discussed further in chapter 4.

A classic definition of framing is that it involves "selecting and highlighting some facets of events or issues, and making connections among them so as to promote a particular interpretation, evaluation, and/or solution" (Entman 2004, p. 5). In other words, framing shapes how issues are understood and what solutions are deemed appropriate (Rasmussen, 2011), thus constructing a particular reality. Here, we understand ***framing*** to refer to this process, whereas ***frame*** refers to particular expressions of language (phrases, arguments, etc.) from particular moments in time that present a particular selection, emphasis, or interpretation. For instance, in this dissertation, frames are identified that include descriptions of the abortion issue as emotional, as divisive, etc. These frames, as described in later chapters, contribute to understanding abortion as an impossible issue which requires a compromise solution.

Perhaps the most well-known approach to framing in public policy is that of Schön and Rein, articulated in detail in their 1994 book and in other writings (e.g. Rein & Schön, 1996). They are focused specifically on what they refer to as "intractable policy controversies", which are "stubbornly resistant to resolution through the exercise of reason" (Schön & Rein, 1994, p. 3), a characterization that could certainly apply to abortion. Their interest is in addressing such controversies and promoting deliberative democracy by introducing a means of reflecting on how frames sustain and can also serve as solutions to such controversies. In their approach, frames are the "underlying structures of belief, perception, and appreciation", which are "usually tacit, which means that they are exempt from conscious attention and reasoning" (Schön & Rein, 1994, p. 23). Conflict between frames can generate conflict between the holders of those frames. For Schön and Rein (1994), policy disputes can be "settled by reasoned discourse" contrasted against intractable policy controversies that "are immune to resolution by appeal to the facts" (pp. 3–4). They understand controversies as "disputes in which the contending parties hold conflicting

frames" (p. 23). This is a slightly different understanding of framing than found with morality policy scholars, in that Schön and Rein's frames are not categorized as moral or not per se, but rather as conflicting ways of understanding an issue. Stubborn policy controversies do, however, usually revolve around values positioned against each other.

Framing theory is closely associated with problem definition, which refers to "persistent conflict over where problems comes from and, based on the answer to this question, what kinds of solutions should be attempted" (Rochefort & Cobb, 1994, p. 3). As this quotation suggests, the role of conflict is inherent in problem definition, as definitions, although they can become deeply entrenched over long periods of time, are both a product and arena of conflict. Problem definition is also closely tied to interpretation, where, as described by Kingdon (2003), problems "are not simply the conditions or external events themselves; there is also a perceptual, interpretive element" (pp. 109-110). Importantly, Kingdon (2003) notes, "Conditions become defined as problems when we come to believe that we should do something about them" (pp. 109). In other words, the interpretation of an issue as requiring human intervention is key to creating a "problem".

Stone's (1989) discussion of causal stories also emphasizes this component, emphasizing how problem definition constructs "images" that "have to do fundamentally with attributing cause, blame, and responsibility" (p. 282). Political actors "compose stories that describe harms and difficulties, attribute them to actions of other individuals or organizations, and thereby claim the right to invoke government power to stop the harm" (Stone, 1989, p. 282). These stories then "move situations intellectually from the realm of fate to the realm of human agency" (Stone, 1989, p. 283), which ties in closely to the concept of (de)politicisation discussed later in this chapter.

Framing is significant for policymaking because it involves a "process by which people develop a particular conceptualization of an issue or reorient their thinking about an issue" (Chong & Druckman, 2007, p. 104). This may be strategic and intentional on the part of actors or an unconscious expression of their values. While some research focuses on either the intentional or unconscious expression of frames, this dissertation analyses them both together. This is because it is very difficult to disconnect strategic rhetorical choices from tacit and subconscious understandings of an issue. Such strategies will always be rooted in actors' own internal and subconscious frames of the issue and strategies will depend on what actors understand to be feasible, possible, right or wrong, etc.

Frames can serve to create a relationship between a perceived problem and a preferred solution, in terms of what kind of action or inaction is appropriate to a situation (Rasmussen, 2011, p. 947). For instance, a study on abortion discourse in the U.S. and Germany identified four frames present in arguments that focused on rights: fetal rights (pro-life), women's rights (pro-choice), balancing rights between fetus and mother (neutral), as well as those focused on state intervention into private lives (pro-choice) (Marx Ferree, Gerhards, Gamson, & Rucht, 2002, p. 107). Other frames included social morality (pro-life), effects on society (neutral), pragmatic consequences (pro-choice), and social justice (pro-choice) (p. 107-108). Each frame is linked with a policy position and solution to varying degrees, such as increased restriction linked with fetal rights frames or liberalization of abortion linked with women's rights frames. In a Canadian example, Snow (2015) describes how jurisdictional frames were used within the policy formulation of Artificial Reproductive Technologies (ART) in Canada to assign responsibility to the federal government, contributing to the failure of the policy. In the Australian context is O'Rourke (2016) who argues that narratives from politicians construct specific ideas of

womanhood, “elevating particular ideals … and stigmatising others” (p. 37). Even when a conservative discourse does not achieve legislative change, as it failed to do in the instance under study, such discourse is still powerful, helping to maintain a perception of abortion as stigmatised and immoral (O ’Rourke, 2016).

Framing is also significant in research on morality policy, as it contributes to understanding why issues like abortion that might be considered a public health issue can become fraught with controversy as they are “moralized” (Arsneault, 2001; Burlone & Richmond, 2018; Ferraiolo, 2013, 2014; Mooney, 2001; Vergari, 2001). In other words, moral frames can contribute to pushing issues into different categories of policy as well as connecting issues with policy solutions or approaches. As discussed briefly in the chapter 2, Mucciaroni (2011) contrasts moral frames against rational instrumental frames, which are oriented towards achieving policy outcomes or results. An issue like abortion could, hypothetically, be treated as a public health issue and linked with other policy goals such as lowering teen pregnancy rates or handled through a moral frame as a matter of right and wrong. Rational instrumental frames, according to Mucciaroni (2011), lend themselves to compromise and collaboration, whereas moral issues resist this due to the difficulty of dividing fundamental values.

3.1.2 Applying Framing Theory

This dissertation draws on the work of van Hulst and Yanow (2016), adopting a dynamic view of framing, as well as the processes of selecting, naming and storytelling. These processes served to guide the process of identifying and organizing frames, as discussed in chapter 4. van Hulst and Yanow (2016) draw a distinction between “frames” and “framing” in which “‘frame’ signifies a more definitional, static, and potentially taxonomizing approach to the subject; [and] ‘framing’ offers a more dynamic and, in our view, potentially politically aware engagement” (p.

93). “Framing” is also described as “interactive, intersubjective processes through which frames are constructed” (van Hulst & Yanow, 2016, p. 93). This emphasizes the need to look at not only at public expressions of party policy but also at how political actors understand their own government’s development of the issue, undertaken in this research through interviews and analysis of internal documents.

Additionally, van Hulst and Yanow, building on the work of Schön and Rein (1994), present framing as involving the acts of sense-making, naming (including selecting and categorizing), and storytelling. Selecting, naming and categorizing operate by highlighting some facets of an issue, silencing others, and linking concepts together as well as to previous experiences. Storytelling, which is an important concept used in the analysis of this dissertation, is the mechanism that brings these selected, named and categorized items together into something that makes sense. As they describe it, “Stories frame their subjects as they narrate them, explicitly naming their features, selecting and perhaps categorizing theme as well, explaining to an audience what *has been* going on, what *is* going on, and, often, what needs to be done – past, present, and future corresponding to the plot line of a policy story” [their emphasis] (van Hulst & Yanow, 2016, p. 100). Importantly, as opposed to “the naming and categorizing aspects of framing might be expressed in one word (e.g. ‘communist,’ ‘creationist’), stories elaborate on the perceived policy problem (and perhaps its envisioned solution)” (van Hulst & Yanow, 2016, p. 100).

This dissertation reconstructs the frames of political actors and recounts stories that emerge from the government speakers. As will be seen in depth in chapters 5-10, these stories are not all equally complete, in the sense that they are not equally explicit about all these past-present-future links, but all do – to a lesser or greater extent – connect conceptions of problems to solutions or, at least, some course of action. This incompleteness also reflects the fact that frames should

not be considered static, but that they are part of the framing process, which is dynamic, iterative, and interactive.

Practically speaking, framing theory provides a means of breaking down discourse, namely by examining speech acts, reconstituting their frames, and mapping their connections and movements. However, it requires additional theoretical concepts to explain the significance of these framing changes. (De)politicisation, as described in the next section, enable us to map out how governments act and talk – and the linkages between the two – to manage abortion. Framing theory integrates well into discursive (de)politicisation. However, both (de)politicisation as well as framing theory require additional precision to help capture the complexities of their movements. Following the introduction of (de)politicisation is the presentation of a new typology that adds three additional dimensions to provide this precision. This both contributes to the concepts of (de)politicisation, as well as facilitating an understanding of how the frames within discursive (de)politicisation function.

3.2 Politicisation and Depoliticisation

Using the concepts of (de)politicisation allows us to probe how governments manage thorny issues of morality policy by conceptualising how governments may try to distance themselves from an issue, or, alternatively, draw themselves more closely to it. After outlining (de)politicisation literature and situating this dissertation within it, (de)politicisation is defined, alongside examining types and models of (de)politicisation and how it is applied in this dissertation, including the development of an original typology.

Depoliticisation initially came out of research based in the United Kingdom (UK) (e.g. Burnham, 2001; Beveridge, 2012; Flinders and Wood, 2014; Wood, 2016). In recent years, although a strong British focus remains, research has expanded significantly into (mainly western)

Europe (Beier & Çağlar, 2020; Buletti Mitchell & Ejderyan, 2021; Buller, Dönmez, Standring, & Wood, 2019; Meriluoto, 2021; Numerato, Honová, & Sedláčková, 2021; Voltolini, Natorski, & Hay, 2020; Ylöstalo, 2020) and to a lesser extent, into other international jurisdictions, including Africa (Desportes & Moyo-Nyoni, 2021), Asia (Bonacker & Lottholz, 2022; Pope, 2021; Schiek, 2022; Setiawan, 2017), the Middle East (Kagan, Pinson, & Schler, 2022), North America (Baker, 2022; Hande, Jamal, & Kelly, 2020) and Australia (Warin, 2021).

Depoliticisation research was primarily interested in issues of governance and economic policy, as well as democracy and political disengagement. Interest in governance and economic policy remains (see Da Costa Vierira & Foster, 2022; Ilten, 2020; Kettell, 2008; Kuzemko, 2016; Stahl, 2021; Ylöstalo, 2020) – particularly developing its connections with neoliberalism, as well as ongoing research on political disengagement, including studying rising populism (Fawcett, Flinders, Hay, & Wood, 2017; Flinders & Wood, 2017; Meriluoto, 2021; Scott, 2021; Stahl, 2021). The range of applications has significantly expanded in recent years, however, including in fields as diverse as the environment (Apostolopoulou, 2020; de Moor, 2020), immigration (Donmez & Sutton, 2020), international organizations (Louis & Maertens, 2021), disaster relief (Desportes & Moyo-Nyoni, 2021) agri-food (Feindt, Schwindenhammer, & Tosun, 2021), and even film studies (Setiawan, 2017), among others. Of particular relevance to this dissertation is Bates, Jenkins and Amery's (2014) study of artificial reproductive technologies in the UK, which applies depoliticisation to an area of morality policy.

3.2.1 Defining (De)Politicisation

Buller et. al (2019) organize (de)politicisation literature under two main "headings": (a) "as a systemic condition that inscribes the whole of society; and (b) as a more specific governing strategy or technique which originates at the state level but can have a significant influence on

society" (p. 3). The first category of depoliticisation diagnoses society as experiencing "a retreat of "the political", where "the political" is synonymous with the qualities of contestation, deliberation and participation" (Buller et al., 2019, p. 4). Studies of this type have a marked interest in anti-politics and the role of (de)politicisation in political disengagement, as well as the "triumph" of neoliberalism (Buller et al., 2019; Da Costa Vierira & Foster, 2022; Felli, 2015; Flinders & Wood, 2017; Hay, 2007; Landwehr, 2017; Stahl, 2021; Warner, 2020; Matthew Wood, 2016b). This dissertation would fall under the second category described, which examines (de)politicisation as part of the practice of governing or statecraft (Kettell & Kerr, 2022), whereby the government uses (de)politicisation to manage policy and politics. Here, the *process* of (de)politicisation is emphasized as activities or practices rather than the status of a polity or society (Louis & Maertens, 2021; Meriluoto, 2021; Numerato et al., 2021).

Flinders and Buller (2006) present what they refer to as a "synthesis" of the literature to define depoliticisation as the "*range of tools, mechanisms and institutions through which politicians can attempt to move to an indirect governing relationship and/or seek to persuade the demos that they can no longer be reasonably held responsible for a certain issue, policy field or specific decision*" [their emphasis] (pp. 295-6). While some of this synthesis holds true for this dissertation's approach as well, the definition used in this research project comes from Jenkins (2011) and Bates, Jenkins and Amery's (2014), who articulate a broader definition of depoliticisation where depoliticisation reduces agency, closes off debate, and renders some options or circumstances natural, necessary or inevitable.[29] As Jenkins describes it, politics is the

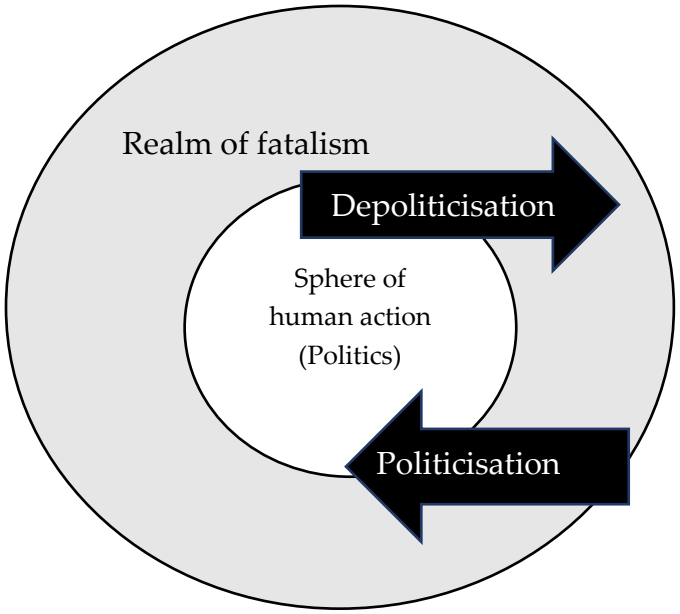
[29] Numerous other authors have similar definitions. Louis and Maertens (2021), for instance, define "depoliticization as processes through which objects are framed as apolitical, issues are driven outside the political realm and actors minimize, avoid or conceal the political dimension of their action" (pp. 5-6), as well as practices that "deny or conceal contingency, choice and deliberation" (p. 12), with politicisation being the opposite. Meriluoto (2021) describes politicisation as: "a set of practices that render a previously self-evident or necessary-appearing matter contingent and that connect this contestation to more abstract, normative principles. Depoliticization, in turn, takes place through

"realm of contingency rather than fate" (2011, p. 160), where, in the realm of contingency, human action and intervention is possible and can result in real impact and change, whereas in the realm of fate, everything is beyond human control. As such, depoliticisation involves constraint on agency and debate, whereas politicisation represents the expansion of contingency, agency and debate. In other words, politicisation means that we are moving into the sphere of human action, where we have the time, authority and capacity to act or intervene, whereas depoliticisation is moving into the realm of fatalism, where we are limited, inhibited and unable to act or intervene and the issue is beyond our control. This "naturalises" the status quo, when issues are fatalised or pushed beyond human "control" (Amery, 2019, p. 364).

In this way, as depicted in Figure 3, depoliticisation can be understood as *pushing* an issue away from the government while politicisation is *pulling* an issue towards the government's sphere of control and agency. Furthermore, as is seen in this case study, even as an issue has become politicised by being very present in the public and governmental spheres, a government may use depoliticising strategies as a means of managing the issue.

practices of closure and detachment from any normative debate: by claiming an issue as a technical, fact-based administrative issue to be discussed "behind closed doors" by relevant experts … Politicization, then consists of practices that "render playable" and show how things could be otherwise, and practices that make a normative connection asserting why things should be otherwise." (p. 16)

Figure 3: A depiction of politicisation and depoliticisation



Source: Author

Accordingly, politicisation and depoliticisation are not about bringing partisanship into an issue or removing it, nor is depoliticisation equivalent to political neutrality or impartiality. While this usage is often found in media reports on politics, the meaning in this study is that of the expansion or reduction of politics as contingency, as discussed above. Furthermore, depoliticisation does not make something non-political (Flinders & Buller, 2006). As Jenkins (2011) notes, depoliticisation is still "a political act, as it generates the restriction, removal or suppression of our capacities for autonomy, as well as the preservation of a particular strategy or force" (p. 160). For Ylöstalo (2020), depoliticisiation "is not associated with the removal but rather the denial of politics" (p. 129). Beveridge and Naumann (2014) agree that policy itself is not depoliticised in the sense of being apolitical but is "reorganized" and rendered "easier to manage and less controversial" through various means (p. 53). This management is also alluded to by Wood (2016a) as "the process through which this political potential is mediated that matters

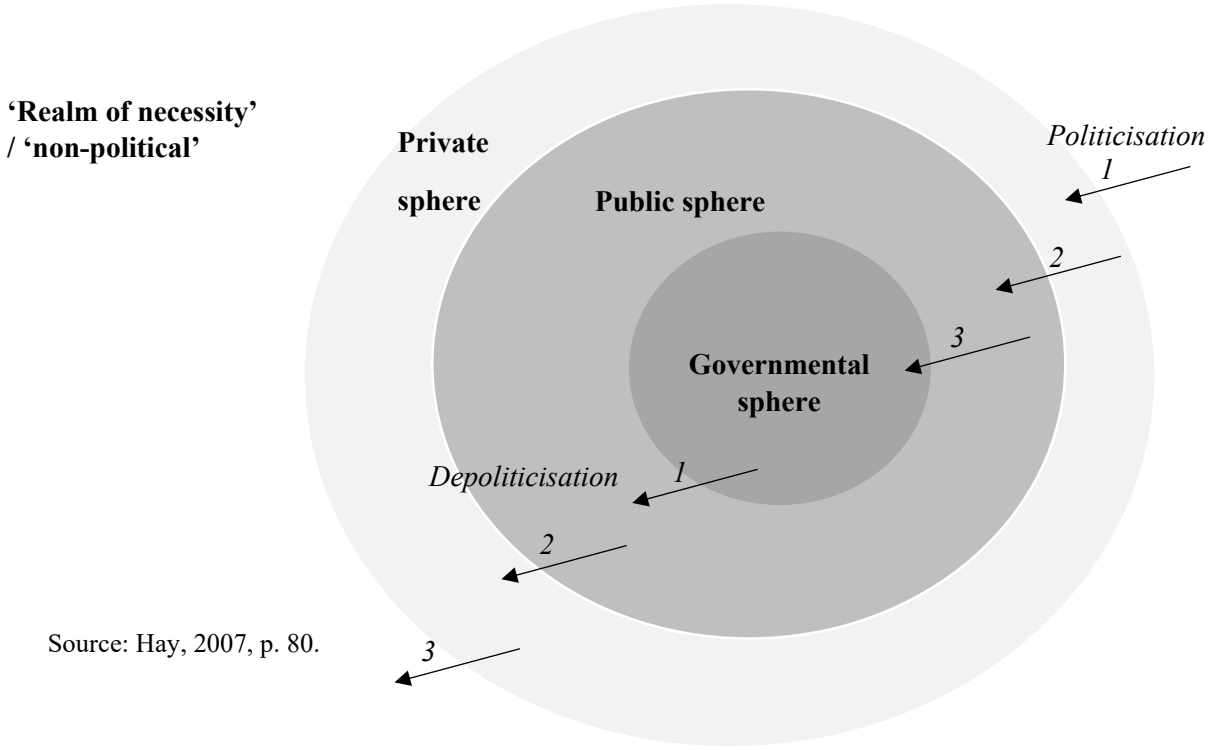
in terms of whether the political elements of the situation are configured more 'visibly' (politicised), and blame is attributed more, or whether they are effectively 'hidden' (depoliticised) and government escapes blame" (p. 715).

This is not to say that either politicisation or depoliticisation are necessarily manipulative or connected to some nefarious intention. While some of the literature, like that of the condition category described above, take a more negative views of depoliticisation and prescribes politicisation or repoliticisation as a remedy (Hande et al., 2020; Meriluoto, 2021), Fawcett and Flinders argue that we "should assume neither that depoliticization is inherently bad nor that repoliticization is the overall goal" (p. 240). Furthermore, as noted in chapter 1, political actors are constantly coping with limited resources and many issues vying for attention on their agenda. Strategies to manage issues are necessary, at least to some extent. This dissertation, accordingly, is focused on understanding management through an analysis of the dynamic movements of (de)politicisation rather than in evaluating the moral soundness of its management.

3.2.2 Models and Types of (De)politicisation

Depoliticisation and politicisation are conceptualized in the literature with differing emphases. Colin Hay's (2007) model presents 3 nested spheres existing within the "realm of necessity" or "non-political", depicted in Figure 4 below. The innermost sphere is the governmental, followed by the public and then the private. Depoliticisation and politicisation are categorized as 3 movements: depoliticisation 1 moving from the governmental to the public, depoliticisation 2 moving from the public to the private, and depoliticisation 3 moving from the private to the "realm of necessity', whereas politicisation 1 moves from necessity into the public sphere, etc. (Hay, 2007, p. 80). In Hay's model, the "political" world encompasses both the governmental and public spheres and politicisation diminishes the further out one goes from the

Figure 4: Hay's 2007 Model of Politicisation/Depoliticisation



Source: Hay, 2007, p. 80.

governmental sphere (p. 79). Wood and Flinders (2014) discuss this model and its utility for observing how issues emerge and disappear from governmental agendas but argue that the "state-centric lens" has obscured what they refer to as "the broader societal and discursive elements of the phenomena" (p. 155).

Building on Hay's (2007) framework, Wood and Flinders (2014) add "faces" or "forms" onto the model, organising existing literature under their own model (see Table 1, below). Face 1 is governmental, which corresponds with Hay's depoliticisation 1, moving from the government sphere to the public. Here, the government or state is the focus, depoliticising issues through delegation to non-state actors. Face 2 is societal depoliticisation, corresponding to Hay's depoliticisation 2, whereby an issue is privatised from the public to the private sphere. Here, privatisation does not refer to the selling of public services to private business, but is concerned instead with public deliberation or the minimization thereof. Depoliticisation has occurred when

the issue is no longer experiencing much public debate. Societal depoliticisation also looks at other actors and institutions in terms of their roles in public debates and governance. Face 3 is discursive depoliticisation, corresponding to Hay's depoliticisation 3, defined as "the 'speech acts' of individuals in the private and public arena that make certain issues appear to be 'normal' or 'natural'" (Wood & Flinders, 2014, p. 152). By presenting issues in such a way, debate is closed down. Within their model, depoliticisation has occurred when "the *debate* surrounding an issue becomes technocratic, managerial, or disciplined towards a single goal, and hence changed in content" [their emphasis] (p. 142). Discursive depoliticisation is, as such, the process by which this content changes through the competition of actors' discourses.

Table 1: Wood and Flinders' 2014 Model of the Three Faces of Depoliticisation

Faces of depoliticisation	Link to Hay's Model of Depoliticisation	Acts of Depoliticisation
1: Governmental	Depoliticisation 1: Government sphere to public (non-government) sphere	**Delegation** of elected politicians from direct control
2: Societal	Depoliticisation 2: Public (non-government) sphere to private sphere	**Privatisation** of the issue or function from the (collective) public sphere to the (individualised) private sphere
3: Discursive	Depoliticisation 3: Private sphere to the realm of necessity	**Denial** of the capacity for control through "speech acts"

Source: Adapted from Wood and Flinders, 2014, p. 157.

Drawing on Wood and Flinders' 2014 articulation, other authors have also begun to apply discursive depoliticisation over the past number of years (e.g. Baker, 2022; Donmez & Sutton, 2020; Prem, 2020; Reardon & Marsden, 2020). Discursive studies, to name but a few, have included examining the role of narratives of crisis in (de)politicisation (Kutter, 2020), the use of storytelling and (de)politicisation in building legitimacy for governments (Fawcett & Flinders, 2017) or of maintaining "politics of stability" (Schiek, 2022), as well elite discourses (Buletti Mitchell & Ejderyan, 2021), neoliberal discourses (Hande et al., 2020), populism and "common

sense" discourses (Scott, 2021). Fawcett and Flinders (2017) also expand the operationalization of discursive depoliticisation by connecting it to "statecraft with storytelling as a strategy of metagovernance" (p. 219). Metagovernance as "the 'governance of governance,'…involves deliberate attempts by policy actors to facilitate, manage and direct more or less-self regulating processes of interactive governance without reverting to traditional styles of government in terms of bureaucratic rule-making and imperative command" (Fawcett & Flinders, 2017, p. 223 quoting Torfing et al. 2012, p. 122). More specifically, Fawcett and Flinders study "how policy actors use storytelling and framing [discursive (de)politicisation] to steer network interactions in policy areas characterized by complexity and contestability" (pp. 223-224).

Despite these conceptualizations of (de)politicisation discussed above, gaps remain in the literature. Hay's (2007) model of three spheres may help us understand how issues move on and off the public agenda, contributing to agenda-setting research. However, this model seems to be more focused on outcomes, in terms of where an issue stands on the agenda (i.e., has it been depoliticised or politicised? Where does it sit within the spheres?), whereas this dissertation is interested in the *processes* of depoliticisation and politicisation and their movements back and forth. Accordingly, we require a more precise tool to probe how governments manage issues. Wood and Flinders' (2014) map of the three faces helps to categorize the literature on (de)politicisation, but the discursive (d)epoliticisation category needs further refinement to explore the mechanisms by which discourse functions regarding (de)politicisation. Since this 2014 article, Flinders and Wood (2017) have further articulated how discursive depoliticisation "denies collective human agency in three ways", specifically by (1) constructing a particular narrative or story emphasizing that past efforts have failed, (2) emphasizing that current conditions are such that the actor in question is highly limited by these objective rules, and (3)

arguing that any deviation from their preferred status quo or approach would lead to cataclysmic results in the future (p. 604). However, while this expands on the mechanisms of discursive depoliticisation, it focuses on their relationship with time, looking to deny politics in the past, present and future. However, other authors emphasize how discursive depoliticisation acts by shifting responsibility to other actors or appealing to forces beyond their control. Accordingly, this dissertation has developed a typology, described below, that can conceptualize the relationships of (de)politicisation not only with time, but also in other dimensions, both discursively and in action.

3.2.3 Capturing Dynamics of (De)Politicisation and Repoliticisation

(De)politicisation offers a manner of understanding how governments *justify and legitimize their actions and inactions on morality policy*. Depoliticisation, in particular, when successful, might facilitate the management of contentious issues (Buller & Flinders, 2005; Desportes & Moyo-Nyoni, 2021; Scott, 2021) and its study, therefore, "does provide a way of examining the practice of governance around complex and controversial issues" (Baker, 2022, p. 308). Wolf and Van Dooren (2018) also highlight how discursive depoliticisation can enable us to study conflict management in policymaking, "because it foregrounds how policy-makers allow, avoid or deny the possibility of political deliberation on (incompatible) policy objectives", when incompatible objectives generate conflict and where managing deliberation on such objectives thus reduces or manages conflict (2018, p. 288).

(De)politicisation are not one-way movements, however. Diamond (2015) argues against depoliticisation as a "single, linear shift", pointing to depoliticisation *and* politicisation as co-existing. Depoliticisation and politicisation can be "complementary and self-reinforcing" as well as conflictual, leading to paradoxes (p. 430). He concludes that modern governance involves a

fusion of the two, "reinforcing a hybrid model of statecraft: for instance, actors practice 'blame avoidance' limiting their discretion precisely in order to exercise authority in policy areas judged more amenable to 'credit-claiming'. This underlines the importance of robustly disaggregating the processes of politicisation and depoliticisation" (Diamond, 2015, p. 450). Likewise, Bates et al. (2014) refer to politicisation and depoliticisation as not "simply … opposing forces but also as parallel and simultaneous sociopolitical trends" (p. 257). Bates et al. (2014) note this in their case of Artificial Reproductive Technologies (ARTs), where the legislation introduced constituted "formal politicisation" because it brought the issue into public debate and political deliberations, but the particular clause the authors' studied within the legislation was depoliticising because it was written to maintain the nuclear family and thus exclude new actors from accessing ARTs. They write, "a governmental politicisation had depoliticising (discursive and material) effects in terms of both placing ideological barriers around acceptable political debate, and constraining the choices and agency of particular groups of people by excluding them from IVF access" (Bates et al., 2014, p. 255–256).

Also highlighting the dynamic between politicisation and depoliticisation are Wolf and Van Dooren (2018) who point to a *boomerang effect*, whereby attempts to depoliticise can rebound and heighten conflict rather than diminishing it. This can occur because depoliticising may remove the issue from debate temporarily but, "like a boomerang," it returns, or because the effort to squash conflict actually becomes a source a conflict. For instance, attempts to limit debate on a controversial moral issue can spawn conflict on freedom of debate, which heightens the existing conflict rather than tamping it down. Repoliticisation can, thus, occur even after depoliticisation, resulting in a more dynamic relationship than might be expected (Beveridge & Naumann, 2014).

It is also important to emphasize that (de)politicisation are *movements*, and thus ongoing and dynamic, rather than static, absolutist positions. In other words, this dissertation is not categorizing the abortion issue as "depoliticised" or "politicised" as a state, nor is it interested in *the degree to which* it is politicised or depoliticised (if such a measurement was even possible). Instead, the focus is the movements by which the government manages the issue and constructs its stories surrounding the problems and solutions that it engenders. Political actors, as described by Fawcett and Flinders (2017) and Kettell and Kerr (2022), may move back and forth, or "hop", to borrow their terminology, between politicising and depoliticising actions and stories as part of their management efforts.

3.2.4 A Typology of (De)politicisation as Management

Building on the literature discussed, a (de)politicisation typology was developed to better capture the dynamic of governments' management of the abortion issue. This section provides an explanation of the typology referencing the literature discussed previously. It is summarized in Table 2 as well as depicted visually in Figure 5. Chapters 5-10 then analyses abortion federal policy from 1960 to 2019 using this typology to map out government behaviour and discourse.

3.2.4.1 Mechanisms of (De)politicisation: Procedural and Discursive

This study organizes depoliticisation/politicisation into two forms. The first is referred to as ***procedural (de)politicisation,*** where political actors use tools and procedures to delegate responsibility and distance government members from the issue in order to minimize controversy. This aligns with much of the research on depoliticisation discussed in this chapter, which is focused on the formal movement of issues – such as delegation of responsibility to a commission, a panel of experts, a private company – as well as the more informal movement of a debate from the governmental sphere to the public to the private sphere (e.g. Beveridge, 2012; Beveridge &

Naumann, 2014; Burnham, 2001; Diamond, 2015). Neal (2019) refers to this as arena-shifting, "whereby issues or policy areas are removed from public contestation in favour of ostensibly apolitical experts or processes" (p. 73). However, other authors differentiate between these "material" or formal forms of (de)politicisation and those involving language, which bring us to the second form of (de)politicisation: ***discursive (de)politicisation***.

Wood and Flinders introduced the concept of discursive depoliticisation, defined as "the 'speech acts' of individuals in the private and public arena that make certain issues appear to be 'normal' or 'natural'" (2014, p. 152). Framing theory fits well into the concept of discursive (de)politicisation, in that it analyses language and discourse in order to probe the "construction of meaning" that occurs through policy deliberations and processes, yielding policy outcomes (Erikson, 2012). Framing analysis serves as the means of uncovering discursive (de)politicisation. Our typology adopts a larger definition of discursive depoliticisation, in that it is interested not only in what is presented as "normal" and "natural", but also in the use of language to present some situations or policy solutions as outside the realm of agency or contingency (Jenkins, 2011; Wolf and Van Dooren, 2018; Tilli, 2009). This means that depoliticising frames can serve to justify a particular course of (in)action by portraying the government as limited by matters outside of their control. Depoliticisation can also be used to set up a certain policy prescription. For instance, Tilli's (2009) study of religious nationalism in Finnish wars between 1939-1944 highlights the role of theological depoliticisation, where religious narratives or frames produced an image of the state as sacred and, therefore "transcendent and unchallengeable – i.e., depoliticised" (Tilli, 2009, p. 599). As a result, the state, as sacred and imbued with divine authority, required sacrifice and even martyrdom from its citizens who are merely following the "divine will" into a "holy war" to "regain the Holy Land" (Tilli, 2009). In our case study more

specifically, discursive (de)politicisation includes everything from arguing that a certain aspect of the policy area is provincial rather than federal responsibility, to arguing that the Supreme Court decision tied the government's hands, to presenting the Canadian public as irreconcilably divided on the issue which means that no solution can truly be a consensus one.

Importantly, procedural and discursive (de)politicisation are not mutually exclusive; a government can use both at the same time and both generally reinforce each other. A government may take certain procedural depoliticising steps that limit debate in parliament or move responsibility towards other bodies all the while reinforcing this and justifying it with discursive depoliticisation. It is also worth restating that language is not viewed solely as a rhetorical strategy for justifying a particular action or inaction but, rather, that language plays a significant role in constituting the meanings and understandings that political actors have of their roles, their capacity and the policy area in question. Procedural and discursive (de)politicisation, thus, have a dynamic and interrelated relationship.

In addition to be differentiated through their mechanisms, (de)politicisation need to be grasped through different types of movements that explain further its dynamic. The next section helps understand why and how time, space and capacity need to be taken into account to truly understand how abortion was managed by governments over time.

3.2.4.2 Movements of (De)Politicisation: Spatial, Temporal, Capacity

Temporal, spatial and capacity are dimensions of movement, which serve to *push* issues *away from* governments and political actors (depoliticisation) or *pull* issues *closer* to these actors (politicisation), allow us to better organize and make sense of the back-and-forth movements that governments seem to use to manage thorny morality policy issues. Instead of understanding the government as acting in a linear way, this approach allows us to better capture a more dynamic

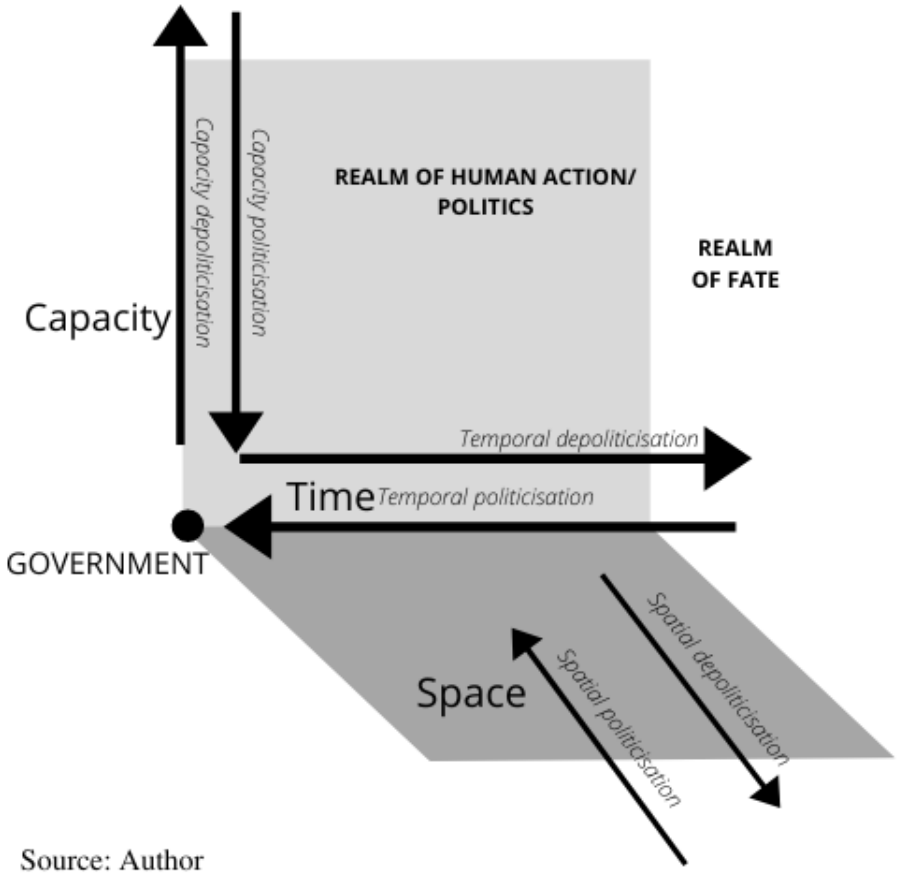
movement. Each of these types of movements can occur through both procedural and discursive mechanisms of (de)politicisation.

In Figure 5 below, these movements, applied to both procedural and discursive (de)politicisation, have been represented visually. *Spatial movements* are depicted as moving vertically through space towards or away from the realm of fate, with the realm of human action or politics represented by the square shaded space. *Temporal movements* are moving horizontally through time, and ***capacity movements*** move through a third dimension.

Temporal movements focus on time and reorganize time to either push away an issue (depoliticisation) or pull closer an issue (politicisation). For instance, procedural measures and discursive frames that create or justify a *delay* can serve as a means of depoliticisation if such a delay keeps an issue away from debate. On the other side, actions or frames that stress the *urgency* or time-sensitive nature of a matter helps move an issue higher on the agenda, justifying quicker action, which can serve as a form of politicisation.[30]

[30] However, it is not as simple as adjusting the speed (slower or faster) of a process. Slowing down a process is not necessarily the same as delaying. Slowing down a process can be for the purpose of having a more fulsome, debate, thus being politicisation. Similarly, speeding an issue up is not necessarily politicisation as increasing the speed of a process can be a means of hiding an issue and getting it through a political process before people have adequately had time to examine the issue. The focus, as such, is on what the intent of the time movement is: is it aimed at minimizing controversy, controlling debate, and diluting blame? If so, it can be considered depoliticisation. If it is focused on facilitating and spurring debate, then we can consider it politicisation.

Figure 5: Model of Politicisation and Depoliticisation



Source: Author

Spatial movements are interested in the proximity that political actors place themselves in relation to the issue. Pushing responsibility away from the actor onto other actors can be understood as a spatial depoliticisation, whereas pulling responsibility towards them is a spatial politicisation. For instance, setting up a Commission to examine an issue would be a means of spatially moving an issue away from government to another body (depoliticisation), whereas framing an issue as within the purview of your level of government rather than any other would be a form of politicisation.

Capacity movements differentiate themselves from spatial movements in that spatial movements focus on where political actors place themselves in terms of responsibility for an

issue, whereas capacity movements set up the degree to which the actor has the ability or capacity to act – regardless of whether they want to. This dimension, in other words, is interested in the procedural and discursive means of establishing fatalism (depoliticisation) or creating contingency (politicisation), which involves establishing or removing barriers or limits on action. Discursively, these capacity depoliticisation movements are frames that position government actors as severely limited by forces outside of their control, whereas politicising capacity movements would be framing actors as having the requisite agency and capacity to act. In the case of procedural capacity depoliticisation, these are movements that limit parliamentarians' or governments' capacity to act, such as using an omnibus bill to dilute debate and voting on controversial aspects of said bill, whereas processes that expand agency represent politicisation, such as the use of legislation to increase resourcing of a political actor to act or enforce a particular policy issue.

This dissertation explores this dynamic between politicisation, depoliticisation and repoliticisation, with the typology described above providing an analytical tool to explore movements back-and-forth, as well as to examine how boomerang effects may arise and how the creation of contradictory depoliticising frames and stories can contribute to challenges in the adoption and implementation of policy decisions.

Table 2: Dynamic Typology of Depoliticisation and Politicisation

Mechanism of Depoliticisation/ Politicisation	**Types of Movement**		
	TIME *Temporal*	*SPACE* *Location (pushing vs pulling responsibility)*	*SPHERE OF CONTROL/CAPACITY* *Fatalism vs contingency*
Procedural	*Processes that delay (slow) or obscure an issue (speeding up) vs processes that encourage and allow for fulsome debate (by slowing an issue) or place an issue higher on the political agenda so it is dealt with in a more timely manner*	*Processes that move responsibility to another body, like a Commission, a committee, an advisory board, etc. vs processes that secure and maintain the actors' responsibility for the issue.*	*Processes that limit parliament and the government's agency, such as using an omnibus bill to dilute debate and voting on controversial aspects vs processes that expand agency and capacity.*
Discursive	*Frames that justify delay vs emphasizing urgency. These frames are usually focused around justifying the procedural choices above.*	*Frames that argue that responsibility lies with another level of government or with the private sphere vs. frames that assume responsibility for the issue.*	*Frames that position the actors as severely limited by forces outside their control vs frames that position actors as having the requisite agency and capacity to act.*

3.3 Synthesis

This dissertation combines framing theory with the concepts of (de)politicisation. Framing theory considers the import both of how actors use language to present, represent, and categorize issues and ideas, as well as the underlying way that they think about these issues. It offers a means of assessing policy change and understanding the agency and role of actors in constituting and negotiating policies. This dissertation, moreover, borrows from van Hulst and Yanow (2016) dynamic' view of framing, as well as the processes of selecting, naming and storytelling. As will seen in chapters 5-10, these processes – particularly that of storytelling – enable an analysis of abortion discourse that tracks evolutions in the government's discourse on abortion, as well as contradictory stories that emerge and conflict.

Although framing theory allows us to break down discourse and reconstitute the stories found within, additional concepts are needed to explain the significance of these stories and framing changes. (De)politicisation is used to accomplish this, as it conceptualizes how governments can move towards and away from an issue – both discursively and procedurally – and how this can contribute to the management of abortion. This chapter also introduced a new typology that continues to build on the literature's differentiation between procedural and discursive (de)politicisation, but adds on an additional axis of (de)politicising movements along the dimensions of time, location, and spheres of capacity. This provides an analytical tool to unpack the management of policy issues, specifically the contentious morality policy issue of abortion. Now, having presented the theoretical foundations of this study, we now move to the methodology it engenders.

Chapter 4: Methodology

To explore how the abortion issue has evolved and been managed in Canadian federal policy and politics, data was collected concerning the behaviours and language of successive Canadian governments. In this chapter, the ontological and epistemological foundation are first presented, with a social constructivist vision of public policy that yields an interpretivist approach. This approach includes an epistemological reflexivity to the relationship between the researcher and subjects in knowledge production. Accordingly, the methods employed seek to unpack the meanings of actors regarding the issue. Frames and (de)politicisation are the theoretical concepts applied to access these meanings, as discussed in chapter 3, and are investigated using frame analysis and content analysis of a variety of documents as well as interviews.

This chapter subsequently lays out its qualitative methodology, with a research design that spans 1966 to 2019 to capture the legislative and policy changes as well as discursive changes that have occurred over time. Several types of sources are used to capture both official statements and responses made, such as Hansard and committee transcripts, as well as deliberations, such as cabinet documents and interviews with those implicated in the policy making and politics of these periods. This chapter justifies the choice of sources and methods for collecting data, with coding procedures to identify and analyse framing within transcripts. The content analysis – specifically frame analysis – used to reconstruct the frames of government speakers is also described, including procedures for coding and analysis.

4.1 Ontological and Epistemological Foundations

This project rests on a social constructivist understanding of public policy as constructed through the intersubjective interactions of actors. The investigation of how governments and political parties manage a policy area is founded on the premise that the shift in frames within

these actors drive different understandings of the abortion issue in politics, and thus, of the resulting policies. Accordingly, the ontological assumption is that public policies are socially created entities, developed through intersubjective relations between a variety of societal and governmental actors. As Berger and Luckmann (1966) discuss, an investigation is needed into "the processes by which any 'knowledge' comes to be socially accepted as 'reality'" (p. 3). Society, as an "objective reality," for Berger and Luckmann (1966), is built through subjective meanings (p. 16-17). In the case of abortion policy, the political approach to the issue – which is often taken for granted– has emerged over time through the political interactions and understandings of actors and undergoes change based on those interactions. This project investigates how particular understandings of abortion policy condition the discourse and approaches taken by federal governments to managing the issue.

From this ontological foundation flows an interpretivist methodology, which aims "at discovering the meanings that motivate their [human actors] actions rather than relying on universal laws external to the actors" (della Porta & Keating, 2008, p. 24). As Haverland and Yanow (2012) describe, this results in particular ontological and epistemological beliefs:

> Interpretive researchers hold that knowledge of or ideas about social realities are intersubjectively (or "socially") constructed and that research-related knowledge can only be developed in interaction with actors in their own settings and situations; "objectivity"— knowing from the outside—is, in this view, not possible (p. 404).

However, as Yanow (2006) discusses, "Meanings cannot be observed directly. We infer meaning(s) from their manifestations in or expressions through the more directly observable, more tangible artifacts that embody them" (p. 19). In this perspective, "categories, metaphors, narratives, frames, synecdoche, and stories are discursive devices that help people to make sense of and convey ideas related to complex real-life situations" (Rasmussen, 2011, p. 932). Frames,

as used in this research, are therefore the external expression (convey ideas) of understandings and also help to constitute the actors' understandings of the issue (meaning making).

Language plays a critical role in translating experiences into meanings. The way we name and narrate experiences can create knowledge and understandings within ourselves, as well as intersubjectively with larger populations of people. However, there may also be coercive effects to this, where the meanings increasingly entrenched in a community may condition and constrain individual behaviour (Berger & Luckmann, 1966, pp. 36–39). Language, overall, is understood to be "integrally constituting the world it presents, expressing its users' experiences of that world (at least in part)" (Cienki & Yanow, 2013, p. 168). An analysis of framing accesses the meanings involved and assists in tracing how some become dominant over time. Furthermore, because meaning-making is collective and intersubjectively constituted (Cienki & Yanow, 2013, p. 168), it is important look at groups of actors, the environment within which they exist and the actors with whom they interact.

This research sidelines the broader ontological issues that interpretivism and social constructivism raise. More specifically, it is not concerned with what causes or motivates human beings to construct and reconstruct public policies, but merely seeks to investigate the *processes* by which such policies are constructed and reconstructed as well as the *results* of these processes. As such, the concern of this research is not with the nature of (governmental) actors but with their creation: public policy and politics.

Interpretivism is accompanied by an epistemological reflexivity to the relationship between the researcher and subjects in knowledge production. Interpretivism's epistemological commitment highlights the need for reflexivity as it recognizes the significance of the role and position of the researcher who does not stand apart from the subject but actively interprets it

(Haverland & Yanow, 2012). Drawing on the voices of the actors and their own meanings and seeking to represent those voices within the research serves as an important away of balancing out the researcher's own understanding of the issue. Interviews often serve, in interpretivist research, "for clarifying, corroborating, and/or refuting the researcher's provisional meaning making derived from observation, reading, and/or other conversations, with the same or with other conversants" (Yanow, 2006, p. 19). As Soss (2014) describes, in interviews "there is a give-and-take between individuals: Each responds to what the other has said" (p. 169). Soss (2014) also emphasizes that interviewees are "positioned as interpreters of their own experiences and tellers of their own tales. They were not only the central focus of their narratives; they were the acting subjects of these narratives" (p. 176). This reflexivity also contributes to an inductive approach to research.

Instead of testing causal relations, inductive research looks to *understand* actors' meanings of the phenomena under investigation; it begins with an examination of the object of study to observe the patterns emerging from the data, rather than imposing and testing a given hypothesis (Héritier, 2008; Riccucci, 2010, p. 45). As such, this research, collects qualitative data – specifically policy documents, speeches, interviews, and media articles – to review the language and arguments used by political actors and reconstruct their frames. This does not mean, however, that theoretical concepts are absent from the early stages of the research process. Researchers, as noted by Haverland and Yanow (2012, p. 405), "do not start from a blank slate" but are informed by theory, existing literature, and knowledge of the field (p. 405). Although theoretical concepts guide the research, exploring frame processes within governments and political parties requires an openness not only to the types of frames that may appear, but also the processes by which frames are introduced, accepted, and changed over time. As such, accounting for framing changes

in abortion policy and politics initially in this project was considered "provisional" (Corbin & Strauss, 1990, p. 7) and a posture of openness was maintained to the patterns that emerged from the data collected. A questioning attitude allowed the research to evolve and pivot as needed (Haverland & Yanow, 2012, p. 404).

4.2 Research Design

The research design and methods flow from the overarching ontological and epistemological commitments described above. This project adopts a qualitative methodology, analysing the language and arguments found in a variety of sources, which represent how Canadian governments from 1966 to 2019 have behaved and spoken on the issue of abortion. This section sets forth the scope of the research, in terms of the period under investigation as well as the objects of analysis. Subsequently the choice of sources is presented, specifically the use of Hansard transcripts, cabinet documents where available, committee meeting evidence (transcripts), interviews and media articles.

4.2.1 Scope of Research: Time Period and Objects of Analysis

Intending to map how the Canadian federal government has managed the abortion issue over time, this project begins in 1966 with the 27th Parliament and continues through to the 42nd Parliament, which ended in the fall of 2019. This provides this project with a very long period – 54 years – over which to analyse the government's management of federal abortion policy, enabling an analysis of this policy area's development over time. Chong and Druckman (2007) affirm the benefit of studying frames over a long period to facilitate the evaluation of change over time. Starting in 1966 enables the capture of the most significant parliamentary events involving

abortion, beginning with the lead-up to and introduction of the Omnibus legislation in 1968 and 1969 that expanded legal abortion access[31].

The objects of analysis within the research's time period are the parties that held power federally in Canada, specifically the Liberal governments and the Conservative governments as well as the Conservative precursor, the Progressive Conservative government. Although data on other opposition parties, such as the New Democratic Party (NDP), Bloc Quebecois (BQ), Green, Ralliement Créditistes, Social Credit Party, and Reform Party, were reviewed as contextual information, it was the governments of the day as the decision makers and, thus, the managers of the policy area, that were the particular focus.

4.2.2 Choice of Sources

Different source materials were chosen to capture frames from government actors specifically (see Figure 6): Hansard, and committee meetings, cabinet minutes and interviews. Hansard is the main source used in the analysis. The other sources are complementary, serving as a means of understanding the government's approach to and discourse on abortion in different ways, such as in cabinet discussions, in committee, and in interviews. The coding and analysis strategies used for the frame analysis of Hansard differs from the ones applied to the other sources, as presented in section 4.2.3.

[31] Appendix A breaks down the parliaments by government, government minority or majority status, and prime minister.

Figure 6: Source Documents

Source documents	3400+ pgs of Hansard
	5600+ pgs committee meetings
	45 cabinet documents
	28 personal interviews
	450 + media articles

4.2.2.1 Hansard Documents

Transcripts of the proceedings in the House of Commons are found in the House of Commons Debates, more often referred to as "the Debates" or "Hansard". Hansard are edited volumes based on audio recordings as well as the first-hand experience of the staff who are following the debates within the chamber (Bosc & Gagnon, 2017, Chapter 24). These documents provide "the full deliberations of the House – speeches and statements of Members as well as other comments and interventions made in the Chamber" (Marleau & Montpetit, 2000, Chapter 24). Hansard is entirely available to the Canadian public and in both official languages[32] and includes all business occurring in the House of Commons, including debates on legislation, the Speech from the Throne, Question Period, Order Paper questions and answers, and records of votes (Bosc & Gagnon, 2017, Chapter 24).

More than 3400 pages of Hansard were collected and analysed for this dissertation, spanning 1966 to 2019. Hansard documents prior to 1994 are available online in large 1200+ page

[32] Each version of Hansard – English or French - involves translation of the speeches or remarks made in the other official language. In this research project, only the English version of the documents were used; some of the content reviewed, therefore, is a transcript of English statements whereas other sections are translations from the original French transcript. The use of only English content was chosen to simplify both the data collection process as well as the analysis of the data.

scanned pdfs that cover weeks worth of parliamentary transcripts in each volume,[33] whereas Hansard following 1994 are organized into much smaller documents with each issue covering one day of sitting. The collection process for the pre-1994 documents involved searching these pdfs, identifying relevant portions, and using Adobe Acrobat create an excerpt of the file that contained the pages needed, as well as any preceding pages that were necessary to establish the context of the remarks, identify who was speaking at the time, etc.[34] For the post-1994 documents, the Hansard database was searched and each issue containing discussions of abortion was included in the data collection.

The transcripts were searched to identify references to abortion[35] and the results of these searches were quickly reviewed to ensure their relevance (i.e., to avoid inclusion of agricultural discussions of abortions on animals, etc.).[36] Items that were included in the data collection specifically were: Question Period questions and answers, questions on the order paper, and debates on both government business and Private Members' Business (PMB). Excerpts of Hansard were only included in this analysis when they involved a *government response*, since the object of analysis is the government's management of abortion. As a result, Statements by

[33] Prior to 1994 and the 34th Parliament, these volumes are available from the Canadian Parliamentary Historical Resource, available at parl.canadiana.ca. Following 1994, these documents are available on the main website for the House of Commons, available at ourcommons.ca.

[34] Each of the historical (pre-1994) Hansard documents were very large files and caused difficulties for the software used for data collection and analysis, resulting in the creation of smaller excerpt files of only the relevant material.

[35] Search terms included: "abortion"; "unborn" and "preborn"; "fetus" and "foetus", because both spellings are used'; "pregnan", in order to review any use of the terms "pregnant" and "pregnancy", as well as connected "termination of pregnancy"; "reproduc", in order to review any use of the terms "reproduction", "reproductive", "reproductive rights", etc.; "freedom of choice", "freedom to choose" and "right to choose"; "pro-life" and "anti-choice"; "pro-choice".

[36] Lipad.ca, a scholarly database that has digitized Hansard, both historical and current, was used to help ensure that all important excerpts were included. The files on Lipad.ca, however, were not ideal for downloading and coding, so notes were made on the search results to create a "map" or outline of the excerpts needed, which were then located in the original documents.

Members made by backbencher or other individual MPs[37] were not included, nor were MPs presenting petitions, as these both represent individual MP positions and/or constituent views rather than government positions. PMB on abortion that received debate (i.e., 2nd and 3rd readings) were still reviewed, however, because even if a particular debate did not include a government representative, the government usually had to respond at some point, often in Question Period. It should be noted, however, that as Parliaments were reviewed and searched for relevant content, the content of opposition and backbenchers was still observed, noted and included in memos to provide context.

Mcintyre, Patterson and Mah (2018) indicate that Hansard allows access to "political argumentation and other symbolic aspects of public policy making", offering an excellent "platform" for frame analysis over a significant period (pp. 153-154). Hansard, therefore, is a "valuable resource for studying representations of interests and values as they are put forward for symbolic and agenda-setting purposes" (Mcintyre et al., 2018, p. 154). Furthermore, as described by Dummitt (2020), these debates provide a window into the specific time periods they record, thus enabling researchers to "assess the contemporary opinions of the legislators themselves and the broader cultural arguments that they thought would win them support" (p. 28). As such, Hansard provides a comprehensive source of all language used, and thus framing, in advocating for legislation, asking and answering questions, and addressing the issue of abortion within a legislative context and over time. Overall, Hansard provides a very complete record of language used in relation to abortion within the House of Commons throughout Canada's parliamentary

[37] Statements by Members is also often referred to as SO31s or Standing Order 31, under which time is allocated for individual MPs to speak briefly to the House on matters of local, national and international importance (Bosc & Gagnon, 2017, Ch. 10).

history. However, it is limited to public statements and responses, requiring other sources to highlight internal deliberations.

4.2.2.2 Committee meeting transcripts and reports

Parliamentary committee documents served as a supporting source, also spanning 1966-2019 and involving the review of 5600+ pages of documents. Committees whose mandate could pertain to abortion (i.e., Status of Women Committee, other committees dealing with abortion-related legislation such as PMB) were searched to identify substantial discussions. More specifically, rather than reviewing every possible off-hand mention of abortion, meeting transcripts (called "evidence") and reports were reviewed when they *substantially* studied abortion, whether because a government bill or PMB involved the issue or when they were looking at the issue outside of a particular legislative proposal. Notes were taken during the searches of the committees, recording the general topic of discussion, such as some references to abortion in Justice committee meetings regarding same-sex marriage, for instance. Appendix D lays out the committees reviewed.

4.2.2.3 Cabinet Documents

Cabinet documents provide a rare look into the internal and private conversations among the government executive, namely the Prime Minister and his or her ministers. Documents from the 1960s through to the early 1990s were reviewed, and a full list of the 45 documents consulted can be found in Appendix C.

Although these documents do not provide transcripts with which to code and reconstruct frames, they provide a point of comparison to the Hansard frame analysis. Cabinet solidarity and the confidentiality attached to it makes it difficult to access such private internal debates. As described by the Treasury Board of Canada Secretariat (2014), "Cabinet ministers are collectively

responsible for all actions taken by the Cabinet and must publicly support all Cabinet decisions." Cabinet confidentiality protects this collective ministerial responsibility by ensuring that frank and open discussions and debates between ministers can be had at the cabinet table without risk of such discussions becoming public. Cabinet confidences are protected for a period of twenty years, following which they can be disclosed upon request. Therefore, cabinet documents from recent decades are not available. Earlier documents, which cover significant periods like the 1960s reforms and 1988-90 attempt to legislate are available to some extent and can provide a glimpse of the internal discussions occurring within the executive. The use of these sources in this project is novel, because other earlier studies focused on federal parliament did not have access to these documents.

One type of cabinet document is Cabinet Conclusions, often referred to as "minutes", which are not transcripts that record discussions verbatim but instead "summarize discussions and decisions" and "reflect the nature of the debate and discussion" (Library and Archives Canada, 2020). Cabinet Conclusions from 1944 to 1979 are available online in a digital format from the Library and Archives Canada website.[38] These digital records are only those of the main cabinet committee, however. These Cabinet Conclusions often reference other pertinent documents, such as a memorandum from the Justice Minister or a report from a cabinet committee regarding abortion. These documents are not available online but must be accessed in person at Library and Archives Canada (LAC). However, the majority have some degree of restrictions in place which requires Access to Information Requests and, thus, delays, which were also worsened by the LAC

[38] The digital scans are searchable only by section header rather than content. Accordingly, Cabinet Conclusions involving abortion, both during the 1960s reforms and through the 1970s were searched for and found using the following keywords: abort*; omnibus; criminal; Morgentaler; Badgley. These key words were used to ensure that all discussions relevant to the omnibus bill amending the Criminal Code as well as later discussions in the 1970s involving the Morgentaler court cases and the Badgley committee were captured.

closing during COVID. Some needed documents are unavailable entirely. Notably, the cabinet conclusions referenced discussing Justice Minister John Turner's memorandum on the criminal code, but Turner's fonds are classified as code 10 restricted and thus entirely unavailable at this time.

Other cabinet documents reviewed included those made available through Stanley Tromp, a reporter who published the results of his Access to Information request for documents pertaining to the Mulroney govenrment's response to *R. v. Morgentaler*. This set of documents, which were partially redacted by the government, includes not only the cabinet conclusions but also minutes from the Cabinet Committee on Planning and Priorities (chaired by the Prime Minister) and the Ad Hoc Committee on Abortion as well as discussion papers, presentations, draft resolutions and draft legislation.

4.2.2.4 Interviews

Interviews served as another complementary source material that helped to capture internal party and government discussions. Interviews conducted with 38 past and present decision makers within Conservative and Liberal parties contextualize and confirm the findings of the document analysis. Those contacted for an interview included current or former elected members of the government identified through their participation in key government decisions on abortion and/or on their participation in debates in Hansard and within cabinet documents. Others, specifically those who were staffers and worked behind the scenes, were identified through media reporting as well as information available from the Library of Parliament website on staffing within the Prime Ministers' Office. Snowball sampling was also employed, whereby those who were contacted for interviews suggested other potential interviewees. A total of 93 requests for

interviews were sent out and 28 interviews were completed. Of the 93 requests, 30% agreed to be interviewed, 18% declined, and 52% did not respond to the request.

Efforts were made to include interviewees across the time frame. This posed some challenges, in that, particularly for 1960s and 1970s, numerous policy actors are deceased. Those living are often quite elderly and no longer active in public life, making them more difficult to reach. Their age, as well as the length of time that has passed since the 1960s – 1970s, also makes their recollection of events more difficult and distant. At the other end of the time frame, those who are currently in government were also difficult to engage for interviews, perhaps partly due to their busy schedules, especially during the COVID-19 pandemic. This resulted in an unequal distribution of interviews over the time periods, with no interviews covering the 1960s, very few representing the 1970s, and most spanning the 1980s to mid-2010s. The distribution of interviews by period is depicted in Figure 7 below. A representation of the distribution of interviews by partisanship affiliation and role (elected official, staffer/advisor) is found in Figure 8.

Figure 7: Interviews Distributed by Time Period

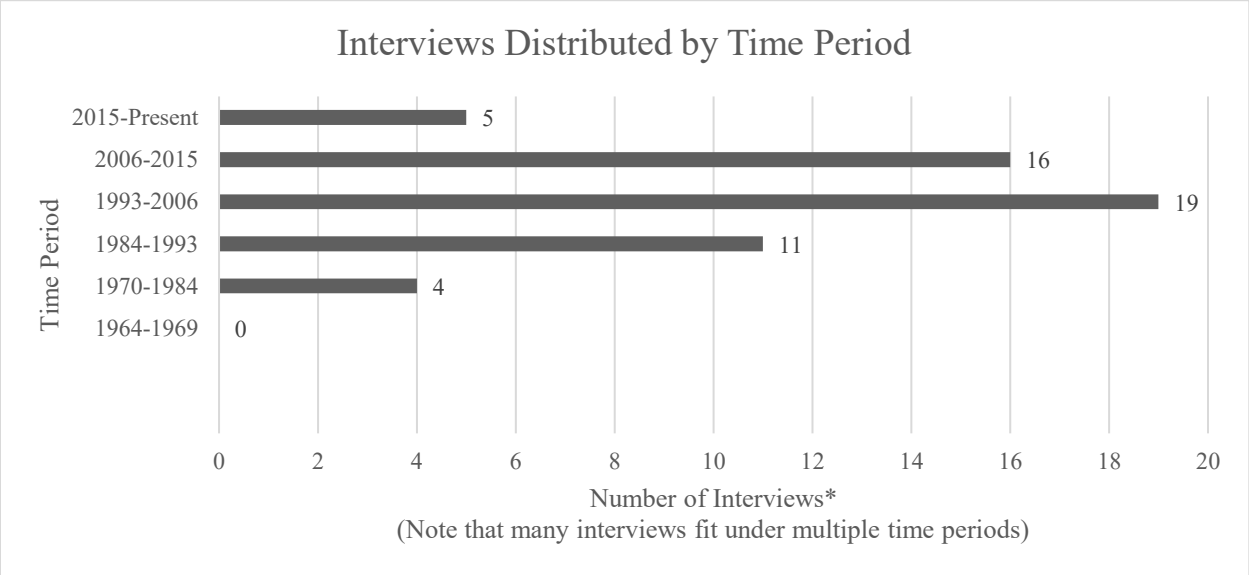
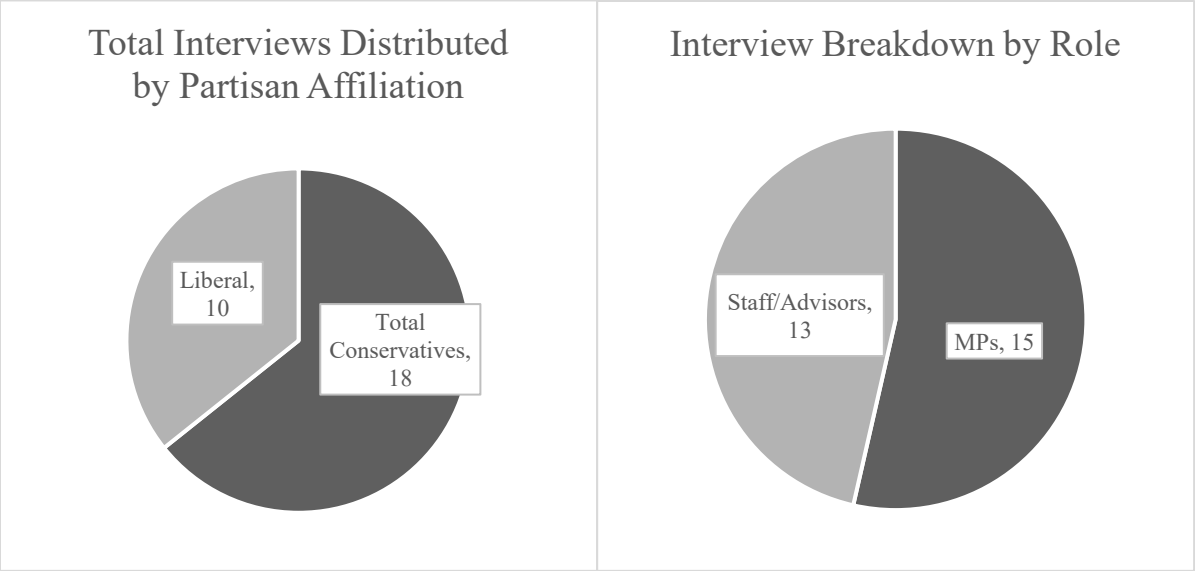


Figure 8: Distribution of Interviews by Affiliation and Role



Interviews were semi-structured, with questions laid out in the appended Interview Guide (see Appendix E) and follow-up questions asked to clarify responses from the participants, as well as to address any decisions or events that were relevant to the participants' experience. For instance, those involved in the late 1980s were asked specifically about C-43, etc. Due to the pandemic, interviews were conducted over the phone or over Zoom except in two cases where they were done in-person. Following the interviews, the recordings were transcribed and reviewed for accuracy vis-à-vis the recording. Due to the sensitivity of the topic under discussion, interviewees were assured of confidentiality and are not identified in this dissertation.

4.2.2.5 Media Sources

Media sources are often an important vehicle by which scholars study framing and its interaction with public policy (e.g. Burlone, 2020; Burlone & Richmond, 2018). While it not the focus of this dissertation, 450+ media articles were collected and reviewed to supplement the data collected from other sources. This is used to access what political leaders are saying during election campaigns, since the discourse of campaigns is significant, particularly regarding the use

of abortion as a wedge issue or weapon against other parties as seen in elections from 2000 and on. Since media sources were a supplemental source, media searches for articles pertaining to election campaigns and abortion were conducted only in one national newspaper – *The Globe and Mail*- to catch the main national-based discussions of abortion while also keeping the sample at a manageable size.[39] Using the ProQuest database, *The Globe and Mail* was searched for coverage of abortion during each election period within the time period of study (1966-2019), as well as a month before and afterwards, as coverage of elections often predates the initial writ period.

4.2.3 Analysis of Sources

Having reviewed the types of sources collected, we now turn to the analysis strategy. Firstly, Hansard forms the bedrock of the analysis. The collected Hansard transcripts were analysed using a coding procedure as a means of generating data concerning the framing occurring in Parliament. The other sources discussed in the preceding section (cabinet documents, committee documents, interviews, and media sources) were subject to content analysis, described later in this chapter, but not coded with the same procedures as Hansard. Three main reasons explain why Hansard were privileged for coding. First, complete records exist of proceedings in the House of Commons, which is the location where legislation must be debated and voted upon, where questions are posed to the executive and answered, and where Private Members' Business is put forward. As such, it is *the most complete source* of all legislative measures that have been proposed, either by the executive or other members of Parliament. Second, the House of Commons is *a performative site* in which frame competition occurs with government representatives seeking to defend their proposals or their agendas against those of the opposition.

[39] This selection also means that Francophone newspapers are not represented. While differences in framing may exist between English and French news sources, a comparison between them was beyond the scope of this dissertation. This is acknowledged as a limitation in chapter 11 and broader media analyses – in both French and English – are suggested as a remedy.

The speeches given are accessible to the public and may be disseminated through media coverage; Question Period is particularly known for being a time when the government and opposition are both very conscious of having an audience and they tend to speak accordingly (Mcintyre et al., 2018). Third, Hansard transcripts record the dialogue and debate that occur at each moment in time, unlike interviews, which are reflections on past events and potentially very distant events. Hansard are also verbatim transcripts, unlike cabinet minutes which summarize discussions. As such, they provide a *record of contemporaneous speech over a long time period*, that is, the exact wording used at each historical moment in time in Parliament (Dummitt, 2020; Mcintyre et al., 2018).

The Hansard transcripts were manually coded using NVivo 12, a qualitative research application, to capture relevant data points (described further in the next section) and to reconstruct and analyse the frames used by different political actors. However, cabinet documents, interviews and media articles could not be coded in the same manner as Hansard because they are not sufficiently comparable. Unlike Hansard, which is a transcript of contemporaneous speech, cabinet documents provide summaries of discussions rather than transcripts. They are, as such, the result of interpretation on the part of the minute takers, rather than verbatim transcripts. Interviews are personal and confidential reflections on events that occurred in years past, and in some cases, in decades past, and are not contemporary to the events as they occur. Both sources are still important for the analysis but must be treated separately from Hansard. Media sources are also treated separately from Hansard because, while providing contemporaneous discourse, articles are curated and presented according to the interpretations of the reporters and editors. And while they do provide access to direct quotations from politicians, they are significantly different than direct transcripts as found in Hansard because of the specifics

of their format. They can provide a compelling source of data for some public policy projects but are not central to the objectives of this study. Also, although committee evidence is contemporaneous speech and thus comparable to Hansard, these committee transcripts were analysed in a more circumscribed way to limit the scope of data to be collected and analysed. The first subsection below describes how data from Hansard was collected, coded and analysed. Subsequently, the manner of identifying and analysing the other source materials is discussed.

4.2.3.1 Frame Analysis of Hansard

To reconstruct and evaluate the framing process, it is necessary to parse and analyse the data, which is the language used by political actors. The frame analysis of Hansard involves a coding procedure and used NVivo 12, a qualitative research software. Coding refers to "the names given to the concepts derived through coding" (Corbin & Strauss, 2012, p. 65). In other words, coding involves the analyst interpreting and then "tagging" particular elements of discourse so that, at the end of the coding process the researcher can organize and re-organize these tags to identify dominant frames or changes in frames over time. NVivo 12 can be used to review, organize, and query this coding, in order to analyse the evolution of frames and changes therein over time. For instance, coding can mark the identifiers of who is speaking, as well as the phrases that represent arguments, in order to then reconstruct the frames being used. Although coding can be done according to a set pre-determined book of codes (i.e. categories established through previous research or based on theoretical concepts), it can also be an inductive process, as in this dissertation.

The first round of coding identified the political party of the speakers,[40] the year and parliament, and the type of speech (i.e., a government bill or PMB, or Question Period, etc.). When the speaker represented the government, their position within the executive was also coded (i.e., minister, prime minister, or parliamentary secretary). In the second round of coding, where the substance of the arguments was analysed, the main arguments and narratives were coded for, with a particular emphasis on how the government was positioning themselves on the issue (i.e., moving away from or closer to the issue and their sphere of responsibility and capacity), how they were presenting the issue and problem itself, as well as any possible solutions. Initially, this second round coding was very open, reflecting the themes and descriptions contained in the speech. As such, codes varied from reflections on the 1969 law, demands for legislation, characterizations of abortion, the role of provinces, courts and parliament in addressing the issue, etc. A specific code book was not used in order to be open and sensitive to the particularities of the excerpt in question, rather than attempting to fit the content into a predetermined grid. Alongside using NVivo to code Hansard, notes were also taken and memos written to summarize the discussions of abortion from all speakers, regardless of party. These memos served to provide context for the coding, which was focused on government speakers specifically.

This coding process did not proceed in a straightforward way. This is because the original time frame for this dissertation was 1980-2019, which meant that the coding process began in 1980. At this time, the analysis was not specifically focused on government speakers so *all* speech from *all* parties and *all* MPs was coded. This was a time-consuming process and yielded unsustainable amounts of data. As a result, a decision was made to analyse the data collected from

[40] In the case of the Ralliement des Créditistes and Social Credit parties, which have not held seats in Parliament for decades, these parties were coded as one single party because of the party's similar positionings on abortion, their affiliation in parliament and their eventual merger in 1971 (Stein, 2006).

1980-1990 before coding the rest of the Hansard excerpts. This first review of the codes from 1980-1990 pointed to significant depoliticisation strategies. Consequently, a second round of code review occurred to organize codes from 1980-1990 into broad categories of policy solutions and depoliticisation. These were not treated as mutually exclusive categories as some codes fell under both categories. At this point, there were over 700 codes in the policy solution category and over 1300 in the depoliticisation category. Subsequently, the codes were reviewed and divided into subthemes as well as the categories of policy solutions and depoliticisation, based on similarities observed in the codes as well as patterns identified through the first round of review. These subthemes help to connect codes and construct the framing narratives used throughout the development of Bill C-43 and are discussed in more detail in Chapter 9. [41]

Following this analysis of 1980-1990, it was decided that the project would be narrowed to only focus on the frames of government speakers and thus the *government management* of abortion, rather than analysing in depth the discourse of all MPs. The project was also expanded by pushing the time frame back to 1966. Following this, the remainder of Hansard was coded, which retroactively covered 1966-1980, and then 1991-2019. In this secondary coding process, the concepts of (de)politicisation factored into the coding, which helped to narrow and focus the coding process. A third round of analysis involved examining the codes and organizing them into categories, such as different types of (de)politicisation, problem definitions and problem solutions.

The narrowing of the parameters in coding is not uncommon in this type of iterative research. As Corbin and Strauss note, "Being an analyst means using common sense and making

[41] This, then, yielded a conference paper and presentation, which was later published as Vachon (2020) and focused specifically on the post-Morgentaler decision deliberations of the Mulroney government and their proposition of C-43. The analysis incorporated the theoretical concepts of (de)politicisation as a means of organizing and understanding the frame analysis.

choices about when and what bits of data to ask questions about" (2012, p. 71). These choices are sometimes only apparent after having delved into the data to get a sense of what is in there and what is worth further investigation. Corbin and Strauss (2012) also describe how coding "involves interacting with data (analysis) using techniques such as asking questions about the data, making comparisons between data, and so on, and in doing so, deriving concepts to stand for those data, then developing those concepts in terms of their properties and dimensions" (p. 65)

Following the coding process, NVivo 12 was also used to examine the patterns and changes in the nodes over time. This involved using the software to compile the coding results chronologically, examining each year and each parliament. Notes and observations were organized into charts, allowing for a comparison between time periods and between speakers. Finally, the full references for these codes were reviewed (i.e., the parts of the transcripts that they refer to) to add additional detail and gain context for how policy solutions and (de)politicisation strategies occurred.

4.2.3.2 Content Analysis of Other Source Material

Other documents, including cabinet documents, committee transcripts and reports, interview transcripts and media sources, were reviewed chronologically, with memos written to capture observations of the actions and language used by political actors, particularly by those representing the government. This content analysis did not consist of the coding procedures used for Hansard but was guided and influenced by the Hansard analysis, which occurred prior to analysing these other materials. As such, these materials were reviewed in light of the findings of the Hansard analysis and were used to complement, challenge and further expand on the coding analysis. Accordingly, the analysis considered the speakers, the main arguments being advanced

and how they fit into discursive politicisation and depoliticisation, as well how the discourse connected to the frames from in the Hansard analysis.

4.3 Synthesis

This chapter presented the interpretivist and social constructivist ontological and epistemological foundations of the research as well as justifying the 1966–2019 time frame, alongside the focus on governments as the object of analysis. Data was collected from Hansard transcripts, committee transcripts and reports, cabinet documents, interviews, and media articles to examine how federal governments acted, avoided action, and spoke on the policy of abortion. As described in this chapter, coding was used specifically for Hansard documents to identify arguments and language that framed abortion as a policy issue and positioned the government on it. In particular, it was the language used by government representatives (parliamentary secretaries, ministers, prime ministers) that was of interest, although that of other parties as well as backbench MPs was used to provide context. The other types of records were used to contextualize and complement the Hansard data, as well as provide an internal view of the government (through cabinet documents and interviews, for instance).

The results of the analysis are set forth in the subsequent chapters (chapter 5-10), organized by period. Chapter 5 begins with the 1966-1969 period, during which the Liberal government of Lester B. Pearson and subsequently P. E. Trudeau amended the Criminal Code to liberalize abortion somewhat, by creating clearer channels for legal access to therapeutic abortions for reasons of health.

Chapter 5: Reform, Clarification, and/or Compromise? P.E. Trudeau's Liberal Government and the Omnibus Bills, 1966-1969

As described briefly in chapter 1, pressure mounted in the 1960s to liberalize Canadian abortion legislation, mainly coming from the medical establishment's desire to clarify and amend the law. As the Canadian Medical Association (CMA) and Canadian Bar Association (CBA) proposed and lobbied for such legal changes, similar calls for action were found in Parliament, particularly from the New Democratic Party (NDP). Private Members' business (PMB) to liberalize abortion laws were introduced and studied by Parliament prior to the government introducing an omnibus bill that proposed similar changes, which, when enacted, resulted in expanded abortion availability for therapeutic reasons. This chapter analyses the period of 1966-1969, during which time these PMB were introduced and studied, and the government legislation was debated and passed. This period, albeit brief, is significant as it constitutes a major legal change to abortion policy and was sponsored by the government.

Drawing on the Hansard record, committee evidence (transcripts) and cabinet documents as well as secondary sources,[42] this chapter presents two main conclusions. First, although the government actively put abortion on the parliamentary agenda and passed legislation that liberalized the practice, it also actively managed the conflict and controversy the issue engendered. This management involved both actions and discourse (framing) that allowed the government to move back and forth between pushing the issue ahead or delaying it, taking responsibility for it or deferring responsibility, and affirming capacity to act or denying their own agency. Using the concepts of (de)politicisation introduced in chapter 3, this chapter demonstrates how the introduction of government legislation on abortion represents significant ***procedural***

[42] Unfortunately, none of those interviewed for this dissertation were present during this period. See chapter 4 for more details on interviewees.

politicisation, in that the government took responsibility for the issue and acted on it by placing it on the official agenda for debate and ensuring it passed both the House and the Senate, as well as discursively presenting it as part of a broader reform project. However, the government also ***procedurally and discursively depoliticised*** the issue to manage the conflict and controversy that it engendered.

Second, the stories that emerge from the government's discourse during this time create different problem definitions that challenge the status quo and present policy problems relating to abortion, while all emphasizing the need for a singular legislative solution: the omnibus bill amendments to the abortion laws. These stories, despite all being used to justify and defend the proposed omnibus bill changes to abortion, are based on different logics and, consequently, conflict with and contradict each other. And while they serve to facilitate the management of the abortion issue, they also introduce new fault lines for conflict and controversy.

Following an historical overview in section 5.1, this chapter is organized into two main parts, first addressing the government's actions or procedural (de)politicisation. Section 5.2 on procedural (de)politicisation presents how the government acted to put abortion on the agenda (politicisation) but also used procedural depoliticisation to control the controversy these legislative changes engendered. Section 5.3 on discursive (de)politicisation describes the construction of three stories that the government used to defend its omnibus legislation. These stories are somewhat contradictory, despite all being used to defend the same legislation, each emphasizing differing means of understanding the omnibus bill as it pertained to abortion and the other moral issues.

5.1 Historical Overview

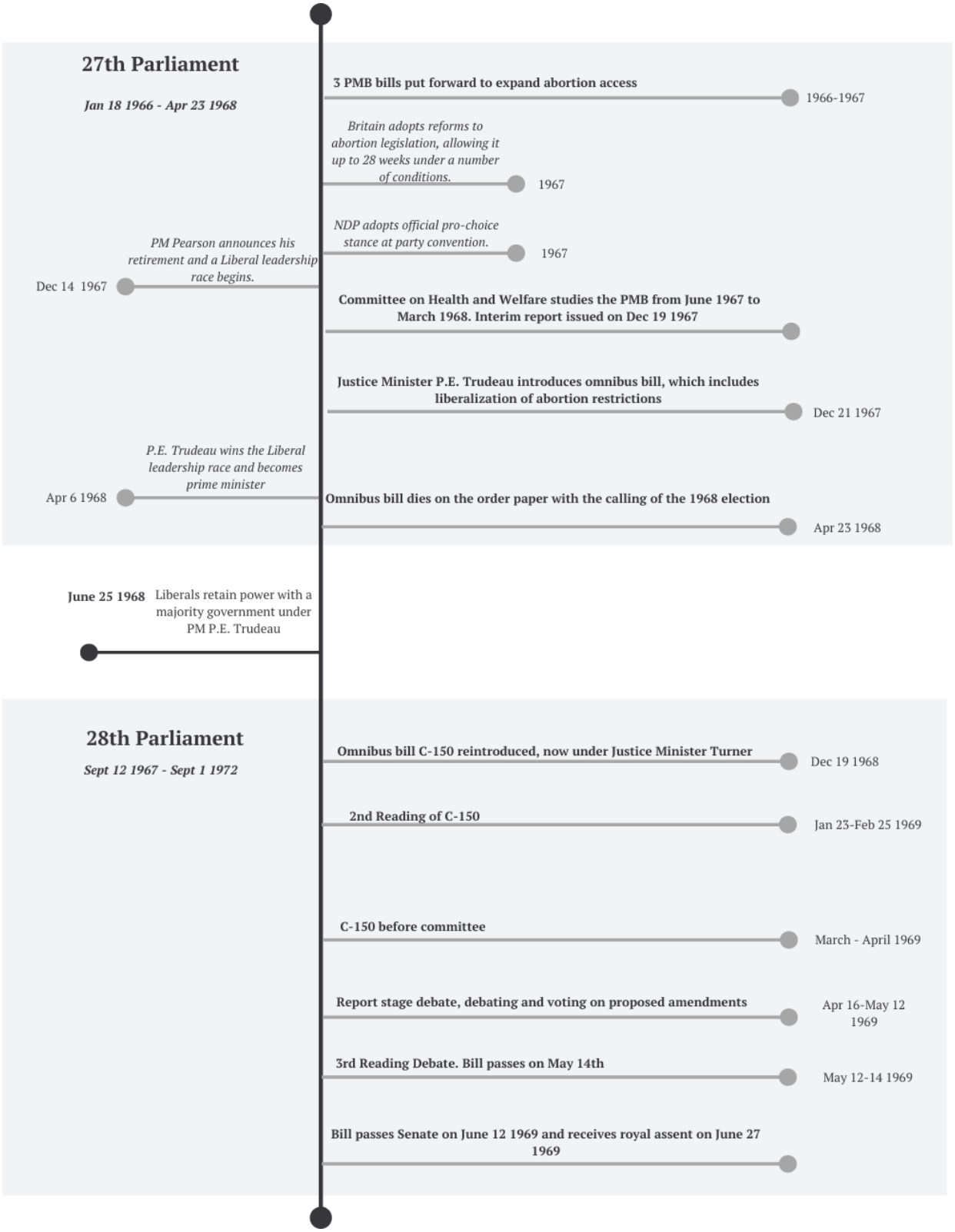
Although the focus of this chapter is the Liberal government's omnibus bills, this legislation only came after initial attempts for legislative reform from private members within Parliament. During the study of these PMB in committee, the government introduced an omnibus bill that included amendments to the abortion law closely matching one of the PMB as well as the recommendations from the parliamentary committee's interim report. These PMB, their study by parliamentary committee and the subsequent introduction and passing of the government's omnibus bills are described in this section to contextualize the analysis that follows. This period is also visually depicted in Figure 9.

5.1.1 Private Members Business (PMB) and the 1967 Omnibus Bill

In the 27th Parliament, three PMB bills were introduced in 1966 and 1967 by two NDP MPs, Grace MacInnis and H.W. Herridge, and one Liberal MP, Ian Wahn.[43] All of these bills proposed loosening Criminal Code restrictions on abortion. The bills from MacInnis and Herridge reflected their party's position as the NDP had adopted a firm pro-choice stance on abortion at their convention in 1967. Even prior to the introduction of their PMB, the NDP advocated for abortion reform in parliament (Canada, Parliament, House of Commons Debates, 27th Parliament, 1st Session, 1967, Vol 2, Feb 21; Vol 13, Feb 24; Vol. 14, Apr 11). These PMB bills were introduced before the government took any action of its own on the issue, and the bills were referred for study to the Standing Committee on Health and Welfare.

[43] Bill C-122, An Act to Amend the Criminal Code (Abortion) (sponsored by MP Grace MacInnis, NDP); Bill C-123, An Act to Amend the Criminal Code (Birth Control) (sponsored by MP Ian Wahn, Liberal); Bill C-136, An Act Concerning the Termination of Pregnancy by Registered Medical Practitioners (sponsored by MP H.W. Herridge, NDP).

Figure 9: Timeline of Abortion Related Events, 1966-1969



MacInnis' bill allowed abortion under three conditions: (1) first, if the pregnancy presented a serious risk to the life or health (physical and mental health) of the woman; (2) second, if "there is a substantial risk of a defective child being born"; or (3) if the pregnancy resulted from violence against the woman (rape or incest) (Canada, House of Commons Committee Evidence, Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, No. 1, p. 3). Herridge's bill borrowed several clauses from the UK's recently passed abortion legislation. Such clauses included allowing abortion when pregnancy risked the life or risked injury to the woman or to her "future well-being" or that of her child or future children, as well as when there were risks that the child could be born with "serious" physical or mental handicaps (Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, No. 1).[44]

MacInnis and Herridge's inclusion of a eugenics clause[45] followed the British legislative model, with MacInnis stressing the need to "work toward quality population in this country" as a means of preventing children born from rape and incest, as well as allowing women control over their situation when "monstrosities" caused by thalidomide babies or those with congenital diseases would be born (p. 4). These clauses elicited criticism in the press and concern from MPs on the implications of such a measure (de Valk, 1974; Standing Committee on Health and Welfare, 27th Parliament 2nd Session, No. 1., pp. 5-7). Eugenics clauses were notably absent from both the committee's recommendations as well as in the eventual federal government's legislation.[46] In the 1969 omnibus bill debates, Justice Minister Turner reiterated repeatedly that

[44] Conscientious objection by medical personnel was specifically provided for as well, but where Herridge's bill diverged from the UK was a clause deferring to provinces, which he defended as allowing flexibility for various regions of the country while still having the federal government articulate general "principles" (Standing Committee on Health and Welfare, 27th Parliament 1st Session, Vol 1).

[45] The term "eugenics clause" is used by Chisholm (2016) to describe clauses that would allow abortion when there was risk of a "defective" child.

[46] Chisholm (2016) notes that the absence of a eugenics clause in the eventual 1969 legislation was a 'curious case', that diverged from abortion reforms in Britain, Australia and South Africa, where thalidomide media coverage

the bill was focused on *medical* reasons for abortion and not on socio-economic ones, rejecting eugenics entirely.

Liberal MP Ian Wahn's bill was more moderate than the two NDP bills and was based on CMA recommendations to allow abortion in cases of risk to the woman's life or health. It was drafted in consultation with the chair of the Abortion Committee of the Ontario Medical Association (Penny Light, 2003, p. 191). Wahn argued that he was not proposing a "radical" change but that his "modest" bill was intended to "clarify the confusion" in the existing law as well as ensure that "uniform" abortions and rules governing them exist across the country (Standing Committee on Health and Welfare, 27th Parliament, 1st Session, Vol 1, p. 14). This language foreshadowed that used to defend the government's later omnibus bill.

The committee studying these PMB met between June and December 1967, receiving submissions and hearing witnesses, the majority of which favoured a limited expansion of abortion. Dr. Henry Morgentaler, representing the Montreal Humanist Association, was a notable exception, as he recommended allowing abortions without restriction throughout the first trimester (Standing Committee on Health and Welfare, 27th Parliament, 1st Session, Vol 1, No. 3). Morgentaler's advocacy on behalf of abortion and its impact on Canadian law and politics will be discussed in subsequent chapters.

The committee's interim report was tabled on December 19th, 1967, noting the variety of views on the subject existing in Canada and identifying the problem to be solved as the law's ambiguity. Although the committee indicated the need to continue their study, they recommended clarifying the law by amending section 209 (2) of the Criminal Code "to allow therapeutic

contributed to lawmakers including deformity and disability as grounds for abortion in their laws. Although such media coverage was present in Canada, and, indeed, MacInnis and Herridge's bills included such clauses, concern with Nazi eugenics programs was raised and a eugenics clause was ultimately not included in the omnibus bills (Chisholm, 2016).

abortion under appropriate medical safeguards where a pregnancy will seriously endanger the life or the health of the mother" (Standing Committee on Health and Welfare, 27th Parliament, 1st Session, Vol 1, No. 14). A mere two days later, Justice Minister Pierre E. Trudeau tabled the government's omnibus bill, Bill C-195[47], and it had its first reading. It was a substantial bill, consisting of 72 pages and 104 clauses and covering a wide swathe of issues, including the amendments to the Criminal Code sections pertaining to abortion (Campbell & Pal, 1991; de Valk, 1974). The wording of the clause on abortion was nearly identical to Wahn's bill and the committee's interim report recommendation, the only difference being the removal of the word "seriously" from the stipulation that abortions were allowed when they *seriously* endangered the life or health of the mother.

The 1967 omnibus bill never made it to debate in parliament, though it certainly engendered debate in the media and public. The Liberal Party was occupied with its forthcoming leadership race after Prime Minister Lester B. Pearson had announced his retirement in late December, 1967. In the meantime, the Standing Committee on Health and Welfare continued its study, presenting its second and final report on March 13, 1968.[48] In this report, they contrasted the C-195 legislation with their interim report recommendations, stating that the legislation's wording – specifically not including the word "seriously"– was less clear than the wording they had recommended (Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, Vol 1, No. 24). They also acknowledged the concern over defining "health" and clarified that their

[47] The bill's full title was to C-195, *to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act and the Customs Tariff.*

[48] In total, the committee had met twenty-nine times, heard from ninety-three witnesses, received thirty-five briefs and many more petitions, correspondence, etc. (Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, 2nd Report to the House, March 13, 1968).

own intention was for health to comprise physical and mental health but should not be as broad a definition as that of the World Health Organization.

The PMB from MacInnis, Herridge and Wahn that had precipitated the committee's study went no further, however, and did not receive 2nd reading debate. C-195 also died on the order paper because, after P.E. Trudeau secured the Liberal leadership, he called an election on April 23rd, 1968.

5.1.2 The Second Omnibus Bill Becomes Law

The Liberals won the 1968 election handily with a majority government. Prime Minister Trudeau appointed John Turner as Minister of Justice, giving him responsibility for the Criminal Code reforms. On December 19th, 1968, nearly a year since the original bill had been introduced in the previous Parliament, Minister Turner introduced a revised omnibus bill, C-150, and it had its first reading.

The bill contained three clauses relevant to abortion.[49] Clauses 14 and 15 were intended to clarify that the definition of a human being began at birth and that homicide would apply to injuries to a child before or during birth, but only if the child dies *after* birth because of these injuries. In other words, the child must be born *alive* and die *subsequently* due to injuries inflicted before or during birth for *homicide* to incur (Canada, Parliament, House of Commons Bills, 28th Parliament, 1st Session, C123-C173). Clause 18 of this bill was directed to abortion reform more specifically, amending section 237 of the Criminal Code by adding exceptions to the prohibition on procuring a miscarriage. The exceptions allowed for abortions to be provided by qualified medical practitioners within accredited hospitals when three doctors approved the abortion as needed for health reasons (House of Commons Bills, 28th Parliament, 1st Session, C123-C173).

[49] See Appendix F for details on the changes made to the Criminal Code with this bill.

In sum, the legal changes of section 237 expanded legal access to abortion in cases where pregnancy threatened the life or health of women, but otherwise maintained protection for the fetus.

The second reading debates began on January 23rd and continued until February 25th, 1969. Abortion was only one of many issues debated[50] but was arguably the most contentious, as indicated by Minister Turner (House of Commons Debates, 28th Parliament, 1st Session, Vol. 5). Following this, the Justice and Legal Affairs Committee studied the bill from March 4th to April 28th. Despite the many topics covered by the bill, the importance of abortion was evident as the committee invited several legal and medical witnesses to testify on abortion.[51] The report of the committee on the omnibus bill was released at their April 29th meeting. No amendments relating to abortion had passed at committee excepting one supported by Minister Turner, stipulating that abortions must be performed at accredited or approved hospitals (Canada, Parliament, House of Commons Committee Evidence, Justice and Legal Affairs Committee, 28th Parliament, 1st Session, Vol. 2, No 17).

The bill then returned to Parliament for report stage debate, during which, in what was a new procedural development for the Canadian Parliament, MPs were able to propose amendments to specific clauses of the bill. Fourteen amendments concerning abortion were debated,[52] of all which were aimed at restricting abortion, or at least limiting its expansion and application beyond serious health situations. The final abortion amendment debated was to delete the clause on

[50] Considerable debate was also dedicated to changes to drunk driving laws as well as other penal reforms.
[51] Unlike the Standing Committee on Health and Welfare's study of abortion in the previous parliament, which involved hearing from nearly a hundred witnesses, most Justice and Legal Affairs committee meetings did not include witnesses and those that did usually involved Ministry of Justice bureaucrats, appearances from Minister of Justice John Turner as well as parliamentary counsel and the Solicitor General. As such, the inclusion of additional witnesses at the March 13th, March 20th, March 25th, and March 27th meetings to discuss abortion is noteworthy.
[52] Additional amendments were proposed but some were grouped together by the Speaker because they were similar, and others were ruled out of order. Most of the amendments came from Ralliement Créditiste members, who were stridently opposed to abortion.

abortion entirely from the omnibus bill, thus rejecting the proposed reforms.[53] None of these amendments passed. Immediately following the last vote of the report stage, the third reading began, and, upon its conclusion on May 14th, the House of Commons voted to pass the omnibus bill 149 to 55. Despite the bill's massive size, it passed quickly in the Senate, receiving its final vote on June 12th, 1969, before receiving Royal Assent on June 27th, 1969.

Having reviewed this time period and the abortion-related legislation, we now turn to the analysis of the government's management of abortion, first in action (section 5.1) and then in discourse (section 5.2).

5.2 Procedural (De)politicisation: Abortion on the Agenda, but Controlled Controversy

As discussed in chapter 3, procedural (de)politicisation refers to the use of tools and procedures to position oneself closer or farther from the issue at hand. In other words, these are the concrete actions taken by the government in their management of abortion policy and politics. This section presents the procedural politicisation and depoliticisation of the 1965-1969 period, summarized in Table 3, differentiating between spatial, capacity and temporal (de)politicisation. As noted in the introduction to this chapter, this period includes one of the most significant incidents of ***politicisation*** in this study, with the government pursuing abortion legislation reforms, described in section 5.2.1. However, the government also ***depoliticised*** abortion in three main ways, described in subsequent subsections: 1) by using private members' business (PMB) and the Standing Committee on Health and Welfare; 2) by deferring responsibility to PMB and the committee as well as timing the bill to minimize debate; 3) by using the omnibus format of the bill to dilute attention to abortion specifically.

[53] See Appendix G for a full list and brief description of the proposed amendments relating to abortion.

Table 3: Procedural (de)politicisation, 1966-1969

Procedural Politicisation	
Movements	*Elements that feed into politicisation*
Capacity	N/A
Spatial	- Placing abortion on the governmental agenda through legislation
Temporal	N/A
Procedural Depoliticisation	
	Elements that feed into depoliticisation
Capacity	- Omnibus bill format to dilute attention to particular issues and increase ability to get some items through - Rejection of free votes and split bills to minimize debate and controversy - Vaguely defined concept of health to limit government's ability to enforce regulations
Spatial	- Use of PMB to defer responsibility and test reception of bill - Deferral to medical discretion through text of legislation
Temporal	- Close timing of committee's interim report and introduction of omnibus bill - Timing introduction of omnibus bill with Christmas break

5.2.1 Politicisation through Putting Abortion on the Agenda

By placing abortion on the legislative agenda, the government ***spatially politicised*** abortion by accepting federal responsibility over the issue and bringing in legal changes to its regulation. This created opportunities for change and invited debate, both within the legislative process and broader society. This bill also spurred social movement mobilization on both sides of the issue, though perhaps especially with the pro-choice movement, which would then continue to pressure the government for further changes to the law (Haussman, 2000, 2001; Palmer, 2012).

Available cabinet documents indicate that abortion reform was on the government's agenda prior to the introduction of the omnibus bill, although the exact dates are unclear. The first reference we find in the cabinet documents is at an October 12, 1967 meeting, where Minister of Justice Pierre Trudeau addresses a misunderstanding in the media about the government's abortion agenda. The minutes recorded that, since the Government's program of legislation had not specifically mentioned abortion, "a misleading conclusion had been drawn by the Press that

the Government had dropped this amendment from the Government program" (Canada, Cabinet Conclusions, 1967-10-12, p. 7). However, the minutes report that the decision to legislate on abortion "had been taken by the Government some time ago", though without specifying precisely when (Cabinet Conclusions, 1967-10-12, p. 7). At a meeting later that fall, in response to opposition from some cabinet ministers to changes on abortion, Prime Minister Pearson reaffirmed that "the government was committed to modification of the law in this respect" (Cabinet Conclusions, 1967-11-30, p. 4). This commitment to changing the law, as expressed in these documents, demonstrates procedural ***politicisation***, with the government taking on responsibility for the issue and placing abortion on the official legislative agenda.[54] And while the Trudeau Liberals did face some media and professional association pressures to amend the legislation alongside similar reforms occurring in Britain, they could have turned to other means to defuse the pressure, such as a commission to study the situation or relying entirely on a private members' bill, as would be the case for some capital punishment legislation (Pothier, 1979). Instead, the government's ***spatial politicisation*** involved including abortion within a broader reform package, which invited significant debate and controversy both in Parliament and in the broader public.

Despite this politicisation, however, Trudeau's Liberals also used depoliticising movements to negotiate the controversy and debate that their legislation engendered, both procedurally, as demonstrated below, and discursively, as discussed in section 5.2.

[54] This can be contrasted to another case of procedural politicisation discussed in chapter 7 where the PC Mulroney government would also place abortion on the legislative agenda, but responded reluctantly to the Supreme Court striking down the earlier law.

5.2.2 Depoliticisation through PMB and the Standing Committee on Health and Welfare

We can also observe ***spatial depoliticisation*** through the deferral of responsibility to PMB and the Standing Committee on Health and Welfare. As discussed in section 5.1, the government's omnibus bill was proceeded by three PMB bills that proposed expanding access to abortion to some degree. These PMB were studied by the Standing Committee on Health and Welfare and their recommendations, which echoed the PMB introduced by Liberal Ian Wahn, closely matched the omnibus bill clauses introduced only two days later. It is unknown whether Wahn was pursuing his PMB purely motivated by his own interest in the subject or whether there was support from and/or collusion with the government. However, the fact that the clauses concerning abortion in the resulting government bill reflected Wahn's bill almost word-for-word suggests some level of coordination. This is further supported by the similar frames (discussed further in section 5.3) used by both Wahn and the government to defend their respective bills, arguing that the bills do not really change the abortion situation in substance, but offer merely a "modest" clarification of the law (Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, No. 1). Alongside the cabinet documents that indicated that the government was committed to amending the abortion law, we can postulate that Wahn's PMB served as a trial balloon for the government. Whether or not the Liberal leadership was directly implicated in the creation of Wahn's bill, the PMB still provided a means for deferring responsibility ***spatially***. The PMB allowed for study for the bill (through the committee reviewing the PMB), which the government could use to evaluate the reception of the bills amongst Canadians and gain a sense of the debate and controversy the issue would raise.

The timing of the bill also supports some degree of coordination between Wahn and the government, or, at least, the use of the PMB and committee. The committee, halfway through its study of the PMB when it broke for Christmas, was initially scheduled to hear from the Catholic

bishops in December but informed the bishops that their testimony would be deferred until January. Instead, the committee held an in-camera (i.e., off the public record) committee meeting on December 19th with less than half of the members in attendance. These fourteen members, as noted by Campbell and Pal (1991), were the "bare quorum" of members required for a vote (p. 10). The Interim Report was released by the committee following that meeting, with De Valk (1974) noting that, "This decision surprised, perhaps, even the Committee's own members" (p. 55).[55] The transcript[56] of the previous meeting of December 14th, 1967 records the Chairman as indicating that the next meeting would be in camera, but that the meeting was "to discuss the future role of the Committee"; no mention of releasing an interim report is recorded (Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, No. 1, Evidence, p. 447).

The Omnibus Bill was introduced only two days after the report was issued, yet its abortion provisions were, as previously mentioned, nearly identical to the committee's recommendations. Jenson (1992) notes the interesting timing, as "simultaneously with this interim report, the [Pierre Trudeau] government announced its omnibus bill, including virtually the same wording for the abortion section, dropping only the insistence that the threat must be 'serious'" (p. 34). This timing suggests that the government was using the committee and the PMB to justify and establish the rationale for the abortion reforms, thus continuing to ***spatially depoliticise*** the issue. As De Valk (1974) writes, "The events of December 19th and 21st certainly seemed to vindicate the suspicions of those who had feared all along that the Minister of Justice

[55] De Valk states that only "eleven of the twenty-four were present that day. Despite the fact that, as yet, their own work was only half done, these eleven members passed the recommendation to proceed with legislation by a vote of 9 to 2" (1974, p. 55). However, the minutes record that 14 members were present, including the chair, and that the vote passed 11 to 2 (Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, No. 1, Minutes 14-5).

[56] Transcripts of committee meetings are called "evidence" whereas minutes only record basic details such as decisions made or general topics of discussion.

was quietly preparing to go ahead with his legislative plans without waiting for the completion of the hearings by the Standing Committee" (p. 61).

Procedural ***temporal depoliticisation*** is also found in that both the introduction of the report and bill occurred immediately prior to the Christmas break, helped to both distract attention from the issue as well as delay debate on it. Morton (1992b) describes this timing as "strategic" to minimize potential political fallout. This is because the Christmas break meant that not only would Parliament not be sitting, meaning less political debate and a lack of Question Period, but also that Canadians would be generally less preoccupied with politics and more so with their holidays. This use of timing to minimize debate and controversy is confirmed by Campbell and Pal (1991) who note that when the Interim Report was released, it was clear that "Something was up…. It was clearly a masterstroke designed to minimize controversy over the morality provisions of the bill: on the same day that the bill was introduced, it was read for the first time, and Parliament immediately adjourned for the Christmas holiday" (p. 10). Interestingly, concerns are also raised within cabinet regarding the timing of the bill, given the proximity to Christmas, but Minister Trudeau defended the timing by indicating that they wanted the public to consider the issues over the parliamentary recess (Cabinet Conclusions, 1967-12-19, p. 4), conveniently leaving out that MPs would not be able to question the government about the legislation if it was introduced at that time. The effect overall, regardless of the intent, was to delay any debate until Parliament sat again in the new year.

5.2.3 Depoliticisation by Regulating via Medical Discretion

The very substance of the bill, in that it relied on the medical profession to decide on when abortions were necessary and provide such abortions as needed, also served to depoliticise the issue. Wahn's PMB, almost entirely replicated in the omnibus bill, was based on the CMA's

recommendations and prepared in consultation with the chair of the Abortion Committee of the Ontario Medical Association (OMA) (Penny Light, 2003, p. 191). Unsurprisingly, then, the law was premised on the principle of medical discretion and deferred to the expertise of medical professionals, serving as another means of both ***spatial*** and ***capacity depoliticisation***. Permitting abortions only by qualified doctors, in qualified hospitals, when a committee of doctors approved of it for health reasons, ***spatially*** deferred responsibility for the administration and operation of the law away from the federal government and to hospitals and doctors and, by extension, to the provincial authorities that govern them. By depending on medical discretion and not providing any specifics as to what "health" would and would not include within the law, the government also used ***capacity depoliticisation*** to diminish their ability to act within this policy area or enforce the law.

Embedding medical discretion within the law was also be found in the British reforms of the same decade. As Keown (1988) noted, basing the law around "professional autonomy" and "clinical freedom" neutered the safeguards of the British regulations, allowing for a rapid increase in abortions for a large range of reasons (p. 137). Logically, if the law establishes that only medical authorities can determine the necessity of an abortion, how can politicians then intervene to insist on a certain interpretation of the law? This proved also to be the case in Canada and appears to be the design. Canadian cabinet minutes from the 1970s confirm that the very construction of the law in 1969, and the lack of definition of "health", had been written in such a way as to be "deliberately vague so as to leave a certain amount of discretion and responsibility in the hands of local doctors and local hospitals", thus effectively deferring responsibility away from the federal government and limiting their capacity to enforce it (Cabinet Conclusions, 1974-11-07, p. 5).

5.2.4 Depoliticisation (and Re-Politicisation) through the Omnibus Format

The bill's format as an omnibus bill had both depoliticising and repoliticising effects. The choice to include abortion – alongside other controversial measures – within a much larger omnibus bill served as procedural ***capacity depoliticisation***, because it limited parliamentary and governmental agency by diluting the debate on individual issues and requiring members to vote on the whole package rather than on individual issues. By sandwiching more popular Criminal Code reforms with the more controversial, the government presented MPs and the opposition with less room to manoeuvre. In his discussion on omnibus bills, Massicotte (2013) notes that the advantages of omnibus bills – beyond saving time – also includes generating "embarrassment within opposition parties by diluting highly controversial moves within a complex package, some parts of which are quite popular with the public or even with opposition parties themselves" (p. 17). This can help get the more controversial measures through parliament by enabling the government to use the more popular components of the bill rhetorically against the opposition if they oppose it (Massicotte, 2013). For instance, although a party may oppose the bill for its abortion reforms, the Liberal government could then accuse them of not supporting another measure within the bill, such as drunk driving reforms. The strategic use of the omnibus format in this case is also acknowledged by Tatalovich (1997) as a means of diluting attention to the issue and minimizing the debate opportunities on the individual issues, as well as dividing the loyalties and votes of MPs who might support parts of the omnibus bill and oppose others.

The inclusion of abortion within the omnibus bill was not without critique even within the Liberal cabinet, however. Cabinet minutes record some ministers questioning "whether it was necessary or desirable for the government to deal with so much Criminal Law reform at the same time" (Cabinet Conclusions, 1967-12-19, p. 4). An indication of the utility of lumping controversial issues into such a large bill can be found in a December 19th cabinet discussion on

the bill's clauses regarding homosexuality and gross indecency, with the cabinet needing to decide whether to include them in the bill. The Conclusions record that "the changes would be unpopular but if the government was prepared to deal with abortion it might just as well deal with gross indecency as well" (Cabinet Conclusions, 1967-12-19, p. 4). Due to the limited summaries of cabinet discussions, it is difficult to unpack depoliticisation definitively without more details of the meetings. But, despite some ministerial concerns, the executive's push to include abortion in an omnibus bill and to "deal with" the controversial issues together provide some support for procedural forms of depoliticisation because the format dilutes opposition to specific clauses by procedurally reducing parliament's ***capacity*** to debate individual issues.

Although the omnibus bill format did likely help dilute the issue somewhat, abortion was still subject to considerable debate and produced its own sub-debate on dividing the omnibus bill. Through motions introduced in the House and at committee, proposals were made to divide the bill or at least divide the committee's report on the bill to address abortion and a few other issues separately from the rest. These resulting debates can be understood as a backlash or boomerang effect, which, as discussed in chapter 3, refers to depoliticising efforts resulting in an unintended ***repoliticisation*** (Wolf & Van Dooren, 2018). In other words, by trying to minimize debate and controversy by including controversial issues alongside a vast array of more popular measures, a new point of debate and controversy was created: namely, repeated calls for the bill to be divided and a free vote allowed on these more controversial elements, particularly abortion.

This debate on splitting the bill occurred not only with opposition members in the House, but also within cabinet and the Liberal caucus. Cabinet minutes from November and December 1967 reveal that cabinet was deliberating on whether to introduce the abortion clauses as a separate bill and allow a free vote (Cabinet Conclusions, 1967-11-30, pp. 3-4). As recorded by

the minutes, “The government was taking many big steps in social legislation, some of which touched on religious sensitivity; it was a matter of judgement whether it was better to face all of these controversial issues at one time or to defer some of them” (Cabinet Conclusions, 1967-12-05, p. 5). Concerns on how government members would vote on the more controversial aspects of the bill are also in evidence, with the cabinet indicating that it needed to ensure that the bill would not be defeated “if it permitted government supporters to vote against certain sections of the Bill in Committee, or absent themselves on second reading on grounds of conscience” (Cabinet Conclusions, 1967-12-05, p. 5).

Ultimately, however, the government did not split the bill and had to continue to defend it against calls from the opposition to do so. For instance, immediately following Minister of Justice John Turner’s speech at the beginning of the second reading debate, a PC amendment to split the bill to allow votes on the most contentious issues was proposed, including – or perhaps especially – abortion. This concern with splitting the bill lasted long after the vote on this failed amendment. In this way, ***repoliticisiation*** is found in the debate and conflict generated due to criticism of the omnibus format.

Tied to this matter was an invitation from opposition members to the government to allow free votes for Liberal MPs so they could vote “their conscience” on the controversial matters. This call for free votes was generally linked to a need to split the bill, because only that would truly allow MPs to vote according to their conscience, as opposed to a bill that required them to vote only one way on a large swathe of issues that they may support and oppose to varying degrees. The rejection of the use of free votes by the Liberal government also functioned as a means of procedural ***capacity depoliticisation***. Dismissing free votes procedurally minimized debate by minimizing the Liberal MPs who would speak against the government. Morton (1992b)

describes how, “The Liberal backbenchers were unusually quiet and somewhat uneasy during the abortion debate. The Prime Minister had never approved a free vote, but party leaders claimed that no Liberals were being forced to vote against their conscience. In the end, only three Liberal backbenchers spoke against the abortion provision, while nine spoke in support” (p. 24). By whipping the vote, the Liberal government also ensured that the bill would pass, but the lack of free vote also created a new source of controversy, specifically debate on the format of the bill and concerns with free votes and the consciences of MPs, thus contributing to ***repoliticisation***.

In summary, although the government procedurally ***politicised*** abortion by placing it on the legislative agenda and thus created opportunities for debate and contingency, it also continued to procedurally ***depoliticise*** it as a means of managing the conflict and controversy it engendered. More specifically, ***capacity depoliticisation*** served to limit the government’s ability to enforce the law through its deferral to medical discretion, diluted attention to the abortion issue through its omnibus format, minimized the capacity of caucus to cause problems and ploughed the issue through parliament by rejecting free votes. ***Spatial depoliticisation*** is found in the government’s deferral to medical professionals through the text of the legislation as well as the use of a Liberal backbencher’s PMB and the committee’s study of PMB, which softly introduced abortion reform and then largely justified their legislative approach to it. Additionally, ***temporal depoliticisation*** is found in the timing of introducing their bill, which indicates a strategic interest in minimizing debate as well as some degree of collaboration with the government members of the committee that had been studying the PMB. Yet, as we will continue to see, these measures did not entirely dampen the attention and controversy that abortion attracted. In some ways, the measures, like the use of the omnibus format and lack of free votes, created new fault lines upon which controversy and debate continued, thus ***repoliticising the issue***. Furthermore, this procedural

politicisation meant that the government then had to contend with how to navigate the issue through its caucus, the parliament, and the electorate. This is where discursive depoliticisation becomes prominent.

5.3 Discursive (De)politicisation: Three Policy Problems but One Legislative Solution

Turning now to the analysis of the frames and discussion of discursive (de)politicisation, this section is organized according to the three main stories that emerge concerning the omnibus bill, summarized in Table 4, below. Each story, constructed through framing, presented a policy problem and positioned the omnibus bill as a type of solution.

The first story is of the ***bill as reform***. This story, which also applied to the many other issues in the bill, presented the problem as Canadian laws being out of date with modern Canadian society and its values, to which the omnibus bill provides a means of "catching up". The second story, ***the bill as clarifying the status quo***, described the problem with the abortion law as being unclear and causing confusion, which the omnibus bill would solve by clarifying the law and codifying existing practice. The third story is ***the bill as a compromise approach***. It positioned abortion as an intrinsically difficult and controversial issue upon which Canadians are divided, requiring the omnibus bill's abortion provisions to serve as a bridge between the extremes as a means of compromise and accommodation. These stories are supported through discursive depoliticisation, which enabled the government to limit the responsibility it assumed while pursuing legislative changes. Discursive depoliticisation also contributed to the deferral of responsibility to the private sphere, including to the medical profession and to individuals for their own matters of morality, as well as the presentation of the abortion changes in the bill as "necessary" or the only option available to the government.

Table 4: Discursive (De)politicisation, 1966-1969

	Story 1: Bill as Reform	Story 2: Bill as Clarification	Story 3: Bill as Compromise
Problem	Laws out of date with society	Laws is unclear, causing confusion	Lack of consensus on difficult, controversial issue
Solution	Omnibus Bill		
	"Catch up"	Clarify and codify	Compromise/ accommodation
Frames Constructing Stories and Serving as Discursive (De)politicisation			
Capacity Politicisation	N/A	N/A	N/A
Spatial Politicisation	- Bill as daring, comprehensive set of reforms → government assuming responsibility	N/A	N/A
Temporal Politicisation	N/A	N/A	N/A
Capacity Depoliticisation	- Catch up laws to evolving, modern society and its values & needs → limiting other options, invoking necessity	- Clarify a confusing situation → invoking necessity	- Difficult nature of abortion issue + pluralism and lack of societal consensus → limits available solutions/options for action by government
Spatial Depoliticisation	- Private morality the responsibility of individuals, not government → relocating morality to private sphere - Defer to discretion of medical professionals → deferring responsibility/authority to non-governmental actors	- No fundamental change of existing practice by government, merely codifying it → deferral of responsibility through denial of concrete change	- Not condoning nor authorizing abortion but removing therapeutic abortion from criminal law; government as neutral → deferral of responsibility to private sphere - Constructed bill with input and consideration of 'all sides' → sharing responsibility for bill with other actors
Temporal Depoliticisation	N/A	N/A	N/A

5.3.1 Story 1: The Omnibus Bill as Reform

The story of the *omnibus bill as a reform* package represents the bill as the solution to the problem of out of date and out of touch laws that need to "catch up" with an evolving society. This story is constructed prior to the 1967 omnibus bill's introduction and continues through the completion of the 1969 omnibus bill. The problem of being "out of date" is reinforced through frames supporting ***capacity depoliticisation***, where the state of modern society and its modern values are juxtaposed against the allegedly backward state of the Criminal Code. Prime Minister Pearson, in his response to the Speech from the Throne stated that, "we must be prepared to recognize in our laws changing social values," mentioning social issues that include abortion (House of Commons Debates, 27th Parliament, 2nd Session, Vol. 01, p. 50). Pearson went on to say, "It is my hope . … that this session we shall be able to make certain changes in this area which are required to bring the legislation into line with current conditions and current thinking" (p. 51). Similarly, Minister Trudeau, closer to the date of the 1967 bill's introduction, responded to a question by saying, "the government has undertaken to introduce a legislation designed to bring the Criminal Code up to date with regard to abortion, so as to bring our statues more in line with our modern society… [and it] should win the favour of all reasonable persons. It reflects the needs and morals of our time" (Vol. 05, p. 5042).

The omnibus bill, as a solution, is thus framed as *necessary* for Canada's laws to *catch up* with its modern values, reducing contingency and agency by invoking the necessity of such action and by positioning the nature of society as "modern" and evolved, thus requiring action. This is re-affirmed during Pierre Trudeau's 1968 leadership campaign, where the Criminal Code reforms he had introduced as Justice Minister fit into his campaign theme of the "Just Society" (Derfler, 2012; Dummitt, 2020), in which "Trudeau positioned himself as an astute observer of cultural trends and a champion of diversity in a modern, civilized world" (Dyck & Lux, 2020, p. 24).

Minister of Justice John Turner's defense of the bill in the 28th parliament at second reading continued to frame the reform as an "update", by "bring[ing] the law into line with the times" (28th Parliament, 1st Session, Vol. 5, p. 4717). A failure to undertake such needed changes would result in dire consequences, according to Turner, as "yesterday's order, if unresponsive to change, becomes tomorrow's oppression" (p. 4717).

With the introduction of the revised omnibus bill in the 28th parliament, Minister of Justice Turner's speech during the 2nd reading debate acknowledges that the bill "is the most important and all-embracing reform of the criminal and penal law ever attempted at one time in this country," (Vol. 5, p. 4717) by which discursive ***spatial politicisation*** highlights the government's leadership in this substantial effort. However, Turner's speech goes on to argue that the law reflects "what most persons believe to be reasonable and necessary for the well-being of our society" (p. 4717). This continued presentation of the bill as a "necessity" sustains ***capacity depoliticisation***, reducing available options and positioning this bill as the only "reasonable" solution.

This necessary reform is linked, in part, to the proper role of government in society and the need to adjust the Criminal Code accordingly. ***Capacity depoliticisation*** further supports the necessity of reform by creating a division between public and private morality, with the government's role as proper only to the former and the reforms removing government from the latter. For instance, during the 1968 election, Prime Minister Trudeau indicates his support of the amendments of the Criminal Code during a national televised debate between party leaders.[57] In this debate, Trudeau stated that their bill was separating "sin" from "crime". Turner, likewise,

[57] Television clip of 1968 election French debate (CBC Archives, 1968).

described this division between sin and crime when quoting the UK's Wolfenden report[58] during the 2nd and 3rd reading debates, reiterating that "all that is immoral has not been and is not now criminal" (28th Parliament, 1st Session, Vol. 8, p. 8577). He more emphatically addressed this point during the committee hearings on the bill, saying, "The purpose, Mr. Chairman, of this section is to remove from the criminal law acts in private which, no matter how distasteful or repugnant to most of us, are properly left, in our view, to private morality rather than dealt with under the criminal law" (Standing Committee on Justice and Legislative Affairs, 28th Parliament, 1st Session, No. 7, p. 171).

Connected with dividing "sin from crime" are movements of ***spatial depoliticisation*** that increasingly allocate and assign responsibility to the private sphere, framing the government's proper and appropriate role as removed from the realm of "sin" and private morality. As Turner noted in his 2nd reading remarks on clauses dealing with changes to Criminal Code provisions concerning sexual behaviour, "parliament would not, in enacting these amendments, be condoning this type of conduct. … Individuals will continue to be responsible to themselves for their moral behaviour" (House of Commons Debates, 28th Parliament, 1st Session, Vol. 5, p. 4723). Consequently, responsibility rests on private individuals. During the 3rd reading debates Turner further articulated the difference between what should be pushed into the private sphere, namely, "In those certain areas of private behaviour which are more properly left to the conscience, which are in private and do not involve public order or the corruption of others, particularly the young, we are of the view that this is no place for the criminal law" (Vol. 8, 1969, p. 8577). The government must, therefore, withdraw from these areas. Jean-Charles Cantin, the Parliamentary Secretary (PS) to the Minister of Justice, also continued to highlight the division

[58] The report was on the subject of homosexuality, but the principle of dividing sin and crime was applied to abortion in some debates.

between personal morality and the public sphere, asking an opposition member to "keep his own morality to himself…We are here only as legislators, and not as moralists. We are here to legislate" (Vol. 8, p. 8498). This logic is affirmed retrospectively decades later in Pierre Trudeau's writings, when, describing opposition within cabinet to this approach to abortion on moral grounds, Trudeau asserted that they, as parliamentarians, "were legislators, not priests or popes" and needed to respond to the needs of a pluralist society (Trudeau, 1998, pp. 8–9).

Frames deferring to the medical profession are also prominent and repeated, which continues to move responsibility ***spatially*** away from government and reinforces the procedural depoliticisation of deferring responsibility to medical discretion through the very substance of the legal changes (see section 5.2.3). This continues to fit into the need to reform the law to address the government's proper role, which is not fundamentally a medical one. This ***spatial depoliticisation*** involves the categorization of abortion as a medical decision, framing it as requiring the professional judgement of doctors. Turner noted that, "It is not a mathematical question. It is not an exact science. It is an art pertaining to professional judgment [of doctors]" (Vol. 8, p. 8478). Turner acknowledged there is no consensus on the definition of health, which should be left to medical discretion. During the 2nd reading debate, for instance, he reminds the House that, "Whether an abortion is justified for the reasons mentioned will involve the making of a decision by members of the medical profession based on medical considerations" (28th Parliament, 1st Session, Vol. 5, p. 4722). Likewise, PS Cantin deferred to doctors, as Canadians' "health will be in better hands than in those of our Créditiste friends", referring to amendments proposed by Ralliement Créditiste MPs that sought to create additional health standards to restrict abortion (Vol. 8, p. 8441). He later went on to reiterate this, saying, "The present government wanted to hand back the practice of medicine to physicians, surely a sounder proposition than to

rely on our Créditistes friends who, under the present provisions of the Code', could procure an abortion. As far as I am concerned, I have much more confidence in physicians. Let each practise his own profession" (Vol. 8, p. 8608).

5.3.2 Story 2: The Omnibus Bill as Clarification and Codification

The second main story is that of the bill *as clarification and codification of existing practice*. Contradicting the previous story of "reform", this story argues that that situation is not really changing, but the law is merely being clarified and/or codified. The codification story is specific to abortion rather than covering the broader swathe of issues within the omnibus legislation, and thus is narrower than the reform story. In essence, the story argues that there is no actual change occurring in practice, that the government is not assuming responsibility for abortion through a legal change, but merely expressing more clearly what the existing law is already understood or interpreted to be. Overall, this ***spatial depoliticisation*** moves responsibility away from the government through a continued denial of any concrete change.

We saw the beginning of this story when MP Ian Wahn introduced his PMB in the 27th parliament, where he argued that, "The purpose of this bill is not to make any radical change in the existing law. Rather, its purpose is extremely modest, that is, to clarify the confusion which now exists in our Canadian law on this subject" (Standing Committee on Health and Welfare, 27th Parliament, 1st Session, Vol. 1, p. 14). Wahn described the status of abortion as "probably generally recognized that an abortion is legal today in Canada if it is performed for the purpose of preserving the life of the pregnant woman. There is some question as to whether it is legal if it is performed for the purpose of preserving her health" (p. 14). Wahn goes through the existing sections of the Criminal Code to point out that the law acknowledges "the principle that an abortion is not illegal . … if it is performed in good faith to preserve the life of the mother", yet

other sections provide no exceptions to their prohibition of abortion, resulting in an "inconsistency" in the law and a "serious difficult of interpretation" (p. 14). Wahn cites news reports about confusion within the medical profession on what is and is not legal for therapeutic abortions; his proposed law would merely "clear up this confusion by stating specifically that therapeutic abortions are legal in Canada. It declares that to be the true state of the law" (p. 15). It is not, therefore, "changing our rules, we are simply declaring what our rules are" (p. 15).

The committee's interim report, likewise, stated that "There is general agreement that the Criminal Code is ambiguous in its references to abortion" and recommended that amendments be made "so that their interpretation [of sections 209, 237 and 238 of the Criminal Code] will not give rise to ambiguous situations" (Standing Committee on Health and Welfare, 27th Parliament, 2nd Session, 14-3, Dec 19, 1967). As noted earlier in the chapter, Wahn's bill and the committee's interim report recommendations matched almost perfectly the omnibus bill put forward shortly thereafter, so it is no surprise that similar language appears. Indeed, in the 1968 election, Trudeau continued to assert that the abortion provisions were a clarification of the act, with the only fundamental change being the required committees to approve abortions in hospitals. It would not, said Trudeau during the televised debate, make abortion easier, but would instead "improve" the act (CBC Archives, 1968).

As framed in the debates on the omnibus bill, the problem is that the law is "uncertain" and "not clear", resulting in confusion and enforceability issues. The solution is the omnibus bill, whose abortion provisions codify and clarify the law. In his second reading speech, Minister Turner described the situation as follows:

> The Prime Minister and I have both said . … [that] it is important to bear in mind the uncertain state of the present law. To assume that the present law on abortion is clear and thereby to move on from there to allege that the amendments are too stringent, or not stringent enough, or in substance change nothing is, in my submission, arguing from a

> false premise. The fact is that the present state of the law is not clear and one of the overriding purposes of the legislation is to clarify it (28th Parliament, 1st Session, Vol. 5, 1969, p. 4722).

Turner went on to describe the varying understandings of what the law is and under what conditions abortion can be performed, but he does not go into detail about what problems this lack of clarity has created. The "problem", as such, remains vague – much vaguer than Wahn had presented it in the previous parliament. This vagueness limits the degree to which the "solution" of the omnibus bill can be said to solve it.

Along these same lines, Minister Turner also argued at committee that some of clauses under review did not even pertain to abortion. In speaking to clauses 14, 15 and 18, Turner argued that each clause represented a distinct offence, but only clause 18 or section "237 is the abortion section – anything done to kill the foetus, viable or nonviable, prior to the act of birth" (Standing Committee on Justice and Legislative Affairs, 28th Parliament, 1st Session, No. 15, p. 783). Clauses 14 and 15, he argued, were mere clarifications of the law, reflecting "the way the section has always been interpreted" (p. 781). Although some misinterpret these sections to pertain to abortion, as the previous parliament's Health and Welfare committee had, they do not actually relate to abortion, argued Turner. Turner described the legislative history of this section of the Criminal Code, which dates from a UK commission, and cited the UK House of Lords to support his position that these clauses are not about abortion. This emphasized continuity of practice and interpretation rather than fundamental change, as well as appealing to the authority of the UK House of Lords, ***spatially depoliticising*** the issue by deferring responsibility.

Although the government continued to refer to the bill as merely a clarification of the law, this story is not very well developed. The most significant defence is found in Wahn's defense of his PMB in the 27th Parliament's committee hearings, described above. Although the government

adopts some similar language in presenting the omnibus bill, they do not spend much time in describing the problem of confusion and lack of clarity. It is presented as a self-evident fact, rather than an argument to be constructed and defended. As such, the problem remains vague and the omnibus bill's ability to solve such a problem is, likewise, barely described. The story of clarification generally gives way to the more robust compromise story, described in the next subsection.

5.3.3 Story 3: The Omnibus Bill as Compromise

The story of the bill as compromise is the most prominent in the government discourse and, as will be seen in the next chapter, remains prominent for many years to come. Indeed, this framing of the bill as accommodation and compromise is the characterization often found in literature describing the bill (Cuneo, 1989; Morton, 1992b). The problem presented by this story is that the state of society is pluralist and divided on the issue of abortion, and the nature of the abortion issue is fundamentally one framed as controversy and division. Both of these frames contribute to ***capacity depoliticisation*** by establishing how difficult and near-impossible the situation is to resolve. This then lowers expectations for what is possible for the government to do as well as lowering expectations for any proposed solution. The solution of the omnibus bill, consequently, is framed as the compromise or accommodation that bridges the divide in society and the divisiveness inherent in the abortion issue.

Framing abortion as a "difficult issue" is found throughout Hansard and committee evidence. For instance, in the 28th Parliament, Turner's opening remarks on the bill during the 2nd reading debate began by describing the challenge of seeking a balance between "law and morals and the historical ideal of the rule of law in a free society" (1st Session, Vol. 5, p. 4717). Following these more general remarks, Turner turned to what he calls "some of the most controversial

questions of our time" (Vol. 5, p. 4718) and framed these issues – including abortion – as part of the challenge of reconciling private beliefs with the rest of society within a pluralistic society. Speaking to abortion specifically, he noted that these clauses attracted the most feedback and controversy out of the entire bill, saying "We have heard more from individuals on the proposed amendments concerning abortion than on any other provision" (Vol. 5, p. 4722). Similarly, Turner continued framing abortion as challenging, emotional and controversial, as well as society as divided on the issue. He stated, "It is a matter that is undoubtedly of profound concern for all of us, and it has been the subject of debate, often very emotional debate, for a number of years" (p. 4722). Consequently, the population is divided on the matter, with Turner going on to say, "This matter goes right to the essence of life, goes right to the bone. There is not going to be any consensus on this issue in this house or in this country" (p. 4722). In framing the situation as divided and lacking in consensus, Turner then positioned the bill as the appropriate response that balanced divergent views. He stated that there is no consensus, but, "We have reached only what I might call an accommodation" (p. 4722). This accommodation does not support or "promote abortion" nor "authorize the taking of foetal [sic] life", but, by removing certain abortions from their classification as criminal offences, they could promote a positive benefit for society in general (p. 4722). This continued the line of reasoning that separate the government's actions from morality (discussed section 5.3.1) and maintained neutrality on that question, while undertaking actions to reach a certain "public good".

The frame of removing the government from matters of private morality, discussed in the reform story, also contributes to the compromise story. In the 3rd reading debate, Minister Turner began by acknowledging the very different but strong and sincere convictions, particular on matters involving "private morals and the concept of life and death" (28th Parliament, 1st Session,

Vol. 8, p. 8574). By referring to "private morals" Turner continued to ***spatially depoliticise*** the issue, pushing it from the public sphere into the private realm. As they argued, the government is not responsible for what is proper to the private rather than the public sphere. The emphasis placed on how the bill does not condemn or approve abortion continues to sustain the government's position as neutral and, thus, bridges the divisive, difficult issue with the omnibus bill. Turner stated at committee, for instance, "This section does not imply in any way, in our opinion at least, a moral condonation or a moral approval of the acts exempted from the criminal law" (Standing Committee on Justice and Legislative Affairs, 28th Parliament, 1st Session, March 4, No. 7, p. 171). Turner stressed that the government is not supporting these acts, and the language used even indicates that these acts may be "distasteful and repugnant" (p. 171).

Furthermore, Turner described the crafting of the bill as a result of both legal expertise as well as listening to "the arguments and the views from all sides" and representations from various actors such as provincial governments, (House of Commons Debates, 28th Parliament, 1st Session, Vol. 5, p. 4717), which not only framed the bill as the result of careful consultation and diligent work, but also as a response to the concerns of Canadians. This, again, ***spatially depoliticises*** the issue, pushing responsibility towards all these other actors, thus lessening the responsibility of the federal government itself. Hearing from "all sides" also continues to emphasize the government's neutrality and middle-ground approach.

5.4 Synthesis

Procedurally, we see that although the government did take the ***politicising*** move of putting abortion on the governmental agenda, it also accompanied this with ***procedural and discursive depoliticising*** moves that minimized and controlled debate where possible. Procedurally, the use of PMB, the omnibus format, and avoidance of free votes enabled the

government to minimize and dilute debate as much as possible, sandwiching the more controversial aspects of the bill with more popular clauses.

Discursively, throughout this period, three stories that support the bill emerge. The bill is framed as an important reform project, yet this reform is tempered by depoliticising movements that tie reform to a "necessary" catching up with society as well as responding to the demands of society. Also, at odds with the reform story is framing the abortion provisions of the omnibus bill as mere codification of the status quo, emphasizing that the government is clarifying rather than changing the practice of abortion, removing the government from a position of moral responsibility for the practice of abortion. The compromise story also emerges, framing the abortion provisions of the bill as bridging this divisive issue, within a society lacking consensus, and between the pro-life and pro-choice sides of the matter. These stories not only identify differing problems but the presentation of the omnibus bill as the solution is framed in significantly different and contradictory ways.

The three stories identified from the document analysis all point to the omnibus bill clauses on abortion as a solution but the stories themselves are in tension with one another. The bill as a reform story pertains to the omnibus bill in general, highlighting the bill as part of a modernizing reform that is "catching up" with Canadian society, which includes the reforms to abortion but also many other issues. This story also highlights how the government is separating crime from sin or morality. The clarification story, on the other hand, emphasizes – more specifically to abortion – that the criminal code changes are not, fundamentally, a change. Rather, they merely codify existing practice to make the continuity of the status quo clearer, legislatively speaking. The third story of compromise proposes that, in the face of a divided, pluralist population and a difficult, divisive issue, the bill offers an accommodation between both sides of

the issue. There is a tension, as such, between stories that position the bill as change (reform) versus not actually a real change (codifying status quo) versus a middle-ground change (compromise).

These stories highlight varying problems and yet somehow all arrive at the same solution – the omnibus bill, but also characterize this solution in very different ways (reform vs. status quo vs. compromise). This tension helps to illustrate not only how the government tried to negotiate and navigate the issue discursively, but also points to the narrative fractures and contradictions that helped to produce some of the challenges the government faced along the way, as well as some of the issues that will challenge the efficacy, enforcement, and implementation of the bill in the years to come. As will be seen in the subsequent chapter, the passing of the omnibus bill does not render abortion a non-issue, but created new opportunities for debate, controversy and politicking throughout the 1970s and 1980s.

Chapter 6: Navigating Neutrality and Defending the Status Quo: The Liberals on Abortion, 1970 to 1984

After the omnibus bill passed into law, the Liberal government of P.E. Trudeau appeared keen to shelve the abortion issue throughout the 1970s and 1980s. Cabinet discussions during the 1970s confirm this, with Prime Minister Trudeau noting, "that it would be unfortunate if the impression was given that the government is going to take the initiative to re-open the issue or that there has been any hardening of the government's position in the interpretation of the Act" (Canada, Privy Council, Cabinet Conclusions, 1974-11-07, p. 5). However, the 1969 legislative changes resulted in new pressures and new sources of conflict – particularly within civil society and its burgeoning social movements – with which the government had to contend. Depoliticisation served as a means managing this conflict, with the government playing a delicate balancing game to appease both sides of the issue. This appeasement proved to be increasingly difficult as social movement mobilization grew and resulting court cases kept the issue alive in both the media and parliament.

This chapter presents two main conclusions drawn from the analysis of these sources. As in chapter 5, it first emphasizes the dynamic management of the issue of abortion by the government. Attempting to find a balance between growing social movement and parliamentary advocacy on both sides of the abortion issue, the government took concrete actions to contain the "compromise" produced by the omnibus bill legislation through ***procedural depoliticisation***. Despite efforts to defuse conflict, the government faced several instances where these efforts yielded ***repoliticising*** or boomerang effects that required additional ***procedural depoliticisation***. Other government action, specifically the constitutional changes and introduction of the Charter of Rights and Freedoms, also inadvertently ***politicised*** abortion, yielding a concerted effort to establish the government – and the Charter's – neutrality on the issue. This period of 1970-1984

demonstrates how the government's aim to keep abortion *off* the legislative agenda involved a much more dynamic situation than simple avoidance, with multiple actions pushing and pulling abortion away from the government, and, as will be detailed in the next main argument, with similar dynamics in the government's discourse.

The second main conclusion focuses on the discourse of the government, identifying three main stories that served to defend the 1969 legislation that has been passed into law: (1) the legislative change is done; (2) the law is the compromise and the government the neutral broker; and (3) any problems lie not with the law itself, but with those responsible for administering or enforcing it. Unlike during the omnibus bill debates, the government is not advancing these stories in response to the problem definitions they have established. Instead, they are defending their legislation as the new status quo against problems advanced by those on both sides of the issue (pro-life and pro-choice) in parliament and outside of it. This creates an interesting dynamic where again, a singular legislation solution is having to meet the challenges of very different problem definitions, resulting in – perhaps – unsatisfactory stories.

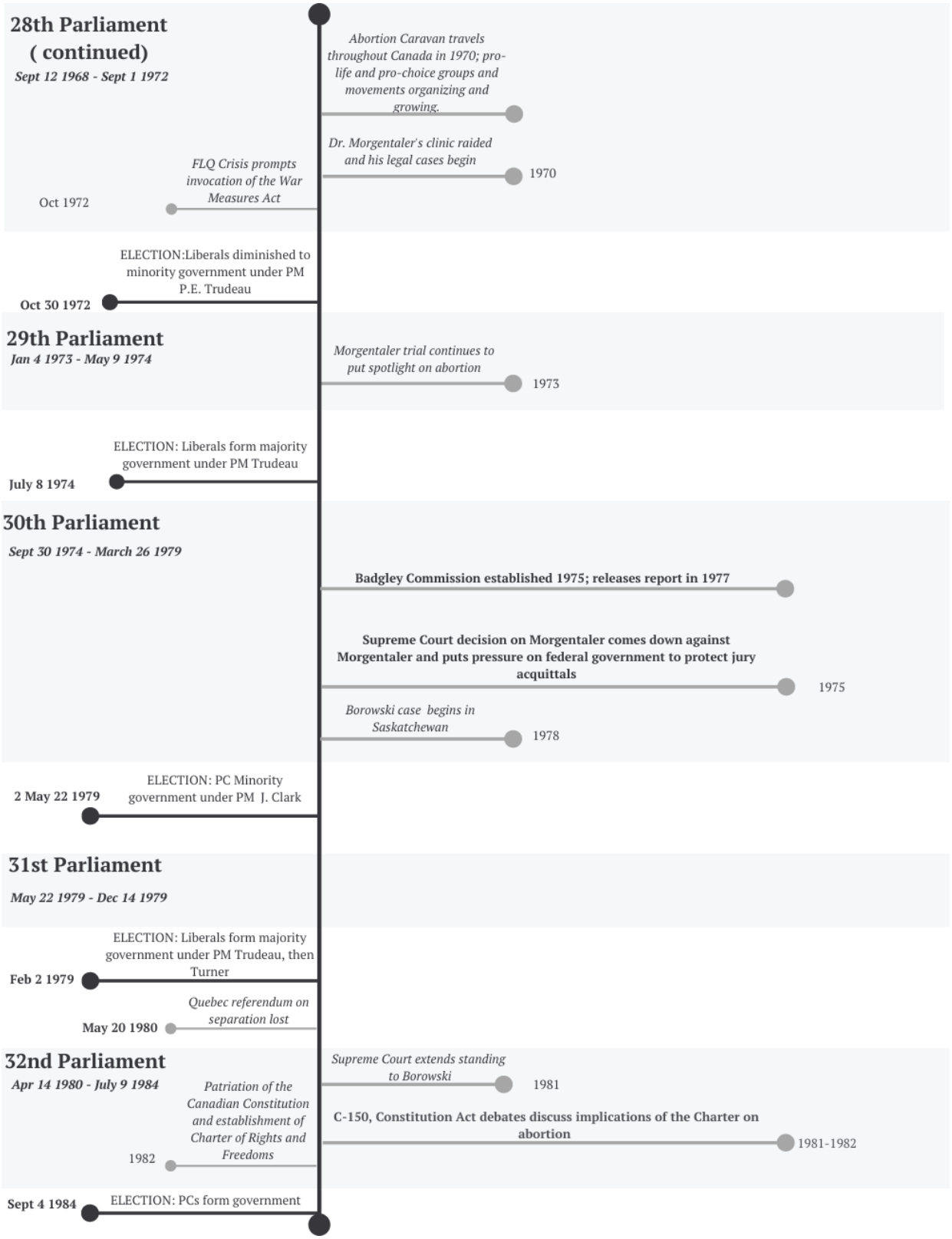
In addition to Hansard, available cabinet documents, committee evidence and secondary sources, this chapter also utilizes three interviews with policymakers who spoke to their personal experiences with abortion policy and politics during this time in parliament. This chapter begins with a historical overview of this period, highlighting the rising women's movement and the civil disobedience and court cases of Dr. Henry Morgentaler, as well as the pro-life countermovement. Abortion politics within parliament are then discussed, emphasizing the most significant moments, including Minister Lang's memo and the Badgley Committee, as well as the constitutional debates. It should be noted that although this period is primarily governed by the Liberals, the PC government of Joe Clark did provide a brief intermission but was in power for

only a matter of months. Therefore, although Clark's government is mentioned on occasion, the chapter focuses on the Liberal governments of P.E. Trudeau. The analysis of the government's use of (de)politicisation as a means of negotiating these increasingly active and polarized views on either side of the issue follows, beginning with procedural (de)politicisation in section 6.2, and followed by discursive (de)politicisation in section 6.3

6.1 Historical Overview

This fourteen-year period of 1970 to 1984, depicted in Figure 10, includes the conclusion of the 28th parliament and continues through the 32nd Parliament. Although Trudeau's government was defeated by Joe Clark's PCs in 1979, the 31st parliament was a brief months long interlude. Following this, Trudeau and the Liberals returned with a majority government in the 32nd Parliament, during which time they patriated the Canadian Constitution and instituted the Charter of Rights and Freedoms. This section reviews abortion policy and politics in parliament during this period but first begins with the broader social context, namely the social movements both for and against abortion choice, which were increasing in significance and activity during this period.

Figure 10: Timeline of Abortion Related Events from 1970-1984



6.1.1 Mobilizing Social Movements

Following the changes to the abortion law in 1969, social movements became increasingly active and polarized, advocating for either heightened restrictions or liberalized access. This, notably, was a response to the law, rather than a force propelling the abortion changes of the 1960s. Following the 1969 law, women's groups continued to mobilize, developing into an abortion rights movement (Ackerman & Stettner, 2019; Haussman, 2000, 2001). According to Palmer's (2012) account, the 1969 law "served as a catalyst for feminist action in Canada, bolstered by the social, political, and economic shifts that had been fomenting over the course of the 1960s" (p. 10). The women's movement criticized the 1969 law, calling for increased liberalization (Morton, 1992b, p. 29).[59] Notably, the Abortion Caravan, involving women crossing the country to raise awareness, disrupted Parliament in 1970 with protests in the public galleries (Dyck, 2013; Jenson, 1992; Saurette & Gordon, 2015). Concurrently with the legislative proposals of 1967-1969, the Royal Commission on Women (RCSW) had begun hearings in 1968 and solicited submissions from women and women's organizations, which included discussions of the abortion law (Stettner, 2012). The commission recommended allowing abortion "by request" in the first trimester of pregnancy, but its report was only tabled at the end of December 1970 and was too late to be a part of the debates concerning the 1969 bill (Stettner, 2012).[60]

[59] Palmer (2012) notes that while pro-choice the movement was certainly diverse and even fractured in places and at times, expanding abortion access served as a focus and a goal that the varied movement components could unite around, as well as attracting allies in new left and student movements.

[60] Despite the general portrait in the literature of women's voices and the women's movement being predominantly absent from the 1960 reforms (cf. Brodie, Gavigan, & Jenson, 1992b) or at least "marginal" (Haussman, 2001), Stettner (2012) argues that the commission was still influential by soliciting and amplifying women's voices, impacting "the wider public dialogue, even if only as the undercurrent shifting dominant understanding of unplanned and unwanted pregnancies" (p. 167). For more information, see Haussman (2000, 2001), who assesses the evolving role of the women's movement in abortion related debates from the 1960s to 1990s.

The legal battles of Dr. Morgentaler also began in the early 1970s. As President of the Montreal Humanist organization,[61] Dr. Henry Morgentaler, a Montreal family physician, had testified before the Health and Welfare committee in 1967 regarding changes to the Criminal Code on abortion. Offside with most other proposals, he advocated for abortion on demand for the first trimester. Following his appearance on the committee, he was approached by women requesting abortions, even though he had never actually performed any (Dunphy, 1996). A few months later, his family medical clinic had been converted into an illegal abortion clinic (Dunphy, 1996). Starting in 1970, Morgentaler's clinic was raided by the police, and he was charged and arrested.[62] The trials yielded jury acquittals, but these were subsequently overturned by appeal courts. Morgentaler's cases and subsequent civil disobedience would be used by both pro-choice NDP MPs and other pro-life MPs to challenge the Liberal government to either cease prosecution or further prosecute Morgentaler, as well as used to argue for the need to either decriminalize/liberalize abortion or restrict it further. Morgentaler's court cases would also become pivotal for the legal status of abortion, most significantly in the Supreme Court case of 1988, *R. v. Morgentaler,* discussed in the next chapter.

Meanwhile, a counter-mobilization was also brewing: the pro-life or anti-abortion movement (see Cuneo, 1989; Hunt 2015, 2019, 2021a, 2021b., Lima, 2010, and Saurette and Gordon, 2013, 2015). Opposition to the liberalization of abortion had not been robust during the omnibus bill debates, which de Valk attributes to the "confusion" and "turmoil within the Catholic Church due to the Second Vatican Council (Vatican II), which pulled attention away from the

[61] Interestingly, Morgentaler had been elected to replace former Montreal Humanist president Pierre Trudeau (Dunphy, 1996).

[62] In his series of court cases against him for these violations, Morgentaler's defence team utilized a "medical necessity defence" to explain his non-guilty plea, which was also used in *R. v. Bourne* in 1938, as well as the Good Samaritan defence (section 45 of the Criminal Code), despite his admission of having done the abortions.

abortion issue and shifted Catholics' understanding of the role of religion in politics. Vatican II was a global Catholic conference whose deliberations between 1962-65 resulted in bishops spending a significant amount of these years both preparing for and participating in the council, which reduced attention to domestic concerns (de Valk, 1974). One conclusion of the Council was to affirm "a just measure of autonomy for the political order as well as for the layman who maintained this order" (de Valk, 1974, p. 86). Although the documents were interpreted differently around the world, in North America, Catholics "began to adopt the idea that it was improper to influence legislation according to one's religious principles because that would be equivalent to 'imposing' views on those who differed in religion or ideals" (de Valk, 1974, p. 88). Given the significant number of Catholics who were Members of Parliament at this time – including Trudeau and Turner – and the higher degree of church attendance during this era, the influence of the church's moral authority merits consideration.

Some of the earliest pro-life organizing was focused on the establishment of centres for pregnancy counselling and support (also called Crisis Pregnancy Centres or CPCs), but educational and political organizations soon developed (Lima, 2010).[63] Local pro-life organizations were established in municipalities across the country, while also united and coordinated to varying degrees by national and/or provincial umbrella organizations such as Alliance for Life and Coalition for Life (Lima, 2010). Arguably, this structure presented challenges to the Liberal government, in that individual MPs faced pressures from their constituents while also facing national pro-life initiatives and campaigns. The most significant pro-life activist project during this time was the Petition of One Million organized by Alliance

[63] Lima (2010) organizes the pro-life movement into three branches: the educational, the political, and counselling. The counselling wing often – but not exclusively – exists separately from the others and is not involved in lobbying or any other political activity, whereas the educational branch can often blur into the political (Lima, 2010).

for Life. The petition was presented to P.E. Trudeau in 1975, and, as its name suggests, contained one million signatures calling for protection for fetal rights (Lima, 2010). Pro-life MPs in Parliament also drew on movement materials and activism, including rallies and petitions, to push for increased recognition of fetal rights.

Although not exclusively religious, a significant number of Catholics were found within the pro-life movement,[64] which also posed a challenge to the Liberal party, who counted Catholics as an important part of their electoral base. Jenson (1992) describes the strain this presented on the Liberal and Progressive Conservative parties, particularly as the pro-life movement became more political:

> Politicians in both parties felt that the 1969 reform had been quite sufficient. This enthusiasm for the status quo became even greater as the Roman Catholic Church . … became active in the movement to rescind the 1969 reform. This renewed activity affected the Liberal party in particular, given its long-standing reliance on Catholics for electoral support and because of the number of Catholics among its MPs (p. 53).

Both pro-choice and pro-life movements were well represented in lobbying parliamentarians. In reviewing the fonds[65] of then Minister of Internal Revenue Jack (Bud) Cullen[66], the collection of abortion-related correspondence shows extensive letter writing and movement work, including pamphlets, reports, and booklets, from both sides. Although many were personal notes, form letters were also plentiful, meaning that most other cabinet ministers

[64] Despite a significant Catholic membership, the pro-life movement was a lay one in that the Catholic hierarchy was entirely independent of and, according to Cuneo's (1989) study, "lukewarm" towards activists (1989, p. 8). Additionally, many of the movement's early leaders were a mix of professional men and women, including NDP-affiliated academics, viewing their pro-life beliefs as part of their progressive, left-leaning identity rather than the conservative image generally found today (Cuneo, 1989). A polarization quickly developed between "progressive", professional leaders "who preferred to address the abortion issue within a strictly civil rights frame of reference" and the grassroots who linked abortion with a variety of social 'evils', like feminism, secularism, and moral permissiveness (Cuneo, 1989, p. 11). Gradually the latter edged out the former (Cuneo, 1989, p. 11). Also in the mid-1970s, more evangelicals and protestants became involved – sometimes with their own, separate organizations.

[65] Fonds is an archival term which Library and Archives Canada defines as "The body of records and archives of an organization, institution or person, in any medium, created and accumulated during the course of activities and functions" (Library and Archives Canada, 2021).

[66] LAC, Jack (Bud) Cullen fonds, 128-4-2 – Justice Department – Abortion Issues (1-3), volumes 1 and 2.

were receiving similar – if not identical – correspondence and this would likely have been even more substantial for ministers whose portfolios were directly applicable to the topic (Justice, Health, etc.). Letters came from many individuals as well as from organizations on both sides. For instance, one January 28, 1976 letter from a female retired nurse in favour of abortion[67] indicated that she had written to all cabinet ministers, except Otto Lang, "whose [pro-life] opinion is well known and not likely to change" (LAC, Jack (Bud) Cullen fonds, 128-4-2 – Justice Department – Abortion Issues (1-3), volume 1, January 28, 1976).[68]

6.1.2 Parliamentary Advocacy

It should also be noted that the government dealt with the ongoing abortion controversy within a broader political context. The economic conditions of the 1970s, for instance, were an ongoing concern as they resulted in political instability, with high inflation and unemployment, labour strikes and a low Canadian dollar (Derfler, 2012). National unity was also pressing, particularly with the rise of Québec nationalism and separatism, the 1970 October Crisis[69] and subsequent invocation of the War Measures Act. National unity was further threatened by the election of the separatist Parti Québecois provincial government, which yielded a provincial referendum on separation from Canada in May 1980 (Robertson, 2000). Therefore, not only was abortion not a priority issue, but controversy surrounding it could diminish attention (for better or worse) to other issues.

[67] Personal information available in these documents has been withheld to protect privacy, as per LAC stipulations.
[68] Unfortunately, not all such ministers' fonds are available. John Turner's, for instance, are a code 10 – closed, and thus unable to be accessed. Given the passing of the Right Honourable John Turner in 2020, it is possible that his fonds will be released in the coming years.
[69] The October Crisis refers to the October 1970 kidnapping of the British trade commissioner and kidnapping and death of the Québec minister of labour by the Front de Libération du Quebec (FLQ). The crisis resulted in Trudeau invoking the War Measures Act to enable military protection in Ottawa and Quebec, as well as enabling law enforcement to round up suspected FLQ members.

Within parliament, the abortion issue was significantly quieter during the early 1970s[70] following the hubbub of debates related to the omnibus bill. Some parts of the Liberal party were interested in maintaining a role in the abortion issue, as indicated by a Liberal policy convention held in Ottawa in the lead-up to the 1972 election to produce a "Liberal Charter", which included continued liberalization of abortion; however, the project was derailed by a lack of consensus whereby "many cabinet ministers did not support the convention's resolutions on abortion" among others (Leduc, Pammett, Mckenzie, & Turcotte, 2010, p. 276).

The Liberal government of Trudeau returned to a majority government after the fall 1974 election (Derfler, 2012). In this 30th Parliament, the stress fractures of the abortion law came into full view, with pressures emanating from several sources, including the courts and within parliament. Morgentaler's court case, which began its Supreme Court hearing in October 1974, kept the issue alive in the media and among parliamentarians. Hailed as a hero for his civil disobedience in some quarters, Morgentaler won awards for his work and continued to be championed in the House by the NDP while being decried by pro-lifers.

The Supreme Court's decision on Morgentaler's case came down in March of 1975, rejecting the appeal 6-3 and, thus, says Morton (1992b), "Their message was clear: if you don't like the abortion law, lobby Parliament, not the courts" (p. 78). The court, according to Morton (1992b), was more deferential to Parliament before the introduction of the Charter and were also not entirely clear on their role with regards to the Bill of Rights. The Bill of Rights had been passed in 1960 by Diefenbaker's PC government and enshrined rights into law, but, notably, not into the constitution. It functioned as a precursor to the Charter of Rights and Freedoms but, its

[70] This included the remainder of the 28th Parliament as well as the brief 29th Parliament (January 1973-May 1974). Although some PMB were put forward relating to abortion, debate was relatively limited. None of the motions introduced could secure unanimous consent and went no further, and only two of the bills had any debate, though neither went further than 2nd reading debate.

status as piece of legislation resulted in very different court decisions compared to following the 1982 patriation of the constitution and the Charter of Rights and Freedoms. The SCC decision, which upheld the reversal of the earlier jury acquittal, was not celebrated in all quarters, with MPs – including former PC Prime Minister John Diefenbaker – demanding that Justice Minister Otto Lang protect jury acquittals from appeal (Morton, 1992b). Lang eventually did wind up acquiescing to amend the Criminal Code to protect jury acquittals.

Pressure within parliament also emerged from a newly formed all-party pro-life group called The Committee for the Defence of the Unborn, the precursor to the current Pro-Life Parliamentary Caucus. The inaugural press release came in the spring of 1975, indicating that their 'purpose' was "to offer public support to the [pro-life movement's] Committee which will present to Parliament on Thursday, May 29th a petition containing the signatures of ONE MILLION Canadians who are deeply concerned at the growing number of abortions" (LAC, Cullen fonds, v. 1, file: Committee for the Defence of the Unborn, May 28, 1975).[71]

As mentioned in the previous chapter, Lang's concerns with the abortion law changes, as found in cabinet documents, foreshadowed some of the difficulties he now faced as Minister of Justice. Lang was Catholic and, according to Morton (1992b), "the strongest pro-life spokesman in the Trudeau cabinet" (p. 82). In October 1974, he issued a memorandum to hospitals across the country, reminding hospitals that the abortion law was to be applied "strictly: that social and economic considerations were not to be taken into account in determining whether a pregnancy lawfully could be terminated" (LAC, Cullen fonds, v. 2, Lang, Otto. Minister of Justice, N.D. 1974, pg. 2). The memo was leaked to the public by the Abortion Rights Coalition of Canada (ARCC) (Palmer, 2012) and generated complaints from the CMA, who called for the Minister's

[71] Liberal MP Ursula Appolloni served as the chair and the vice-chair was PC MP Dr. R. (Bob) Holmes.

resignation if he did not "clarify" the abortion policy. In response to the CMA's criticism, Lang tried to backtrack somewhat in statements to the media. As reported by the media on January 14, 1975, Lang said, "I've been very emphatic in emphasizing that health requires a broad definition. What I have said is that the decision should not be made solely in relation to social and economic well-being" (Canadian Press, 1975).

The Minister's memo controversy,[72] likely also augmented by social movement pressures and Morgentaler's ongoing court case controversies, resulted in the government appointing the independent Committee on the Operation of the Abortion Law (or Badgley Committee)[73] to study the abortion law in the fall of 1975. Their report, an extensive document just shy of 500 pages, evaluated the operation of the law in terms of access, including the availability of abortion procedures geographically, the timeliness of the procedure, the criteria use by Therapeutic Abortion Committees (TACs) for evaluating abortion applications, and requirements for consent. As discussed further in section 6.4, the committee found that the law was operating "inequitably" across the country, but the report avoided blaming the government or the law itself, placing responsibility with the medical profession for the problems they identified.

Comparatively, the remainder of the late 1970s was quieter for the government on the abortion issue. Some PMB motions were introduced but not debated. Minister Lang was replaced by Ron Basford as Minister of Justice in fall 1975 amidst ongoing attempts from opposition members to investigate his comportment on the abortion file.

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[72] Lang also faced additional questions in November concerning a letter that he had previously written concerning his views on abortion when he was a Secretary of State in the previous parliament, which had somehow been obtained and read on the CBC (Canada, House of Commons Debates, 30th Parliament, 1st Session, Vol. 2). This added to the questions surrounding how his personal views on abortion were informing his work as Justice Minister as well as what the government's actual position was on abortion.

[73] Although some sources refer to this as the Badgley Commission, the terms of reference and report of the committee indicate that "Committee" was the official term used. The Committee was named after his chairman, Robin F. Badgley, and included two other members: Denyse Fortin Caron and Marion G. Powell.

Lessening Liberal popularity, impacted by economic issues and political scandals, assisted Joe Clark's PCs, who won the May 22, 1979 election and formed a minority government. The PC government fell within months and Trudeau's Liberals once again formed a majority government after the February 18, 1980 federal election.

Trudeau's majority government returned to the matter of constitutional reform and developing the Charter of Rights and Freedoms. Building on former Prime Minister Pearson's efforts, Trudeau had made earlier failed attempts for constitutional reform in the early 1970s; negotiations had resumed in 1976 and then picked up again in the new parliament in the early 1980s (Robertson, 2000). The constitutional debates in Parliament – and the broader negotiations and debates occurring with the provinces – discussed patriating the Canadian constitution from Britain and installing a Charter of Rights and Freedoms within it, among other significant changes.

After accomplishing his constitutional plans, Pierre Trudeau stepped down and John Napier Turner, the former Justice Minister, won the Liberal Party leadership race and briefly served as Prime Minister before calling an election. Turner lost to Brian Mulroney's PCs, however, and spent the next two terms (1984-1988 and 1988-1990) as Leader of the Official Opposition (LOO). As will be discussed in chapter 7, as the Liberal leader, Turner would face a renewed abortion debate in the House following the Supreme Court's decision to strike the very abortion regulations which Turner had himself shepherded through the House.

With this historical overview in mind, we now turn to a more in-depth examination of this period, first analysing the government's actions and procedural (de)politicisation in the next section, followed by an analysis of the discourse and discursive (de)politicisation of the government in section 6.3.

6.2 Procedural (De)politicisation: Containing the Compromise

Despite having created a law that placed the onus of regulating abortion on the medical profession, the successive Liberal and PC governments had to contend with the issue amidst the rising agitation of social movements for and against abortion choice and periodic debates and controversies concerning abortion within the House of Commons. Alongside the government's discourse on the issue, the government used concrete actions, or procedural (de)politicisation, to manage the abortion issue. The creation of a bureaucratic entity that funded family planning organizations on both sides of the abortion issue supported ***spatial*** and ***capacity depoliticisation***. This deferral of responsibility to the public service helped appease (somewhat) both sides of the abortion issue and position the government as neutral, while also enabling the government to steer – to a certain degree – the organizations they were transforming through funding. Minister Lang's memo also ***spatially politicised*** abortion by asserting the federal government's authority over it. However, the controversy the memo engendered also produced ***spatial depoliticisation*** by deferring to an independent committee – the Badgley Committee – to study the law. Further ***capacity depoliticisation*** occurred through the narrow terms of reference established for the Badgley Committee, thereby controlling the scope of the committee's study and minimizing the possibility of findings that would negatively impact the government or the legislative status quo. Instituting the committee also enabled the government to delay a response until the committee had completed its study, ***temporally depoliticising*** it. The matter of offering and then avoiding a parliamentary debate on abortion also served as ***temporal depoliticisation***, as the debate had been proposed to soothe those who wished to give abortion a more fulsome treatment during the omnibus debates, but which is then punted later on. Finally, the government inadvertently ***capacity politicised*** the abortion issue through the constitutional and Charter debates in the early

1980s, creating space for both those opposed to and in favour of abortion choice to clamour to have their preferred rights enshrined in law.

Unlike the previous chapter, the 1970 to 1984 period does not include any government bills that focused on abortion. Instead, this period featured other mechanisms of procedural (de)politicisation, described above and summarized in Table 5, below.

Table 5: Procedural (De)politicisation, 1970-1984

Procedural politicisation		
Movements	*Elements that feed into politicisation*	
Capacity	- Constitutional debates/creation of the Charter of Rights and Freedoms	
Spatial	- Memo from Justice Minister to hospitals to urge closer adherence to the law	
Temporal	N/A	N/A
Procedural depoliticisation		**Repoliticising/boomerang effect**
	Elements that feed into depoliticisation	
Capacity	- Funding family planning on both sides of the abortion issue - Narrow terms of reference for Badgley Committee	- Questions/concerns raised by opposition regarding funding
Spatial	- Deferral of issue to public service (Family Planning Division) - Creation of Badgley Committee to study and report on operation of abortion law	- Use of Badgley Committee's report by opposition/backbenchers to advocate for changes to the law
Temporal	- Delay of parliamentary debate - Delay due to Badgley Committee	- Ongoing questions concerning when the debate will occur

6.2.1 Depoliticisation through Funding

Despite the new legislation, controversy over abortion continued, requiring ongoing federal management. Collins (1982) argues that the government knew the law would not put an end to the abortion controversy, necessitating a "further means of issue containment … to help deflect the political heat away from the government and a badly divided Liberal Party caucus" (p. 5). The creation of the Family Planning Division (FPD) to fund organizations considered to be aligned with each side of the abortion issue served to provide "symbolic reassurances to all sides"

(Collins, 1982, p. 5), and this served to both ***spatially*** and ***capacity depoliticise abortion. Spatial depoliticisation*** is found through the deferral of responsibility to the public service, as well as to the organizations being funded. The FPD funded both the Planned Parenthood Federation of Canada (PPFC) for the pro-choice side and Service de Régulation des Naissances (Serena)[74] for the pro-life side, radically increasing these organizations' budgets and, thus, their work, transforming them from "struggling local operations into full-blown national organizations" (Collins, 1982, p. 6). Although Serena received a much smaller proportion of the division's budget, it had a symbolic value because it was supported by the Catholic hierarchy and could then be used to "deflect" concerns from anti-contraception pro-lifers (Collins, 1982). In other words, the government could point to its funding of Serena as a means of appeasing those who opposed contraception as well as abortion.

This funding system also served as ***capacity depoliticisation*** by enabling the government to remove itself from directly providing family planning services, yet also structurally create a means by which such services could be indirectly provided through PPFC and Serena (Collins, 1982, p. 5). The funding of these groups also enabled the government to "steer" them, as they were "subject to manipulation. Supporting these organizations enabled the government to encourage that side of the reform movement most closely aligned with rather cautious incremental changes" (p. 6). By playing to both sides, the government tried to position itself as "neutral" on the issue, supporting both the birth control measures of Planned Parenthood while also supporting non-contraceptive methods of fertility regulation that could appeal to Catholics and other like-minded pro-lifers. This positioning continued to reinforce what the government had tried to

[74] Serena (www.serena.ca) teaches the symptom-thermal method of fertility regulation, a method considered acceptable by the Catholic Church as a form of Natural Family Planning.

establish during the 1969 bill: a middle-ground position that did not fundamentally change the status quo, yet also somehow "reformed" or "improved" it.

6.2.2 Politicisation and Depoliticisation: Minister Lang's Memo and the Badgley Committee

Several (de)politicising movements are also found within Minister of Justice Otto Lang's 1974 memo to hospitals, in which he urged hospitals to adhere to the law more closely. After reiterating that abortion remained – and ought to remain – a crime, and specifying the conditions required to merit an abortion, Lang indicated the impetus that ostensibly pushed him to issue the memo, namely that "The wide statistical variations in the numbers of abortions being performed in different parts of Canada has led me to the conclusion that in some areas too relaxed an interpretation is being placed on the provisions of the Criminal Code relating to abortion" (LAC, Cullen fonds, v. 2, file: Lang, Otto. Minister of Justice, 1974, p. 1). In so doing, Minister Lang ***spatially politicised*** the issue by asserting his responsibility over it, insisting that hospitals obey the letter of the law. Collins (1982) notes that

> it is clear that his [Lang's Justice] department was taking the political heat generated by Morgentaler's trial. It is … likely, therefore, that he over-reacted and confused his role as a member of the Government and his role as department head. As a Government member his job was containment of the issues, but as head of the Justice Department he had to respond to the legal challenge raised by Morgentaler (p. 12).

Lang's memo is interesting because, although the minister emphasizes federal responsibility and calls for hospitals to adhere to the law, the intent seems aimed at tamping down controversy and concerns over the number of abortions being done for non-health reasons and represents an attempt to reinforce the legal status quo. This intent is reflected in ***depoliticising discourse*** found in the memo, with Lang writing that the responsibility for administration and application of the law still rests with the provinces, where "the enforcement of the criminal law in relation to abortion, as in other matters, depends upon the action of the Attorney General of

each province" (LAC, Cullen fonds, v. 2, file: Lang, Otto. Minister of Justice, 1974, p. 2). However, regardless of the intent, the memo stoked the fire, producing controversy and leading to efforts to respond to the outcry from opposition, hospitals and media.

As noted in the historical overview, the Badgley Committee was established as a response, serving as ***spatial depoliticisation*** as the government relegated responsibility to a non-political body. The Committee was appointed on September 29th, 1975, and began its work in November, reviewing statistics and other data, relevant provincial and federal statutes, creating and sending questionnaires to hospitals as well as staff, physician and patient surveys, and conducting hospital site visits (Canada, 1977).[75] Morton (1992) notes that "Like governments before and since, the Liberals hoped that the symbolic impact of an official inquiry would defuse the political situation, at least temporarily" (p. 125).

The committee's terms of reference were narrowly defined to limit the damage their report might generate. This yielded ***capacity depoliticisation*** by restricting the scope of the committee's study and limiting its ability to critique the government. As noted within the committee's report, "The Committee is asked to make findings on the operation of this law rather than recommendations on the underlying policy" (Canada, 1977, p. 27). Accordingly, its scope was restricted to examining how the law was working in practice and clearly was not intended to provide critique or commentary on the law itself.

Collins (1982) highlights how the Committee was "a creature of the federal Justice Department" and the department deliberately "drew the Committee's terms of reference very narrowly to ensure that the final report would not condemn the government. The Committee could

[75] The Committee's work was evaluating the operation of the abortion law in Canada. Related questions under consideration involved women seeking abortions outside of Canada (how many and why?), the impact of the personal views of hospital employees, doctors and hospital boards, the impacts of pregnancy on those who were unable to receive an abortion, as well as the relationship between therapeutic abortions and family planning.

not analyse or make recommendations on the underlying policy of the law" (p. 13). Collins (1982) locates this intent in the Justice Department rather than the executive of the government, noting that the department's intention was "to deflect the political controversy away from the government and on to a 'neutral' commission; a strategy carefully designed from the beginning to give the rhetoric to reformers and the policy to elites" (p. 13). Ultimately, as described by Collins (1982), the Committee had to balance recognition of the "obvious social problem" of therapeutic abortions to remain credible, but also avoid the political pitfall of blaming the law for the problem.

One means of addressing the controversy appears to be with ***temporal depoliticisation***. Within the cabinet documents, the pressure on the Minister of Justice becomes apparent, with Minister Turner defending his proposal for the Badgley Committee at a July 3, 1975, cabinet meeting. Other ministers, it appeared, were unclear about the necessity and utility of the study, asking: "Was it the Minister's intent to move, upon receipt of the task force report to amendment of the Abortion Law [sic] or was it his hope that the creation of the task force would assist in further delaying having to confront this issue" (Cabinet Conclusions, 1975-07-03, p. 20). In response, according to the minutes,

> The Minister of Justice replied that it was his intention both to discover whether the current law was being capably administered and to assess whether major amendments/and or modifications were necessary. He held that the final judgement could not be made on this latter issue until the task force's report had been received (Cabinet Conclusions, 1975-07-03, p. 20).

As such, ***temporal depoliticisation*** was achieved through the committee as Minister Lang insisted on reserving judgement on what changes might be needed until the study was completed, effectively ***temporally*** delaying a firm position for the government and ***spatially*** deferring

responsibility to the Badgley Committee of independent experts.[76] Cabinet agreed that "until the study is completed, the government reserve its position on the nature of the amendments if any, that may be required to the Criminal Code" (Cabinet Conclusions, 1975-07-03, p. 21). Furthermore, if asked to explain the lack of government initiative to make changes, the cabinet agreed to answer by "stress[ing] that there is no consensus for such changes, that the most important causes of improper operation of the law … are within provincial control, and that the government intends to do everything it can to encourage provincial action to improve the operation of the law" (Cabinet Conclusions, 1976-12-22, p. 29). Such statements indicate that the appointment of the Badgley Committee was not intended to produce results, but to appease concerned groups and defuse tension.

The Committee concluded that the abortion law was not "working equitably" across the country, with "considerable confusion, unclear standards or social iniquity involved with this procedure" (Canada, 1977, p. 17). The law, alongside provincial regulations and varying interpretations at the local levels, created significant issues, including: "sharp disparities in the distribution and the accessibility of therapeutic abortions services; a continuous exodus of Canadian women to the United States to obtain this operation; and delays in women obtaining induced abortions in Canada" (Canada, 1977, p. 17). Yet the Committee blamed neither the law nor the federal government, stating, "It is not the law that has led to the inequities in its operation or to the sharp disparities in how therapeutic abortions are obtained by women within cities, regions or provinces. It is the Canadian people, their health institutions and the medical profession, who are responsible for this situation" (Canada, 1977, p. 17). The solution, likewise,

[76] It is, however, noted by Minister of National Health and Welfare Marc Lalonde that the original one-year timeframe of the study was being shortened to six months to "avoid the charge of delay" (Cabinet Conclusions, 1975-07-03, p. 20).

is in the hands of Canadians, rather than the government: "If a reasonable degree of social equity is to be achieved, that decision for its full attainment rests with the Canadian people" (p. 26). This careful language is described in the literature as the Committee "studiously avoiding blaming these problems on the abortion law and thus the Liberal government" (Morton, 1992b, p. 126). Ultimately, the report's conclusions "reproduced exactly the federal government's claim that responsibility for abortion policy did not rest at the federal level" (Collins, 1982, p. 13).

However, as often seen with procedural depoliticisation, the move to minimize controversy created new sources of conflict, ***repoliticising*** the issue. The Committee's report spurred additional questions in the House and served as source material for the opposition: in establishing that the abortion law is inequitable, and that chaotic service provision is the norm, what is the government going to do to address this? Calls for amendments to the existing law were heard, as were calls to debate the issue in the House. As per usual, the government faced questions and criticism from both sides of the issue. There were calls for expanded debate and amended legislation from both those looking to expand access and those looking to restrict abortion (Canada, House of Commons Debates, 30th Parliament, 2nd Session, Vol. 3 & 4). These appeared alongside regular questions and critiques from the opposition and even Liberal backbenchers.

The report also generated pressure outside of Parliament from all sides of the issue (Collins, 1982). According to Collins (1982), "The Report had so aroused the public that another gesture by the Family Planning Division was necessary in order for it to continue to contain and deflect the controversy away from the government" (p. 14). According to Collins, Minister Marc Lalonde "reluctantly" chose a pregnancy prevention strategy, which Collins (1982) called "the

minimum possible incremental response at the federal level, continuing the effort to force the onus for major policy changes on to the provinces" (p. 14).

The press release from Lalonde's office and statement from Lalonde himself clearly indicate that changes to the FPD were a response to the Badgley Report and was a shift "from one of responding to requests to one of active promotion and publicity of family planning information" (LAC, Cullen Fonds, File: News Release Health and Welfare Canada, March 4, 1977, pg. 1). Alongside these FPD changes would be the provision of assistance to provinces and NGOs through several measures, with only one specifically mentioning abortion, which was to promote awareness of the law and its stipulations to doctors. But the aspect that attracted the most attention was the mention of "discussing with the provinces the feasibility of establishing women's clinics affiliated with general hospitals" (g. 2). Fleshed out in the minister's remarks was that such hospital-associated women's clinics could provide a variety of services, from family planning to cancer screening – but also abortion (p. 4).

Although the clinics would provide a range of services, it was the abortion aspect that featured most strongly in the media reporting, thus increasing the conflict (Collins, 1982). For instance, PC MP S. J. Korchinski asked Minister Lalonde, in the most inflammatory way possible, if he had "reconsidered his position… in which he proposed the further extension of abortion clinics which would provide abortion on demand, or does he still intend to actively pursue his original course and perhaps qualify for the dubious honour of 'murderer of the year'?" (House of Commons Debates, 30th Parliament, 2nd Session, Vol. 5, p. 5844). Minister Lalonde evidently did not feel the question merited a serious answer and simply offered to send Korchinski a copy of the press release, accusing him of not being able to read. The issue was raised several times (in arguably softer terms) in Question Period as well as during Adjournment Proceedings; Lalonde

argues his remarks have been "…either misunderstood or distorted. Women's clinics, about which I have spoken, are to be completely and exclusively the responsibility of the provinces. It is their decision whether they want to go ahead with them or not" (Vol. 6, p. 5448). Such clinics, he said, would be recognized as hospitals and thus, is merely the law as per usual, rather than any change to the status of abortions per se. With the plan being more controversial than anticipated, the Minister "immediately back-pedalled and eventually scrapped the federal initiative" (Morton, 1992b, p. 127). The government, subsequently, made no further efforts to implement the Badgley Report's recommendations.

In another procedural move, a cabinet shuffle in the summer of 1977 hoped to alleviate concerns by replacing Lalonde with Monique Bégin as the Minister of National Health and Welfare. According to Collins, Bégin's "feminist image symbolically reassured pro-reform activists as the government within the proposed Social Services Act and proceeded to dismantle the Family Planning Division" (1982, pp. 15-16). When the media reported that Bégin was considering legislation that might involve abortion, the resulting blowback seemed to make her back off (Collins, 1982). It is unclear from the documents and information available if this was the case, or if other factors contributed.

6.2.3 Depoliticisation through Promised (but not Held) Debates

Another means of managing abortion was the government's promise of a debate during the 28th parliament as a means of assuaging those who were unsatisfied by the debate on the issue within the omnibus bill debates. However, the government subsequently continued to ***temporally depoliticise*** the issue by putting off and delaying the promised debate. It was not a matter of forgetting about the debate as the cabinet continued discussing it as a possibility. As reported in the minutes of their 23 December 1971 meeting, cabinet considered and agreed to the possibility

of a special debate on abortion early in the next session to allow MPs to express their opinions on the issue but without an actual vote, and thus, no direct consequences (Cabinet Conclusions, 1971-12-23, p. 7-8). It seems, based on this, that the intent was to defuse some of the controversy surrounding abortion and how it was handled in the omnibus bill, but without a desire to affect change as a result. However, no debate was held when that session arrived.

The question of a debate also arose in conjunction with the Badgley Committee and its forthcoming report. At the end of 1976, the cabinet had a lengthy discussion on how they would deal with the forthcoming Badgley Committee report. The main issue was whether the House would have a debate on the report, even though it had previously agreed to do so, and how such a debate would be structured (Cabinet Conclusions, 1976-12-22). An interest in getting out of the debate is evident, with concern expressed over its divisiveness, the lack of consensus in Canada and the lack of government intent to make concrete changes to the bill. For instance,

> "The Minister of National Revenue [Monique Bégin] argued that there should not be a debate, since there was no consensus in the country and the government was not willing to move at this time to amend the law. Mlle. Bégin's view was that a debate, in these circumstances, would be a waste of House time and would be seen as hypocritical" (Cabinet Conclusions, 1976-12-22, p. 28).

Others noted that, while the terms of reference for the Badgley Committee did include a commitment to debate, ministers stated that, "it was not clear whether the government had, in fact, made a public commitment that such a debate would be held" (Cabinet Conclusions, 1976-12-22, p. 27). At the end of the discussion, the cabinet agreed to *not* commit publicly to a debate. However, the ongoing delays produced a small ***repoliticising*** effect because it served to feed ongoing questions from backbenchers and opposition members about when such debates would occur.

6.2.4 Politicisation through Constitutional Changes

Significant ***politicisation*** also occurred inadvertently through the constitutional changes of 1982. Following years of off-and-on again negotiations, the P.E. Trudeau government was able to introduce and pass the Constitution Act, 1982. But although constitutional negotiations had been ongoing for some years, this marked the first government *bill* introduced in the House for debate, thus providing Hansard transcripts for how government and opposition members addressed the subject. And although the proposed constitutional changes were broad in their scope and impact, concerns with how they would impact abortion were raised within and outside of the House, resulting in debate and ***politicisation*** of the issue.

A key component of the Act is the Charter of Rights and Freedoms, which, unlike the legislative bill Canadian Bill of Rights of 1960, enshrined certain rights within the constitution. Abortion was not mentioned in the Charter but activists and MPs both for and against abortion choice sought to either include or exclude specific recognition for a women's right to choose or a fetus' right to life.

The issue regarding abortion in the constitutional debates centred on what the proposed Charter of Rights and Freedoms, specifically section 7, meant for abortion. Section 7 states that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice" (Canadian Charter of Rights and Freedoms, 1982). The question was: who counts as "everyone"? The Canadian Abortion Rights Action League (CARAL) wanted to ensure this could not apply to the fetus, whereas pro-life groups wanted explicit recognition of the right to life starting at conception (Morton, 1992b). Both movements had specific interests in the text of the Charter and the rights enumerated there within, which prompted substantial lobbying on both sides of the issue. Overall, Morton (1992b) writes, the feminist interest groups had much of their requests included, namely

equality rights and sexual equality, but not "the right to abortion, or at least [not] an explicit rejection of a right to life for the fetus" (p. 111). Meanwhile, the fear for some pro-life organizations concerning the Charter was that it would be used by courts to strike down the abortion law due to its inclusion of "a judicial override of Parliamentary legislation" (Lima, 2010, p. 80).

Although likely not the intent of these measures, the constitutional debates and creation of the Charter opened both opportunities for debate as well as the possibility of legal change to the fundamental rights implicated in the abortion issue. This constitutes ***capacity politicisation*** in that it expanded the opportunity for political actors to act on the issue of abortion. Within the House, these concerns emerged in questions to the government as well as directly within the debates on the constitutional bill. In response to questions from both social movement activists and Members of Parliament, the government stated repeatedly that the Charter was "neutral" on abortion and that nothing within would affect parliament's ability to legislate on the matter if it chose to do so.[77] The inclusion of the Notwithstanding Clause, again not related specifically to the abortion issue but discussed in relation to it, also created the political ***capacity*** to legislate on abortion even if the courts were to overturn the legislation.

Altogether, as discussed through section 6.1, procedural depoliticisation was present in the P. E. Trudeau Liberal government's continued protection of its earlier "solution" to abortion of the 1969 bill. By continuing to defer responsibility to the public service and an independent Committee, and by punting off debates on the subject, it defended the status quo and continued to ***depoliticise*** abortion. And although Lang's memo produced more controversy, the assertion of

[77] The Supreme Court did strike down the provisions of the Criminal Code established in 1969 on the basis of the Charter, and the Charter then and still now is seen as significantly curtailing the ability of parliament to legislate on the issue. However, at the time of the development, introduction and debates on the Constitution Act, 1982 and the Charter included therewithin, the government had created the opportunity to act on the issue, if it so chose.

federal responsibility over abortion was intended to merely reinforce the status quo established in the 1969 bill. Additionally, ***politicisation*** created by the repatriation of the constitution and the Charter, while creating space for abortion debate and the possibility of amending rights pertaining to abortion, was not directly intended to do so. The government successfully managed to keep abortion out of the Charter, helping to maintain its middle-ground status-quo position. The government also managed the abortion issue discursively, responding to questions and critiques in the House of Commons. The following section reflects further on this discourse.

6.3 Discursive (De)Politicisation: Not Our Problem, but Still Our Solution - Defending the 1969 Bill

The discourse surrounding abortion during this period shows a marked difference from that accompanying the 1969 omnibus bill. Instead of the government constructing a problem and solution story to present and defend a legislative solution to abortion, the government faced problem discourses advanced by others. Part of the government's challenge was that it faced opposition from both sides of the abortion issue. The law as written was criticized by pro-lifers as being too expansive and not providing sufficient fetal protection, whereas the law as written was criticized by pro-choicers as being insufficiently liberal for not including social and economic reasons for abortion and for its denial of women's choices. In response to their opponents' problematizations, the government's interest was to defend the new status quo of the 1969 abortion law. The government staunchly denied that a problem existed or asserted that if a problem *did* exist, the problem was neither the federal government's fault nor their responsibility. Thus, the government exonerated itself and its "solution" of the status quo 1969 legislation. The policy of the government, as articulated by Prime Minister P.E. Trudeau, is to "abide by the law as it stands on the books" (House of Commons Debates, 30th Parliament, 1st Session, Vol. 2, p. 1618).

Discursive depoliticisation serves to maintain the status quo of the 1969 bill as the solution through three stories. Firstly, depoliticisation reinforces the story that *legislative change is done and will not be revisited anytime soon*. Secondly, the government frames the existing law *as the only possible compromise and positions itself as the neutral broker* between both sides. These first two stories reject the opposition's assertions that problems exist in the abortion law and its operation, namely denying assertations that the law is not working in principle (either charged as being insufficiently expansive or insufficiently restrictive) or that the law is not working in practice (abuse resulting in too many abortions or insufficient access to abortions). The third story, instead, *stresses that if a problem exists, it does not lie with the federal government and its law, but with those administering or enforcing the law* (i.e., everyone *but* the federal government). The development of stories is laid out in the next section and summarized in Table 6.

Table 6: Discursive (De)politicisation, 1970-1984

Problems *(advanced by opposition parties/those strongly aligned with pro-life or pro-choice sides of the issue)*		Law not working in principle (insufficiently expansive OR insufficiently restrictive)	Law not working in practice (abuse resulting in too many abortions OR insufficient access to abortions)
Government problem	There is no problem and if there is, it is not our fault nor our responsibility		
Government solution	Maintenance of status quo (1969 bill)		
& Defense of Solution	Story 1: Legislative change is done.	Story 2: Law is *the* compromise & government is a neutral broker.	Story 3: Any problems lie not with the law itself but with those administering or enforcing the law.
Frames Constructing Stories and Serving as Discursive (De)politicisation			
Capacity Politicisation	N/A	-The government retains the ability to legislate on abortion regardless of Charter. Access to notwithstanding clause if needed.	N/A
Spatial Politicisation	N/A	N/A	N/A
Temporal Politicisation	N/A	N/A	N/A
Capacity Depoliticisation	-Further debate unnecessary/inappropriate /would not be fruitful because the legislation has already been changed	-Diverse views in pluralistic society make consensus difficult but the law was the compromise	-Cannot impose on provincial jurisdiction. -Medical discretion is the appropriate vehicle for the law, but must be appropriately applied.
Spatial Depoliticisation	-Went through rigorous system in Parliament and society → issue well-considered and does not need changing	-Government does not fund organizations on either side of the abortion issue. -Legal authorities concur that Charter is neutral/does not impinge on parliamentary capacity.	-Responsibility and blame lies with TACs and their administration of the law, as well as with hospitals and medical discretion more generally. -Provinces responsible for healthcare. -Defer to the Badgley Committee studying the situation.
Temporal Depoliticisation	-Law already amended -Will report back when sufficient evidence on law's operation	N/A	-Must wait until the Badgley Committee's report is complete.

6.3.1 Story 1: The legislative change is done.

This first story, that the legislative is done and the government is not revisiting it, is particularly prevalent following the passage of the 1969 bill, as the government sought to shut down any further discussion of legislative change on abortion and to avoid further debate on the subject. By asserting that the matter was concluded and thus ***temporally depoliticising*** the issue, the government sought to turn the page on the issue and move on to the rest of its agenda. For instance, in response to queries from the NDP who urged ongoing liberalization of abortion, Prime Minister P.E. Trudeau stated that the government had "amended the law in respect of abortion during the recent session and … did not intend to make any further amendment at the present time" (House of Commons Debates, 28th Parliament, 2nd Session, Vol. 7, p. 6741). Furthermore, when NDP MP Ed Broadbent asked the Prime Minister if he would be meeting with the members of the Abortion Caravan, Trudeau noted that he had already crossed paths with the abortion-rights activists at the Vancouver airport and had informed them that "we had amended the law in respect to abortion and that we did not intend to make any further amendment at the present time" (28th Parliament, 2nd Session, Vol. 7, p. 6741). This emphasis on the law having been "already amended" serves as ***temporal depoliticisation*** as it firmly places the legal changes in the past and not the present.

Even more emphatic were the repeated responses that the government would not be making further changes to the Criminal Code concerning abortion, both in response to those pushing for liberalization or restriction (29th Parliament, 1st Session, Vol. 3, pp. 2996, 3044). This continues to ***temporally depoliticise*** abortion by pushing any changes into the distant future. This position is reaffirmed by Minister Lang and other government speakers throughout the following decade. Minister Lang gave, for instance, extremely brief responses to NDP MP MacInnis' calls for expanding legal abortion access and often avoided using the word "abortion" in his response

at all. One such exchange in 1973 had MacInnis asking if the government would introduce amendments to the abortion provisions, or at least allow debate:

> Mrs. Grace Macinnis (Vancouver-Kingsway): . … In view of the decision of the United States Supreme Court which will result in broadly liberalized abortion laws in 46 states [*Roe. v. Wade* and *Doe v. Bolton*], and in view of the Canadian Gallop poll . … which showed that 61 per cent of Canadian adults agree that the decision on abortion should be made solely by the woman and her doctor, is the government planning to introduce legislation this session to amend the Criminal Code to this effect?
>
> Hon. Otto E. Lang (Minister of Justice): No, Mr. Speaker.
>
> Mrs. MacInnis (Vancouver-Kingsway): Is the government prepared to arrange for a debate on this matter, such as was promised but not had before, during the present session?
>
> Mr. Lang: Mr. Speaker, there has certainly been no decision to have one at the present time. We would have to consider the time of the House and the other pressing business before us (29th Parliament, 1st Session, Vol. 1, p. 557).

Lang's assertion that no change to the law was forthcoming is also found in his memo to hospitals, in which he concludes the letter by writing,

> Our government has steadfastly refused to accede to the many representations we receive, both inside the Commons and out, to remove abortion from the criminal law and we have no intention of widening the law to allow abortion except where the continuation of a pregnancy is a real threat to the woman's life or health (LAC, Jack "Bud" Cullen fonds, MG 28 1 350 v. 2, file: Lang, Otto. Minister of Justice, N.D. 1974, p. 3).

In response to other queries, the government also used ***temporal depoliticisation*** to punt the issue into the future, thus constituting delay, by stating that it will report back on the operation of the abortion law when sufficient data on that question has been gathered. For instance, in 1970, when presented with a question concerning the limited number of TACs in operation and ongoing illegal abortions, Minister Turner noted that "we are reviewing the statistics on a continuing basis to analyse the recent amendments on therapeutic abortion introduced into the Criminal Code during the last session" (28th Parliament, 2nd Session, Vol. 7, p. 6793). This position was echoed by Turner's parliamentary secretary (PS), Russell Honey, who responded to Grace MacInnis'

concerns on illegal abortions and calls for full decriminalization of abortion by characterizing such statistics to be "fanciful" and "exaggerated" (Vol. 7, p. 7205). Honey cited Minister Turner as noting that the government will report back on the operation of the law when adequate information has been collected (p. 7205).

PS Honey also ***spatially depoliticised*** the issue by emphasizing the rigorous process by which the omnibus bill came to be law. He stated that the abortion provisions of the Criminal Code "received more consideration both in and out of Parliament during discussion of the omnibus criminal law amendment law year than did any other matter contained in the legislation" (28th Parliament, 2nd Session, Vol. 7, p. 7205). This effectively deferred responsibility to both parliament and society who had scrutinized the bill and accepted it. Similarly, Kenneth Robinson, PS to the Minister of National Health and Welfare, deferred responsibility ***spatially*** to the organizations within civil society who had contributed to the omnibus bill's development and process. Robinson stated, "This provision followed prolonged discussion in the standing committees of this House and representations from a very great number of professional and non-governmental organizations concerned with adapting Canadian law to Canadian contemporary circumstances." (30th Parliament, 3rd Session, Vol. 6, p. 6879).

Capacity depoliticisation is found in the government's rejections of proposals and questions regarding legislative change as inappropriate and redundant. In response to a 1973 NDP request to investigate the hospitals that have not set up TACs, Minister Lang denied that this fell within his portfolio, stating, "That would not come within the responsibilities of the Minister of Justice" (29th Parliament, 1st Session, Vol. 3, p. 2643). This also applied to calls for the debate the government had previously promised would be held on abortion. Minister Lang stated eventually that, "several years have gone by since that time. In that interval a good deal of debate has

occurred in the country and I am not sure whether any fruitful purpose would be served by a debate in the House at this time" (Vol. 3, p. 2996). This characterized any debate, as such, as an inappropriate use of parliament's time and attention.

Altogether, by continuing to emphasize that no changes to the legislation will be happening in the foreseeable future, the government continued to hold to its status quo legislation, despite frequent calls from the opposition for change. This stance would become increasingly difficult as the 1970s continued and as criticism concerning the operation of the abortion law mounted.

6.3.2 Story 2: The law is the compromise and the government is a neutral broker.

This second story, that *the law is the compromise and the government a neutral broker*, carries over from the government's presentation and defense of the omnibus bill in chapter 5. It emphasizes that the law they had instituted, and which was now the new status quo, was the middle-of-the ground solution that offered the only possible solution for a pluralistic country on a divisive issue. Shortly following the bill's passage, for instance, Turner's PS cited Turner's debate speech that referred to the bill as an accommodation (28th Parliament, 2nd Session, Vol. 7, p. 7205). This messaging continued through the 1970s with PS to the Minister of Justice Gilles Marceau stating in 1975 that, "The amendments to the Act were a compromise between those who are opposed to abortion and those who do not want any legal obstacle" (30th Parliament, 1st Session, Vol. 5, p. 5102). Ron Basford, who became Minister of Justice later in the 1970s, characterized the 1969 law as representing "a compromise by those who held views on either side of the question" (30th Parliament, 2nd Session, Vol. 5, p. 5302). Highlighting the bill as a compromise between opposing sides helps to position both the bill and the government as occupying the middle ground.

Furthermore, the defense of the 1969 bill as compromise is buttressed by an emphasis on the lack of societal consensus, constituting ***capacity depoliticisation*** by setting up the government's limited capacity to solve this difficult issue. In the previous chapter, pointing to abortion as controversial and society as divided helped to set up the bill as the solution to this problem. This framing dynamic from the 1960s is like that of the 1970s and early 1980s, though the emphasis turned to insisting that such consensus was *still* lacking, thus necessitating the maintenance of the status quo. For instance, in response to a PMB that would increase fetal rights, Kenneth Robinson, PS to the Minister of National Health and Welfare emphasized that, "abortion is a very controversial matter. As the hon. member has said, it is a very emotional subject as well. In any event, it is my view, and I am sure that of others, that the present Criminal Code provisions should at least prevail" (30th Parliament, 3rd Session, Vol. 6, p. 6879). The conclusions of the Badgley Committee are appealed to as reinforcing this position, with Minister of Justice Ron Basford stating that, "The Badgley Report would indicate that the consensus has not changed since that time and that the present law should stay" – Basford (30th Parliament, 2nd Session, Vol. 5, p. 5302). PS Robinson echoed this, aligning the government with the Committee by saying, "It should also be clear that the government, like the Badgley Committee, can detect no consensus on proposed changes to the present Criminal Code provisions on abortion" (30th Parliament, 3rd Session, Vol. 6, p. 6880).

The divisiveness of abortion was also referred to during the constitutional debates, with Ron Irwin, PS to the Minister of Justice, highlighting the division in views on abortion that were expressed during the special joint-committee hearings on the Charter. Irwin stated that,

> Because this is a matter on which there exist fundamentally differing views in Canada, the charter does not seek to take a position on the rights of the unborn and abortion, believing this is a question better left for determination by Parliament in the exercise of its ordinary legislative jurisdiction which can be adjusted from time to time as social and moral values

> evolve. As long as abortion remains an evolving social issue with a divided public opinion it is best dealt with through the flexibility of legislation rather than entrenchment of one view or the other (32nd Parliament, 1st Session, Vol. 7, p. 7968).

This story of compromise allowed the government to uncomfortably sit itself between both sides of the issue. For instance, the story was used to address concerns expressed regarding the funding of organizations seen as allied with either side of the issue. NDP members argued for increased funding for family planning associations such as Planned Parenthood, whereas some PC members asked the government to fund pro-life organizations that were trying to reduce abortions and/or provide alternatives to abortion. Minister of National Health and Welfare Marc Lalonde, in these cases, positioned the government as neutral on the issue by stating, "it is not the policy of the government to subsidize either organizations advocating abortion or those against it" (29th Parliament, 1st Session, Vol. 6, p. 6099, 6458). Lalonde stresses that groups that are funded do not promote abortion, as the government does not see abortion as an acceptable method of family planning (p. 6099, 6458). Additionally, when pro-lifers challenged the government's funding of Planned Parenthood, which the pro-life movement has long considered aligned with pro-choicers, the funding of Serena (the natural family planning organization) was pointed to by government speakers in its defence (Vol. 6). As ***spatial depoliticisation***, this moved the government away from any direct connection with the domestic funding of abortion, maintaining a precarious position of neutrality between both sides of the issue, by which they neither promoted nor opposed abortion choice.

Within the constitutional and Charter debates of the 32nd parliament, this story of compromise and neutrality is predominant when concerns regarding abortion are raised. Although no mention of abortion was included within the Charter or constitution documents themselves, both sides on the issue were highly interested in the development and passage of the constitution

and advocated for their respective interests to be included. As mentioned earlier in this chapter, feminists and pro-choicers lobbied during the development of the Charter for a rejection of the right to life of the fetus, as there were fears that the "everyone" with the right to life mentioned in section 7 of the Charter could be interpreted as applying to the fetus (Morton, 1992). Within the House, pro-life members from both Liberal and PC parties wanted the inclusion of fetal rights within the Charter specifically, and concerns were raised that the Charter could yield expanded abortion access and diminish Parliament's capacity to legislate on the matter. PC MP Douglas Roche, for instance, expressed concern that the Charter would result in future abortion laws being struck down as unconstitutional and Liberal MP Stanley Hudecki wanted the government to ensure that section 7 of the Charter would not be interpreted in such a way that would yield abortion on demand, as the U.S. Supreme Court's decision in *Roe v. Wade* had (32nd Parliament, 1st Session, Vol. 7 & 8). The government repeatedly rejected these concerns, arguing the Charter was "neutral" on abortion and would not affect Parliament's capacity to act if it so wished (Vol. 8). Unsatisfied, the PC opposition made a motion to include a special provision to ensure that the Charter would not affect Parliament's ability to enact legislation on abortion and capital punishment. Minister of Justice Jean Chrétien countered this, appealing to the legal authorities' opinion that "nothing in the proposed charter affects the power of Parliament" in the way the PCs alleged (32nd Parliament, 1st Session, Vol. 9, p. 9401). In so doing, Minister Chretien ***spatially depoliticised*** the issue by appealing to legal experts and thus deferring authority and responsibility to them. At the same time, Chrétien maintained ***capacity politicisation*** through the assertion of parliament's ability to act on the issue.

Ongoing concerns with the Charter's potential impact continued throughout 1981, with parties and MPs moving amendments to add a provision that parliament's ability to legislate on

abortion would not be affected by the constitutional changes. The Prime Minister himself spoke to the matter in November of that year, insisting that "the charter is at this point in time neutral with respect to abortion. In other words, the charter does not say whether abortions will be easier or more difficult to practice in the future. The charter is absolutely neutral on this matter" (32nd Parliament, 1st Session, Vol. 12, p. 13438). Trudeau argued that, "according to the interpretation of senior officials and agents of the Department of Justice and according to the minister [Chrétien] himself, under the constitution the House retains the right to amend the Criminal Code, which is the statute affecting the issue of abortion", while also indicating that the notwithstanding clause could be used if a court was to overrule Parliament's legislation, where "under the override clause we reserve the right to say: Notwithstanding this decision, notwithstanding the charter of rights as interpreted by this judge, the House legislates in such and such a manner on the abortion issue" (p. 13438).

An interesting interplay between the Charter and Parliament's ***capacity*** to act is found in the government's statements whereby the government asserts the Charter's neutrality on abortion and affirms the House's ability to legislate on abortion, should it choose to, even to the point of being able to override the courts were they to impinge upon that authority. As such, on the one hand, the government is affirming the rights and capacities of Parliament to act (***capacity politicisation***), but also using this as justification to reject changes to the Charter and the constitution vis-à-vis abortion. Furthermore, as will become evident in the subsequent chapters, the Charter very much has – or is at least treated as having – limited Parliament's ability to legislate on abortion, among other issues (***capacity depoliticisation*** as a result).

6.3.3 Story 3: Any problems lie not with the law itself but with those administering or enforcing it.

In this story, the government argues *that if a problem does exist, it is not the law nor the federal government that it at fault*. The ***spatial*** deferral of responsibility to the provinces and other actors is not new and it is certainly not unique to this particular time period. But as the government faced continued challenges from those for and against abortion choice, particularly regarding the operation of the law, the government blamed any problems that might exist on the administration and enforcement of the law, rather than with the law itself. Thus, responsibility is ***spatially*** deferred (***depoliticised***) to other actors, alleviating the federal government's responsibility.

The role of Therapeutic Abortion Committees (TACs) was emphasized by Minister of Justice Lang in this regard. When challenged on the operation of the law, he stated that "The question now is really one of sense of responsibility on the part of medical committees [TACs] to ensure that they do not rely simply on social or economic factors but only approve abortions where there is serious danger to the life or health of the mother" (29th Parliament, 1st Session, Vol. 7, p. 7573). The issue, according to Lang, was not that the law is too vague. The law was fine; the issue was the interpretation by TACs. He stated, "if that medical judgment is exercised responsibly, and if hospital committees fairly and properly address themselves to the question of whether the health or the life of a mother is endangered before issuing a certificate, then the 1969 law can work, and perhaps can be the best solution to this problem that this country can in fact have" (30th Parliament, 1st Session, Vol. 1, p. 698). That is the position of the government: that the law should be respected and followed (Vol. 1 p. 1749). He later reaffirmed that, "if the medical committees are willing to take the responsibility that was transferred to them in the 1969 law, we have a law that can be made to operate. There is no immediate intention therefore to present further legislation" (30th Parliament, 1st Session, Vol. 6, p. 6148). When challenged on the

uniformity of the law, Lang insisted that "the law of course is uniform. A question does arise under the law concerning the place of, and the functioning of, the medical committee. That, of course, is another matter which depends on the responsibility and the kind of action which is taken by authorities other than this parliament or this government" (p. 6148).

Responsibility over TACs was ultimately deferred to the provinces, however. Minister Lang expressed his hope that provincial authorities would act "to ensure that hospital committees undertake with a proper sense of responsibility the obligation imposed upon them by parliament" (29th Parliament, 1st Session, Vol. 7, p. 7573). And in general, on the matter of enforcement, he argued that, "If the law as it does stand is to be tested or enforced, that is specifically the responsibility of the provincial Attorney Generals who must initiate proceedings under the Criminal Code" (29th Parliament, 2nd Session, Vol. 1, p. 728). When asked about reports or issues emanating from specific hospitals, Minister Lang continued to push responsibility ***spatially*** to the provincial AG. For instance, regarding particular "disturbing" media reports or "high" rates of abortion in certain provinces, the Minister repeatedly indicated that "the responsibility and initiative rests with the provincial attorney general as far as enforcement of the Criminal Code is concerned" (30th Parliament, 1st Session, Vol. 3, pp. 2191-2). Ongoing questions concerning the rate of abortions or concerns with a lack of TACs is continually and repeatedly directed to the responsible provincial authorities.

When Minister Lang's memo to hospitals, discussed earlier in the chapter, was leaked, it yielded substantial criticism inside and out of the House. In the House of Commons, Minister Lang was questioned by the NDP, who accused him of interpreting rather than merely administering the law, as well as interfering in the medical domain (30th Parliament, 1st Session, Vol. 1). They asked the minister to encourage TACs to be set up to provide better abortion access,

which were inconsistently available across the country. The PCs also criticized the minister, although PC questions were not uniformly for or against abortion; instead, they pushed for a debate to clarify the law and potentially change it, as well as to clarify the Liberal position on abortion in general. PC members also drew on particular "incidents" from certain hospitals in media reports, drawing attention to concerns how the law was being applied as well as the high abortion rates being recorded (30th Parliament, 1st Session, Vol. 1-3). Lang's responses tried to draw a careful line around his role as opposed to that of the provinces. He clarified that only in the case of the territories, where the federal Justice Minister acts as the provincial Attorney General (AG), did he address a TAC directly (30th Parliament, 1st Session, Vol. 1, p. 697). Otherwise, he stated, he was merely "drawing the attention" to the issues with TACs not "reading the law appropriately" (p. 697), thus continuing to defer responsibility and blame to TACs and ***spatially depoliticising*** the issue.

When NDP MP Stuart Leggatt alleged Minister Lang's view differed substantially from previous Minister of Justice Turner's allowance of medical discretion, Lang countered that he, of course, did agree with the former minister in allowing medical discretion, but insisted on the "legitimate" and "rational" use of such discretion (30th Parliament, 1st Session, Vol. 1, p. 697), again ***spatially depoliticising*** by responsibilising the medical profession. When Leggatt went on to demand expanded access to abortion by encouraging the formation of TACs in hospitals, Lang noted that under the Criminal Code, abortion is still a criminal offence subject to narrow exceptions, meaning that hospitals do not have a "positive duty" to provide it. Lang directed Mr. Leggatt to the provincial minister of health if he wants to pursue changes at the hospital level, continuing ***spatial depoliticisation*** (p. 697).

Pressure on Minister Lang continued into early 1975, with opposition members asking for clarification on the government's position on abortion as well as what criteria is to be used by TACs when authorizing abortions. Again, Prime Minister Trudeau weighed in during Question Period to defend the minister, stating that the minister's position is that the issue should be "governed" by the Criminal Code and that health does extend beyond the purely physical (30th Parliament, 1st Session, Vol. 4, p. 3595). For his part, Minister Lang continued to punt to the jurisdiction of provinces for any sort of issues arising from the implementation of the law, since enforcement fell under the purview of provincial AGs (30th Parliament, 1st Session, Vol. 5, p. 3600).

Some differentiation can be seen between Minister Lang and Marc Lalonde, the Minister of National Health and Welfare. When asked by another Liberal backbencher what the government will do concerning hospitals that do not have TACs, Minister Lalonde, similarly noted that hospitals are a provincial responsibility, but also added that hospitals are semi-public institutions and, "in my view should provide those services that are demanded by the general public in their areas" (30th Parliament, 1st Session, Vol. 5, p. 4460, p. 4598). This statement, deferring to provinces and arguing that Canada cannot force TACs to be instituted clearly aligns with a ***capacity depoliticisation***, positioning the government's hands are tied. Yet by adding in his own personal "view" that hospitals should provide publicly demanded services, Minister Lalonde could placate the other side of the issue as well. Emphasizing the federal government's lack of ***capacity*** to address the concerns raised about unequal access to abortion, for instance, Minister Lalonde stated that, "Unfortunately the benefits of the act are not equally available throughout the country; the provinces are responsible for administrating health services,

especially hospitals, and there is very little the government can do to force an institution to take measures in that regard" (Vol. 5, p. 4675).

Similarly, but on the other side of the issue, when PC concerns over "high" abortion rates in some provinces were raised, Gilles Marceau, PS to the Minister of Justice, noted that he, too, was concerned with the rising rate of abortions, but that – as per usual – enforcement is up to the provinces and that the issue is a lack of responsibility by TACs (30th Parliament, 1st Session, Vol. 5, pp. 4712-3). Likewise, when facing concerns from the NDP on the overturning of Morgentaler's jury acquittal, PS Marceau deferred to the court's judgement, but also, on a more personal note, remarked that his sympathy for those in jail is lessened "when this person boasts about having violated the law and claims he is proud of it" (Vol. 5, p. 5101).

Capacity depoliticisation also appeared when Minister of Justice Otto Lang was accused by PC MP Perrin Beatty as having "passed the buck" on abortion to the provinces. Lang responded that, because the law placed responsibility with TACs, "it was parliament's hope in passing that law that only a medical judgment, responsibly made, could intervene to say when an abortion might indeed be legal. Therefore I deny completely that it this is any passing of the buck. It is a passing of a responsibility which parliament itself imposed on the hospital committees in 1969", thus positioning himself and the government as bound by the law passed by parliament (29th Parliament, 2nd Session, Vol. 1, p. 945). Likewise, when asked about withholding funding for non-therapeutic abortions, Minister of National Health Marc Lalonde appeals to the federal structure of medical financing, asserting that it "would not allow me to use such a bludgeon again provincial governments or hospitals in particular" (Vol. 1, p. 946). Altogether, this builds the story of the problem not being the law or the government, but other actors responsible for enforcement and administration.

As discussed in section 6.3, the Badgley Committee was established to study the operation of the abortion law to relieve pressure on the government amidst the ongoing controversy over Minister Lang's memo. Discursively, this enabled the government to respond to questions and critiques by deferring ***spatially*** to the committee's ongoing study, as well as ***temporally***, by delaying until their study and report were complete. When questions arise, such as from a PC member on advertisements soliciting abortion, the Minister of Justice deferred to the Badgley Committee studying the law as well as provincial AGs. Basford and his PS Mike Landers also deferred to provinces when questions on Morgentaler's continued trials were raised by the NDP (30th Parliament, 2nd Session, Vol. 1-6). Later on, during the 1978 debate over a PC MP's PMB that would offer further fetal protection during the TAC application process, Kenneth Robinson, PS to the Minister of Health, agreed that abuses in the use of the law should be addressed but quoted the Badgley Report to indicate that the issue was not the law, but rather the provincial regulations and hospital practices as well as "the result of our permissive society and not because of the present law. In fact, the increase may be in spite of it [the law]" (30th Parliament, 3rd Session, Vol. 6, p. 6879). Accordingly, argued Robinson, "As the report makes clear, the major problems at present are not with the existing law but rather with its application by the provinces and the hospitals" (p. 6880). As such, no changes to the law would occur. Furthermore, he went on, there is no consensus on how to change the law anyway, but the government was happy to support provinces in their family planning efforts. Robinson then turned his entire speech to highlight the supports the federal government was involved in supporting and facilitating, including welfare and children's services, moving as far away from abortion as he could (pp. 6879-82).

Even much later in this period, following the brief PC government, the re-elected Liberal government of P.E. Trudeau continued to face questions concerning Morgentaler's illegal

abortions and new illegal clinic in Manitoba, accompanied by demands to change the Criminal Code on abortion. Again, the government faced pressures on both sides of the issue, from those who wished to exonerate and champion Morgentaler and expand access to abortion (or decriminalize it altogether) and from those angry at Morgentaler's continued defiance of the law and calling for a more restrictive regime. PS Kenneth Robinson answered, as such, that "If Dr. Morgentaler is not following the law, then this is a matter for the Quebec police or the local police to take action on" (32nd Parliament, 1st Session, Vol. 2, p. 1530). The government's insistence that enforcement is up to the provinces and municipalities continued to ***spatially depoliticise*** the issue as well as ***temporally*** delay any changes by vaguely promising that the implementation of the Badgley recommendations is forthcoming (Vol. 2).

In the early 1980s, Morgentaler's announcement that he was – again – defying the law to open another clinic, this time in Manitoba, yielded additional news coverage and questions towards the government. For instance, PC MP, and future Mulroney cabinet minister, Jake Epp asked the minister what was being done given that the clinic was "flaunting" the law (32nd Parliament, 1st Session, Vol. 19, Vol. 22). Minister of Justice Mark MacGuigan deferred entirely to the provinces, continuing ***spatial depoliticisation***, when he stated,

> there really is no need for additional law. It is in the hands of the Provinces, in this case, the Province of Manitoba….Therefore all aspects of the problem as they affect the situation in Manitoba are in the hands of the provincial Government and, in particular, in the hands of the Attorney General. I see no role for the federal authorities, Madam Speaker, and no, we are not contemplating changes to the abortion law at this time" (Vol. 19, p. 21294).

6.4 Synthesis

This chapter has discussed the fourteen years of (predominantly) Liberal governments following the 1969 abortion law. As has been seen, having passed the Omnibus Bill with its wide-ranging changes to the Criminal Code, the Liberal Party did not wish to keep abortion on the

political agenda. As noted in the previous chapter and discussed by Morton (1992), the very structure of the omnibus bill was set up to allow the government to keep the issue at arm's length, since, "much to the relief of the Liberal caucus, the reform effectively shifted responsibility for administering and enforcing the new law to the provinces" and to the medical profession (p. 27). As such, the law meant that "the state delegated – and the courts confirmed this delegation – the decision about terminating a pregnancy to the medical profession, and the 1969 reform made it very difficult for courts or a jury to intervene in what was defined as a medical decision" (Jenson, 1992, p. 41).

However, this chapter has demonstrated that the 1969 law created new pressures for government and further conflict and controversy on abortion. The implementation of the bill and availability of abortions were heavily critiqued by both pro-choicers and pro-lifers both in and out of Parliament, the former because the bill had been too restrictive and not enough TACs were being set up by hospitals to administer abortions, and the latter because the law was too broad and abortions were happening at a high rate and for non-health reasons. The government tried to continue as a neutral broker, but continued to make neither side happy, both in Parliament as well as in the growing social movements mobilizing in civil society.

Procedurally, the government depoliticised abortion by creating the Family Planning Division (FPD) within the bureaucracy, thus ***spatially depoliticising*** the matter to a less political entity. The Division essentially operated as a funding mechanism, by which the government could support organizations financially, without having to be directly responsible for family planning-related work. This included Planned Parenthood as well as, to a much lesser extent, a natural family planning organization called Serena. These organizations were seen as aligned with either side of the abortion issue, with Planned Parenthood supporting abortion choice and Serena seen

as a Catholic-friendly approach to fertility regulation that is non-contraceptive and thus appealed to some pro-lifers. The appointment of the Badgley Committee also represented ***depoliticisation***, by delegating both ***spatial*** responsibility to a non-partisan non-political "expert" body and delaying government action ***temporally***. ***Capacity depoliticisation*** is found within this, in the terms of reference set for the committee, which confined their study to the operation of the law only and thus limited their ability to blame the law itself or the government for problems they identified. The government, which had previously promised a parliamentary debate after the omnibus bill debates as well as part of the terms of reference of the Badgley Committee, eventually decided to nix this, preferring to limit additional debate on the issue. However, this ***capacity depoliticisation*** had some ***repoliticising*** effects, as did the Badgley Committee, both of which produced new points of debate and demands for action. For instance, the committee report was used by the opposition as a means of demanding changes to the law.

Discursively, this analysis indicates that similar concerns, such as criticism of the abortion law, can be found on both sides of the abortion issue, resulting in calls for similar actions such as reform of the law, though based on opposing values and solutions – both for liberalization and restriction. This meant that the government had to defend their status quo on two fronts. Also, although similar forms of discursive depoliticisation were present in the omnibus bill debates, the tone and tenor changed during this period, as the government had to emphatically insist that the issue was over and done (***temporal***) and that all problems were not their fault nor the law's fault, but rather the responsibility of provincial and medical actors (***spatial***).

Discursively, we also see new stories emerging, with the first being related to that ***temporal*** aspect of framing the issue as *over and done with* and, as a result, no changes would be made to the bill at that time. This is most obvious in the early 1970s, after the omnibus bill had

recently passed, but a continued emphasis on "no changes forthcoming at this time" continues throughout this period. The second story, which also defends the status quo of the bill, is its positioning as *a "compromise" and the government as the "neutral" actor or broker*. This was part of how the omnibus bill was sold and continues to be an element within its defence. The government also maintains this story during the constitutional debates, insisting that the proposed and subsequently passed Charter of Rights and Freedoms is neutral on abortion and will not affect parliament's ability to legislate on the matter if it so chooses. The third major story involves the *attribution of blame to everyone but the federal government* and its abortion law. Any problems identified, whether through the Badgley Report or within a media report, came down to the responsibility of the doctors and the TACs administering the law.

The next chapter moves ahead to the 1984 to 1993 period, during which Brian Mulroney's PC party formed governed. This period included the Supreme Court decision of *R. v. Morgentaler* which struck down the existing abortion provisions that had been established in the 1969 omnibus bill and the subsequent Mulroney government's unsuccessful attempt to pass legislation that would respond to the court decision and continue to regulate abortion.

Chapter 7: Reacting to the Ruptured Status Quo and Building a "Balanced" Bill: The PC Response to *R. v. Morgentaler*, 1984-1993

John Turner succeeded P.E. Trudeau as Liberal leader and Prime Minister, but his 1984 electoral campaign did not go smoothly, and Brian Mulroney's Progressive Conservatives (PC) won a massive majority,[78] relegating the Liberals to opposition. While the PCs maintained a similar posture towards abortion as the previous Liberal government, ongoing social movements and civil disobedience related to abortion kept the issue alive and yielded a watershed Supreme Court decision. This decision, *R. v. Morgentaler*, struck down the existing Criminal Code restrictions on abortion in January 1988, forcing the government to respond and consider a legislative solution.

This chapter utilizes Hansard, cabinet documents, committee transcripts and reports, as well as ten interviews. It analyses how the Mulroney PC government managed the abortion issue prior to *R. v. Morgentaler* and following the SCC decision, including in developing, presenting, and defending legislation. This chapter's conclusions are threefold. First, despite the change in government, the PC government's approach to managing abortion **prior** to the *R. v. Morgentaler* decision was generally consistent with the approach of previous Liberal governments, relying on the same stories when responding to the problems with abortion raised by the opposition. These involved emphasizing no action would be taken, defending the compromise of the status quo legislation, and deferring blame for any issues with the law to medical and provincial authorities.

Second, following the SCC decision that struck down the existing abortion law, the Mulroney government responded by quickly committing to re-legislate on abortion, thus ***politicising*** the issue and placing it on the political agenda. Interestingly, however, they also

[78] The PCs won 211 out of 282 seats (Library of Parliament, n.d., General Election Profile 1984).

managed that agenda through several ***depoliticising*** actions and frames, contributing to a dynamic situation that yielded ***repoliticising*** and boomerang effects. More specifically, the government's procedural ***politicisation*** of placing abortion on the agenda was accompanied by procedural ***depoliticisation***, including deferring responsibility to other actors and to Parliament through motions intended to "get a sense of the House" and guide forthcoming abortion legislation. This had ***repoliticising*** effects, with the motions introduced creating new sources of conflict over the lack of options and debate and resulting in a visibly fractured caucus and a confirmed lack of parliamentary consensus. Also, following the failure of a cabinet committee to develop a workable abortion law that caucus could support, a caucus committee was convened to develop legislation, pushing responsibility away from the executive and towards the general caucus. Free votes, similarly, served to defuse tensions within caucus, but also, like the motions mentioned above, had a ***repoliticising*** effect of increasing debate amongst MPs on the subject.

The chapter's third conclusion focuses on the discourse of the government in developing and then defending the story of *the* balanced solution **following** the SCC decision. The primary story that emerged was that there was a need to find *a* "balanced" solution, which eventually became, as legislation was introduced and debated, the story that C-43 was *the* "balanced solution". Although the earlier omnibus bill provisions on abortion had been framed as "accommodation" and "compromise", the framing of C-43 was even more significantly depoliticised, with the government positioning itself as extremely limited and constrained: this proposed bill was, as such, the *only* option available and the *only* means of achieving balance between fetal and women's rights as well as finding a balance between pro-choicers and pro-lifers amidst the constraints of the Charter of Rights and Freedoms and the Supreme Court decision.

This story thus had consequences when C-43 failed on a tie vote in the Senate, for if *the only* solution failed, what bill could possibly succeed?

This period is significant as it was the last time the federal government attempted abortion legislation. And although without a much wider analysis it is impossible to say exactly why C-43 failed to pass into law, this analysis nevertheless points to cracks in the narrative that may have contributed to its failure. More specifically, the story of C-43 is rendered contradictory because parliamentary advocates on both sides of the issue used a similar framing of *the* balanced solution but argued for opposing objectives. More specifically, C-43 was defended to pro-lifers as offering the best protection for fetal life it could, yet also defended to pro-choicers as offering as much secure access to abortion as possible. As could be expected, both sides were unhappy with the bill and this yielded a close vote in the House of Commons and a subsequent tie vote in the Senate, resulting in the bill's failure.

This chapter first provides a historical overview, including ongoing social movement and civil disobedience activities as well as resulting court cases. *R. v. Morgentaler* is reviewed in brief, as are parliamentary and provincial responses to the SCC decision, and the development and defense of C-43. The analysis of this time, due to the major events that punctuate it, is presented in 3 parts. First, the period before *R. v. Morgentaler* (1984-January 1988) is analysed, demonstrating the general consistency between the Mulroney government's approach to abortion compared to the preceding Liberal government. Second, procedural (de)politicisation is discussed, demonstrating how the government managed the issue after having committed to re-legislating on abortion after *R. v. Morgentaler*. Lastly, the evolution in the discourse surrounding the response to *R. v. Morgentaler* is discussed, charting a path towards defending C-43 as *the* balanced solution and the only possible solution.

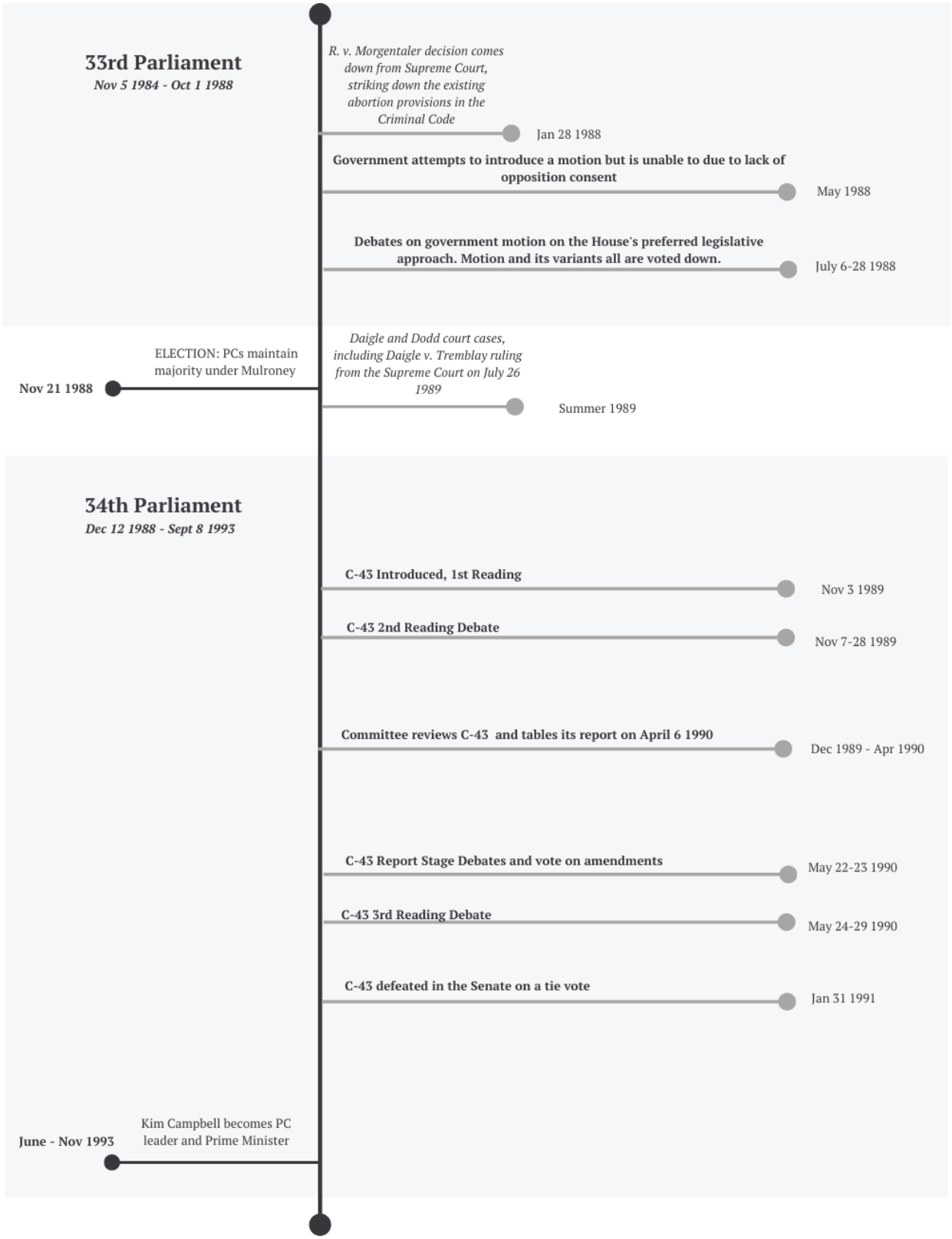
7.1 Historical Overview

This section provides an overview of this decade, also depicted in the timeline in Figure 11, spanning both the societal events relating to abortion as well as parliamentary advocacy and government responses. It reviews the civil disobedience and court battles of Dr. Henry Morgentaler and, to a lesser extent, Joe Borowski, as well as the watershed *R. v. Morgentaler* Supreme Court decision. The PC government's response to the decision is recounted, including the two unsuccessful motions of the spring and summer of 1988 and provincial responses to the lack of federal legislation. The paternal injunction cases of Barbara Dodd and Greg Murphy and, more famously, Chantal Daigle and Guy Tremblay, are also introduced, which motivated the government to propose legislation to prevent further sensational cases and to address the patchwork of abortion regulations being imposed provincially. The development and progress of C-43 is reviewed in brief, followed by the bill's failure in the Senate.

7.1.1 Social Movements, Civil Disobedience and Court Battles

Leading up to this 1984 election that saw Brian Mulroney's PCs form government, social movements on both sides of the abortion issue had begun to target parliament. For instance, some pro-life organizations worked to elect pro-life candidates to political office, which resulted in stronger connections being built with the PC Party, "when some Tory candidates accepted funding and help from 'Campaign Life' in 1984" (Jenson, 1992, p. 54). Within parliament, both pro-life and pro-choice PCs had caucuses that would meet to discuss the issues, as noted by Farney (2009), though their activities appear to have been limited.

Figure 11: Timeline of Abortion-Related Events, 1985-1993



Dr. Henry Morgentaler, whose civil disobedience was discussed in chapter 6, had ongoing court cases. Morgentaler had lost his 1975 SCC case *Morgentaler v. R.,* with the justices deferring to parliamentary authority on the matter (Haussman, 2000).[79] The Bill of Rights had been used by Morgentaler's team to defend his case, but the Bill was a piece of legislation adopted under the Diefenbaker government rather than an enshrined part of the Constitution and was therefore on lesser legal footing than the Charter would be. The 1982 introduction of the Charter of Rights and Freedoms served to encourage Morgentaler to pursue his agenda, with Morton (1990) describing the Charter as a "new weapon" for Morgentaler.

Morgentaler's civil disobedience involved the establishment of abortion clinics in several cities starting in 1983, beginning with Winnipeg and Toronto (Brodie, 1992). These illegal abortion clinics were raided periodically by police and arrests were made, resulting in new court cases. This included the arrests of Morgentaler and two colleagues at the Toronto clinic that led to the Supreme Court of Ontario trial in November 1983. As in Morgentaler's earlier Quebec cases, the Ontario jury found Morgentaler and his associates not guilty in the fall of 1984 and this acquittal "remobilized both sides", with pickets and rallies popping up from pro-life and pro-choice activists, particularly when the clinic reopened in December 1984 (F. L. Morton, 1992b, p. 202). The Ontario Court of Appeal then heard the case starting in May 1985 but its decision was a "complete and total defeat" for Morgentaler and his team, reasserting the primacy of Parliament in these policy decisions, rejecting the use of the defence of necessity since there were legal abortion options in place, and calling out Morgentaler's lawyer for asking the jury to overturn the law itself (F. L. Morton, 1992b, pp. 211–213). This case was then appealed to the Supreme Court of Canada, which began its hearings in October 1986. It is this case - *R. v.*

[79]Prior to the Charter of Rights and Freedoms, parliamentary supremacy was seen to be much stronger than following the introduction of the Charter in 1982 (Haussman, 2000).

Morgentaler - that would serve as a defining moment in Canadian abortion policy, and we will return to it in the next section.

These court cases, alongside the ongoing operation of illegal clinics in multiple provinces, continued to attract both media and parliamentary attention. As Morgentaler's legal battles continued and were appealed to the Supreme Court, the government would have been aware that a forthcoming Supreme Court ruling could impact them, although it is not clear what they anticipated in terms of the verdict. As one former PC MP indicated, "No one really expected the Supreme Court to do that [strike down the law], to interfere or to intervene on the issue" (Confidential Interview). In other words, parliamentary supremacy was likely presumed by many within Parliament, and the SCC was likely expected to continue to defer to parliament, as previous rulings had done.

The ruling on *R. v. Morgentaler*[80] came down from the SCC on January 28, 1988 and struck down section 251 of the Criminal Code (the abortion clauses) on the basis of it being unconstitutional due to its impact on section 7 of the *Canadian Charter of Rights and Freedoms,* which guarantees life and the security of person. The complexity of the Morgentaler decision made it more difficult for Parliament to digest and work with, and the decision is still today a matter of some confusion. This 5-2 decision had two dissenting opinions as well as *three* different majority decisions among the five judges who ruled in Morgentaler's favour (Dunsmuir, 1998; M. Morton, 1988, Saurette & Gordon, 2015). Unlike *Roe v. Wade* and *Doe v. Bolton*, the watershed U.S. Supreme Court cases, *R. v Morgentaler* did not establish a right to abortion.[81]

[80] Although indexed *as R. v. Morgentaler*, the case's appellants also included Dr. Robert Scott and Dr. Leslie Smoling, who were also doctors at the Toronto abortion clinic, but the face of the trial remained Morgentaler.
[81] Subsequent legal cases including *Tremblay v. Daigle,* 1989, while still not creating an abortion "right", did rule that fetuses did not possess legal rights until fully birthed (Browne & Sullivan, 2005, p. 288; Saurette & Gordon, 2015, p. 131).

Only one of the judges, "Justice Wilson – explicitly declared a constitutional right to abortion, and even she acknowledged a legitimate state interest in protecting the life of the fetus/unborn child at some point" (F. L. Morton, 1992b, p. 232). While Wilson's position was more expansive than the other justices in her interpretation of section 7, she acknowledged section 1 provisions of the Charter that provide for "reasonable limits" on the decision to have an abortion, though she found that limit most compelling at the point of fetal viability (E. Anderson, 2002, pp. 229–230). The justices returned the issue to parliament to craft new legislation, including indicating that legislation could provide some degree of fetal protection (Browne & Sullivan, 2005; Flanagan, 1997; Glendon, 1989; Jenson, 1992). As Morton (1992a) noted, "all seven justices explicitly recognized the legitimate interest of the state in protecting the life of the unborn child. They disagreed – four different ways – on when and how" (p. 274).

On the other side of the issue was another case of civil disobedience and court action, albeit less prominent and influential than Morgentaler. Joseph (Joe) Borowski was a former NDP cabinet minister in the Manitoba legislature who was outspoken in opposition to abortion and refused to pay taxes to protest the use of public funds for therapeutic abortions. As a result, he was jailed in 1975 and subsequently initiated a legal challenge to the abortion law in 1978, arguing in favour of a fetal right to life (F. L. Morton, 1992b).[82] The Borowski trial, dubbed the "Trial for Life" by Borowski, began in May 1983 in Regina, hearing from international experts and arguing that science and medicine establish the fetus as a human person and thus fetuses should be included in the s. 7 protection of everyone's right to life (Laurence, 2004; F. L. Morton, 1992b, p. 135). The case made its way to the Saskatchewan Court of Appeal, where the question at play

[82] As with Morgentaler's legal approach, the arguments from Borowski's lawyer that had been based on the Bill of Rights now latched onto the Charter (Laurence, 2004; F. L. Morton, 1992b, p. 135).

was whether the "everyone" referred in the Charter should be expanded to include fetal rights (F. L. Morton, 1992b, pp. 213–217).

The case was subsequently due to be heard by the Supreme Court of Canada,[83] but Morgentaler's case was ruled on first. With the abortion laws struck down by the SCC *R. v. Morgentaler* decision, this raised the question of whether Borowski's case was moot. Although no law was on the books for Borowski to challenge, a key question lingered: that of fetal rights and whether, or to what degree, fetal rights could be supported by the Charter. The government initially tried to have the courts put off the case until they had a new law on the books, but this was not agreed upon by the courts and, in October 1988, the Court heard arguments for and against why the SCC should decide on the case – or whether it was moot and should be dismissed (Dunsmuir, 1998, p. 12; F. L. Morton, 1992b, p. 262). Five months later the Court announced that Borowski was, indeed, moot and, "Thus the Court decided not to decide" on fetal rights after all (Dunsmuir, 1998; F. L. Morton, 1992b, p. 271). This finding would stand in stark contrast to the court's subsequent actions in the paternal rights case of *Daigle v. Tremblay*[84] that would soon dominate headlines and newscasts.

Following the SCC decision, the Mulroney government committed publicly to bringing in abortion legislation as well as to allowing a free vote for its caucus, although it took until after the next election for a bill to be introduced. In the meantime, the government attempted to introduce a motion to "get a sense of the House" in May of 1988 but was stymied by the opposition (described in more detail in section 7.3.2), before introducing another motion in July. This July

[83] The SCC had previously ruled in 1981 that Borowski had standing to pursue his case in the courts, which had been challenged by the crown in the Saskatchewan courts (Laurence, 2004; F. L. Morton, 1992b). In 1987, the Saskatchewan court rejected the Borowski appeal, but the SCC gave leave to appeal that fall.

[84] In this case, initiated by Guy Tremblay as a means of preventing ex-girlfriend Chantal Daigle from having an abortion, the Supreme Court was called to an emergency session only to learn that Daigle had already had the abortion. Despite this, they decided to carry on with the case, despite the circumstances having already been resolved. This case will be further discussed later in this chapter.

motion yielded much debate but offered no parliamentary consensus, with a multitude of amendments being introduced and no amendments – including the government's – receiving sufficient votes to pass.

7.1.2 1988 Federal Election Campaign and Abortion as the Wedge Issue that Wasn't

As the 1988 election drew near, the Liberals' and PCs' positions on abortion were similar, both signalling that legislation would be introduced by their prospective governments if elected (Rauhala, 1988; Waddell, 1988a). However, to the dismay of activists on both sides of the issue, abortion was easily overshadowed during the campaign by the issue of free trade with the U.S. and Mexico. Despite this, pro-life and pro-choice groups remained active in making broad national appeals and statements through the media as well as in supporting the nominations of candidates aligned with their positions; the stakes of the 1988 election were clearly higher than they had been in 1984 with the prospect of possible legislation on abortion forthcoming in the next mandate (Fisher, 1988; Hass, 1988; McMonagle, 1988; Walkhom, 1988; York, 1988). Pro-life groups in Saskatoon were described, for instance, as trying to oust Justice Minister Ray Hnatyshyn from his nomination due to his pro-choice position and handling of the abortion issue (York, 1988). As such, even if not a top-of-mind issue in the campaign, abortion did arise both at the national level as well as within individual riding campaigns, as indicated by interviewees (Confidential Interviews).

The Liberal campaign also included an abortion-related gaffe. Members of the campaign team had wished to use abortion as a wedge issue to skewer the Mulroney PCs. Turner's biographer Paul Litt (2011) writes that, "Kirby and Goldfarb [campaign strategists] also pushed for adoption of a policy that would allow abortion up to the twenty-second week of pregnancy. Goldfarb's polling showed that this position would be popular among young urban woman, whose

votes could make the difference in many swing ridings. This proposal, however, was rejected" (p. 367). According to an interview Litt (2011) conducted with a Turner aide, the rejection of the proposed policy and use of abortion as a wedge issue was due to Turner's "view that Mulroney's position [on abortion] was reasonable and to his reluctance to play politics with such a divisive issue" (p. 460, n. 23). Another Liberal strategist, in an interview conducted for this thesis, also indicated that Turner would "never have exploited choice as a wedge issue" due in large part to his Catholicism and Catholic community, and that although Turner was "comfortable with a public policy that was pro-choice … [he was] not comfortable with using it as a political weapon" (Confidential Interview). The rejection of the policy itself was not the issue, but the publication of an October 17th *Toronto Star* article "claiming that Turner would soon unveil the abortion policy that Kirby and Goldfarb had recommended at the start of the campaign" caused confusion amongst Liberal candidates running in the election as well as within the campaign team (Litt, 2011, p. 374). Turner then had to back away from this media report.[85]

7.1.3 Provinces, Courts and Activists Fill the "Vacuum"

Following the fall 1988 election in which the PCs won a second – but weaker – majority (Haussman, 2000), abortion remained on the backburner, with no legislation introduced by the Mulroney government. In the summer of 1989, however, the media latched onto court cases involving paternity rights, with fathers seeking court injunctions to prevent abortions. *Murphy v. Dodd* was originally decided in favour of Greg Murphy, the boyfriend in question, but the appeal in July 1989 at the Supreme Court of Ontario overturned this in favour of the girlfriend, Barbara Dodd. The case continued to attract media as Dodd stated she would work for the pro-choice

[85] When asked about the circumstances leading to the leak, an interviewee indicated that he did not think it was intended to embarrass Turner or push him into using abortion within the campaign, but rather was an error within a "campaign [that] was leaking like a sieve all over the place" (Confidential Interview).

movement only to allege a week later that she had been manipulated by pro-choicers and regretted her abortion (Brodie, 1992).

Another injunction case, this time from Quebec, also became a media sensation. The injunction granted to Jean-Guy Tremblay to prevent ex-girlfriend Chantal Daigle from having an abortion was appealed to and upheld by the Quebec Court of Appeal, which used the Quebec Charter to rule in favour of fetal rights. The Supreme Court was then called in for an emergency session to hear the case in August 1989. Despite learning that Ms. Daigle had already procured an abortion in the United States, the SCC nonetheless decided to rule on the case to address the principles at stake (Brodie, 1992). This willingness to rule on the case is contrasted by Morton (1992b) to their finding the earlier Borowski case moot.

The justices' decision to strike the injunction was unanimous (Dunsmuir, 1998).[86] According to then Justice Beverly McLachlin (2019), "In the end, the court in *Tremblay v. Daigle* unanimously affirmed that a fetus has no legal status in Canada, either at common law or under the civil law of Quebec, and that a man, while claiming to be protecting fetal rights, cannot obtain an injunction to stop an abortion and compel a woman to carry his child" (p. 220). It did not, however, address whether the fetus could be included as part of the "everyone" mentioned in the Charter, given that it was a civil case and not one of state action (Dunsmuir, 1998).

There was heightened media and public attention given to these cases and protests emerged as a response, including pro-choice demonstrations in several major Canadian cities (Brodie, 1992). The Daigle and Dodd cases were also frequently referenced in the House as requiring legislation on abortion to prevent further "unfortunate" cases, as will be further discussed in section 7.4.2.3. The significance of the Daigle case was affirmed by interviewees,

[86] The decision came down in August though the reasons were not presented until November 1989 (Dunsmuir, 1998).

with one describing how the story went not only around the country but also the planet (Confidential Interviews). Kim Campbell, a junior minister of state at the time but later Justice Minister, noted in her memoirs that these cases "convinced Brian Mulroney that new abortion legislation was needed" (K. Campbell, 2017, p. 142).

As time continued without forthcoming federal legislation, provincial governments stepped into the fray and took their own approaches to regulating abortion (Ackerman & Stettner, 2019, pp. 247–248). As summarized by Brodie (1992), a year after *R. v. Morgentaler*:

> Abortion remained a decision between a woman and her doctor in Nova Scotia, Quebec, Ontario, British Columbia and the Northwest Territories. In contrast, Newfoundland replaced its TACs with the requirement that women seeking an abortion must do so within the first twelve weeks of pregnancy and only after seeking counsel from a psychiatrist, gynaecologist, social workers, and registered nurse. New Brunswick and Alberta required referrals from two doctors while Saskatchewan required the referral of one doctor and counselling. Finally, the Prince Edward Island government passed a motion condemning abortion in the province but indicated that it would fund out of province abortions if a woman obtained the approval of five doctors (p. 89).

Notably in British Columbia, Premier Vander Zalm's Social Credit government attempted to restrict abortion funding following the SCC decision, announcing that the province would not provide public funding for abortions (K. Campbell, 2017). Ralph Klein's Alberta government later made similar announcements. Citing such provincial measures, an interviewee in cabinet at that time indicated concern that, "if there was a vacuum in the law, all sorts of people would rush to try to fill it . … And while I thought that those things would eventually be struck down as colourable attacks to impugn on federal criminal jurisdiction, … I was concerned that … if the federal government didn't occupy the field, that others would try to" (Confidential Interview).

Dr. Morgentaler challenged provincial authorities and their restrictions, continuing to open clinics in provinces that were attempting to restrict abortions to hospitals (Dunphy, 1996). On the pro-life end of the spectrum, Operation Rescue was also active in the summer of 1989,

exporting to Canada the American tactic of forming a human barricade in front of abortion clinics to prevent women from entering. This activism resulted in court injunctions, arrests and eventually "bubble laws" that continue to this day to prevent protesters from being within a certain radius of a clinic (Brodie, 1992, p. 90).

7.1.4 The Legislative Attempt and Failure: C-43

These events placed additional pressure on the Mulroney government, now in its second mandate, to act. Throughout the summer of 1989, a cabinet committee considered options and proposed models of legislation (further details provided in sections 7.3 and 7.4). But when the cabinet committee could not come up with a workable proposal, a caucus committee was appointed in the fall and proposed the bill that became C-43. C-43 was introduced and had its second reading debate in November of 1989, before being studied by the Legislative Committee on Bill C-43 from December 1989 through to April 1990. These committee hearings involved hearing testimony and receiving briefs from 45 organizations and 3 individuals.[87] One committee member interviewed spent significant time recounting memorable appearances from witnesses, particularly those with severe disabilities (Confidential Interview).

Though many amendments were proposed to amend the law at committee, none passed. Likewise, no amendments passed in the House during the Report Stage debate in May 1990. The bill passed third reading at the end of May 1990 by a relatively narrow margin, 140:131. Although the PC caucus was allowed a free vote, the cabinet was required to support the bill. Despite a free vote, however, Overby, Tatalovich and Studlar (1998) indicate that MPs felt freer to "follow their

[87] Such organizations varied in their positions on abortion, but only 13 of the 45 organizations were specifically organized around abortion as their main issue (such as pro-life or pro-choice activist organizations, as opposed to more general women's organizations or humanist organizations).

consciences when their votes mattered least," including on the amendments at Report Stage, but "re-coalesced" to vote with their party for the final vote at 3rd reading (p. 398).

Within the Liberal party, by contrast, only two members voted in favour of the bill, one of whom was outgoing party leader John Turner, who had brought in the original legislation in 1969 as Justice Minister. Among Liberals, the rationale for opposing C-43 ranged from pro-life to pro-choice reasons. An interviewee described the Liberals treating the issue as a matter of conscience and allowing a free vote (Confidential Interview). Another backbencher similarly recalled the situation as:

> we were simply told: this piece of legislation is coming through. You will vote for it the way you wish to vote for it. The party has no particular position. The leader has no particular position. … What I can say is nobody ever in any way attempted to coerce me not to speak, or to change my mind, or not to give a speech in the House of Commons, or anything like that. It was just clearly understood that on a … moral issue as abortion was, you took a position as you felt you had to and that's the way you voted. So there was, in effect, … no official Liberal position on the bill or on the issue (Confidential Interview).

In the Senate, however, the bill died on a tie vote at the end of January 1991, in part due to recent appointments of "eight so-called 'GST' Senators in September 1990, a number of whom were pro-choice" who helped Mulroney pass his proposed Goods and Services tax (GST) but also "furnished some votes crucial to the defeat of Bill C-43 (Haussman, 2000, p. 145). Prime Minister Mulroney had indicated that, if C-43 were to fail, they would not be revisiting the abortion issue with legislation, and this was indeed the case not only for the PCs but also for all subsequent governments. The issue was, as an interviewee described, "dead" (Confidential Interview). Mulroney, himself, stepped down as leader in 1993, with Kim Campbell winning the PC leadership race and serving as Prime Minister briefly before dramatically losing the 1993 election, which saw the PC party reduced to 2 MPs in the House and the Liberals ascending to power under Jean Chrétien.

The analysis follows in three sections, the first (section 7.2) briefly demonstrating the general consistency of the PC government's discourse on abortion ***prior*** to the Morgentaler decision. In 7.3, the government's actions in responding to the decision and attempting legislation are discussed, followed by the discourse ***following*** the Morgentaler decision and then surrounding the legislation in 7.4.

7.2 Discursive (De)politicisation prior to R. v. Morgentaler, 1984-January 1988: Change of Government but Holding to the Status Quo

This section briefly presents the general continuity and consistency of the government discourses despite the change in government from the Liberals to Mulroney's PCs in 1984. This continued up until the Morgentaler decision of early 1988. Overall, as the PC government took power in 1984, abortion was not a central issue, described by an interviewee as dormant in the early and mid-1980s (Confidential Interview). Another interviewee did not recall any substantial discussions of abortion in political circles until the Morgentaler decision (Confidential Interview). Free trade, not abortion, was the concern of the day, although abortion was raised through the advocacy – on both sides of the issue – of backbenchers and Private Members' Business (PMB). Backbenchers introduced PMB to either restrict abortion further in the Criminal Code or to repeal it entirely, although none of these bills went further than second reading and the government did not often participate in the debates.[88] Outside of PMB, private members also made statements (SO 21s)[89] representing both sides of the issue. Morgentaler's continued provision of illegal

[88] An exception to this was David Kilgour's expression of opposition to NDP MP Svend Robinson's PMB C-238, which would repeal abortion restrictions from the Criminal Code. Kilgour was the Parliamentary Secretary to the Minister of External Relations, though his portfolio did not address domestic abortion and his participation does not seem to be on behalf of the government (Canada, House of Commons Debates, 33rd Parliament, 1st Session, Vol. 6).

[89] Changes to the Standing Orders in 1982 resulted in these procedures for Statements for Members, which are also referred to by their standing order number (i.e., SO31s, as they are currently called, but which were SO21s at that time) (Bosc & Gagnon, 2017, Chapter 10). Prior to this, earlier rules had allowed MPs to seek unanimous consent to

abortions in clinics and his associated court cases became a focal part of criticism of the law and the government, either pro-choice critiques that the jury acquittals were not upheld and Morgentaler was not released, or pro-life critiques of inadequate prosecution of Morgentaler.[90]

As in chapter 6, "problems" of abortion were asserted by the opposition and backbench MPs, who continued to either emphasize issues with the abortion law in principle (too restrictive or too expansive in law) and/or in practice (too many abortions or insufficient access). And overall, despite the change in government, the initial framing from the PC government presented similar stories to those discussed in the previous chapter, [91] which functioned to defend the status quo on abortion legislation. These stories were discussed in depth in chapter 6 and summarized in Table 6. They are, thus, covered more briefly here to simply establish the lines of continuity.

Story 1 in chapter 6 was that *legislative change was done* and changes were not forthcoming. Here, this morphed slightly as the 1969 legislative change faded into the past, but an ongoing emphasis can be found with repeated avowals that no changes to the abortion law were being considered, continuing ***temporal discursive depoliticisation***. Prime Minister Mulroney, for instance, in response to a Liberal question on whether the government would review the abortion section of the Criminal Code, stated, "there are no such intentions being brought before the Government at this moment" (House of Commons Debates, 33rd Parliament, 1st Session, Vol. 1).

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introduce a motion without notice. This procedural change has impacted how MPs on both sides of the issue have used parliamentary procedure and opportunities to address the abortion issue, as well as many other issues.

[90] The NDP, as would be expected, made statements supporting Morgentaler in his ongoing court and clinic battles as well as calling for a repeal of the abortion law, whereas some PC members and a few Liberals made statements opposing Morgentaler, including demands for stronger action to prosecute him, and in general favour of protection for the unborn. An increasing number of petitions are also found on both sides of the issues concerning Morgentaler.

[91] Despite this similar story, some changes can be seen in that, although the Liberals did have still a significant pro-life contingent, including some in cabinet, this presence appeared to be more significant within the PC party, yielding more concern with the abortion issue as a problem (particularly from parliamentary secretaries), but continuing to blame the private sphere and provincial governments for the problem.

More significant were stories two and three, which emphasize, respectively, that the *status quo/existing legislation was the only possible solution and compromise* (story 2), and any *problems were not on the law itself, but on those administering or enforcing it* (story 3). For instance, Doug Lewis, then Parliamentary Secretary to the Deputy Prime Minister and President of the Privy Council, defended the law during debate on a 1987 private members' motion to amend the constitution on fetal rights, stating that given that there are:

> fundamentally differing and opposing views…strongly and genuinely held by many Canadians. In view of the lack of consensus for major change in the abortion law, and because the existing law strikes an acceptable balance for Canadians who hold opposing views, it is the Government's position that it would be inappropriate to bring forth such an amendment (33rd Parliament, 2nd Session, Vol. 6, p. 6660).

Lewis' statements lined up quite closely with the compromise framing discussed in chapter 6 and continued to support the story of defending the status quo as the best possible accommodation. Likewise, other PC parliamentary secretaries deferred blame onto TACs and the medical profession for any perceived issues with the law. For instance, Francois Gérin, Parliamentary Secretary to the Minister of Justice, indicated his concern with TACs granting "an unbelievably high proportion of authorizations", concluding that some TACs, such as those in Quebec, are offering de facto "abortion on demand" which is "not in accordance with our laws" (33rd Parliament, 2nd Session, Vol. 2, p. 2706). This characterization acknowledges a problem with the abortion situation but relegates the blame to doctors and TACs for inappropriately applying the law, rather than finding the law itself defective.

These stories could also be found in the lead-up to the 1984 election, with both Turner and Mulroney indicating their support of the existing omnibus bill law and, thus, the status quo on abortion, reiterating story 1 (R. Anderson, 1984; Cruickshank, Hickl-Szabo, Howard, & Sallot, 1984; Jenson, 1992). The compromise story is also found in Turner's statements during a leaders'

debate, in which he stated, "The best we can do in accommodating these two irreconcilable views is the present state of the law,' he said" (Cruickshank et al., 1984).

Though the same discursive stories were used by the PCs to manage the abortion issue from 1984-1988 and defend the status quo, they suddenly had to respond to the Supreme Court's January 1988 decision that struck down that status quo. The following section analyses how the PC government reacted concretely and how procedural (de)politicisation is found in their management. Subsequently, in section 7.4, we return to their discourse in reaction to the SCC decision and then in defense their own proposed legislation.

7.3 Procedural (De)politicisation following R. v. Morgentaler: Leadership, but Deferred and Diluted

Within a few weeks after the SCC decision, the PC government indicated that it would be introducing legislation and providing "leadership" on this issue. As such, like in 1967-1969, we see the PC government place abortion on the official government agenda through motions and their bill, representing significant procedural ***politicisation***. However, again like in 1967-1969, significant ***depoliticisation*** accompanied the government's action on the abortion file, as well as ***repoliticisation***, as will be discussed in this section. These procedural movements are depicted in Table 7.

Table 7: Procedural (De)politicisation Post-Morgentaler Decision, 1988-1993

Procedural politicisation		
Movements	*Elements that feed the types of politicisation*	
Capacity		
Spatial	- Placing abortion on the governmental agenda through legislation - Requirement for cabinet members to support C-43 (lack of free vote for cabinet)	
Temporal		
	Procedural depoliticisation	**Repoliticising/boomerang effect**
	Elements that feed into depoliticisation	
Capacity	- Limiting debate and not allowing amendments from the floor in the proposed May motion - The use of free votes for the earlier capital punishment debate as creating a precedent for using free votes for abortion bill	- Created debate and controversy over the "undemocratic" control over the motions - Use of motions created a new forum for MPs to voice positions independent of the party
Spatial	- Use of motions to guide legislation to defer responsibility to parliament as a whole - Use of free votes to defer to individual MPs - Drafting of C-43 by caucus committee to defer responsibility away from executive of government & defuse caucus tension	- Use of motions and free votes gave agency to individual MPs to voice opinions, including cabinet members during the motion debates
Temporal	- Delay legislation by first proposing motions	- Ongoing questions on when legislation would be forthcoming

7.3.1 Politicisation through Legislating on Abortion

As noted above, the government not only committed to legislation in its discourse (see further discussion of this in section 7.4) but also put abortion on the legislative agenda through the spring/summer motions of 1988 and then finally with the government bill C-43 in 1989. It should be emphasized that, as revealed by cabinet documents, pursuing legislation was chosen ***rather than other*** courses of actions. In other words, the government chose a more ***politicising*** option out of other more ***depoliticising*** options being considered.

The deliberations surrounding this choice are noted within the cabinet documents from this period, which mention the options that the government was considering, some of which would have allowed the government to significantly defer, delay and dilute the government's responsibility significantly, thus providing opportunities for ***depoliticisation***. For instance, within a week of the Morgentaler decision, Minister of Justice Ray Hnatyshyn was already outlining for cabinet five options that he and other implicated ministers had discussed: "take no action; new Criminal Code legislation; use of the Canada Health Act; use of the override provision of the Charter of Rights and Freedoms; and review of the issue by a Royal Commission or a Parliamentary Committee" (Tromp, 2013, p. 2). While use of the override provision or notwithstanding clause of the Charter would have been highly ***politicising (capacity politicisation)***, by strongly wresting authority for the issue away from the SCC, a Royal Commission would have enabled the government to defer to an independent arms-length body and a parliamentary committee would have relegated responsibility for a solution to parliament, both of which offered ***spatial depoliticisation***. The commission and notwithstanding clause options were quickly dismissed and as of February 2nd, a sub-cabinet group, the Ad Hoc Committee on Abortion, was set up to work on possible solutions.[92] A week later, the Ad Hoc Committee reported back to the Cabinet Committee on Priorities and Planning, recommending *against* the notwithstanding clause (while noting that it was favoured by some caucus members), a Royal Commission or use of the *Canada Health Act* (due to jurisdictional reasons) (Tromp, 2013, pp. 3-5). Their recommendation was *for* the introduction of legislation and a free vote (pp.

[92] As discussed later, this committee was comprised entirely of cabinet ministers. After the proposals from this committee proved unpopular in caucus more broadly, a caucus committee was established, and it was this caucus committee that developed C-43. See section 7.3.3 for more detail as well as Appendix H.

3-5). The Prime Minister expressed his support of a legislative solution, as well as his intentions to bring in legislation before the upcoming fall of 1988 (Tromp, 2013, p. 5).

Through the winter, cabinet considered possible models for legislation and, according to Senator Lowell Murray, the Chair of the Ad Hoc Committee, the committee's recommended model was a "middle ground approach, involving regulating abortion with some time limits", meaning a gestational approach that would allow abortion quite freely up to a certain stage in pregnancy but restrict it thereafter (Tromp, 2013, p. 6). Senator Murray also outlined the process of first using a motion in the House and basing legislation on the results of the motion, as well as proposing possible "alternatives" of deferring the matter to a House Committee to draft the legislation, or using a private member's bill instead (Tromp, 2013, p. 5-14). These proposals offered cabinet the opportunity of diluting responsibility for the bill, and thus opportunities for ***spatial depoliticisation***. Only one of these – using a motion – was ultimately adopted, though, as discussed in the next subsection, it ultimately resulted in ***repoliticising*** the issue.

Although the cabinet documents indicate that debate continued throughout the winter and spring, the cabinet ultimately concluded that "the only realistic alternative to the status quo [of abortion on demand] was a bill based upon gestational development" (Tromp, 2013, p. 16). And although possible options to delay and defer were raised in cabinet throughout the spring and summer, proposing government-sponsored legislation continued to be the decision.

Even after the failure of the July motion (discussed in the next sub-section) and following the re-election of the PC government in the fall of 1988, the cabinet continued to debate – but reject – alternatives like a referendum or Royal Commission, all of which would delay and defer the issue (Tromp, 2013). At a 25 July 1989 cabinet meeting, the Ad Hoc committee recommended *not* legislating because of a lack of consensus and the likelihood of failure. Yet the prime minister

insisted on a need for leadership in creating a middle-ground solution such as those employed in other countries (Tromp, 2013, p. 39). An interviewee speculated that merely attempting to introduce a bill may have been a "strategic decision" by Mulroney, stating that "even if we don't get a bill that pro-lifers will like, we can at least have been seen to genuinely try and re-legislate. So that, … for those who come from very conservative and anti-choice constituencies, that they would have a leg to stand on" (Confidential Interview).

These minutes thus show ongoing tensions between delaying or deferring the issue of abortion and accepting responsibility and leadership for the matter. Ultimately, however, the decision to forge ahead with government-sponsored legislation continued to ***politicise*** the issue by creating space and debate for legislative change.

7.3.2 Depoliticisation through Motions to "Get a Sense of the House"

Despite committing to legislation, however, the government managed the associated controversy and conflict through several means, which ***depoliticised*** the issue. One such means was to attempt to propose a motion in May of 1988 that would "get a sense of the House" by having Parliament vote on the direction that the legislation should take. This would effectively dilute responsibility for the bill by making it parliament's bill rather than the government's per se, thus serving as ***spatial depoliticisation***. According to two interviewees, the motion was also intended to serve as a means of relieving caucus pressure on the issue by allowing MPs to voice their positions prior to the upcoming federal election (Confidential Interviews). However, the government could not even introduce the motion on procedural grounds, due to opposition parties' refusal to consent (Farney, 2009). The motion had been structured to limit debate and not allow amendments to be moved from the floor ***(capacity depoliticisation)***, but this produced a backlash and became a significant source of conflict and thus ***repoliticisation*****,** as the opposition refused to

consent to this "undemocratic" motion's introduction. The government then had to regroup and develop a new motion.

The second motion was introduced and debated in July of 1988 and was, as described by then Minister of State (Treasury Board) Doug Lewis and later Justice Minister, "a reasonable way to get a sense of the House which could guide the Government in drafting the legislation, in the general framework for it" (House of Commons Debates, 33rd Parliament, Vol. 13, p. 16598). Having learned the lessons of the May motion, this second attempt relaxed debate restrictions and allowed amendments from the floor. The format of the motion offered multiple amendments for members to vote on, including what they referred to as "pro-life", "middle", and "pro-choice" positions, each offering varying levels of restrictions on abortion. These "pro-life" and "pro-choice" positions were not well supported by those identifying as pro-life and pro-choice in the House, however. This, combined with the free vote structure that released members from party discipline, resulted in a diverse and fractured debate with ministers and parliamentary secretaries supporting different aspects of the motion, as well as supporting amendments and opposing the main government motion itself. The discourse of this debate is detailed in section 7.4. While free votes can serve as a means of ***spatial depoliticisation*** through their deferral to individual members, it also paradoxically ***repoliticises*** the issue by creating an opportunity for MPs – including cabinet ministers - to express non-party positions.

An interviewee also indicated that the motions offered a means for PC caucus members to situate themselves on the issue before the upcoming election, saying "the reason we had that debate where people could present their opinion was, we knew the election was coming within months. Therefore, if you wanted to show to your constituents where you stood … take this opportunity to speak", but that they were also aware that the vote was not binding as a motion

offers only the "opinion of the House" (Confidential Interview). Therefore, even if a motion received sufficient support to pass, "that was the opinion of the House, but the issue would not be resolved then. It would be resolved after the election" (Confidential Interview). Another interviewee, a minister at the time, also indicated that the motion served the purpose of "debate and discussion, but not to formalize a bill, which would take away from the free trade debate", which was the matter demanding their "complete and absolute focus" (Confidential Interview).

The "pro-life" option of the motion also generated ***repoliticisation*** as it was a gestational approach that allowed abortion more easily earlier in pregnancy and was more tightly regulated later in pregnancy. This approach was roundly criticized by pro-lifers, including cabinet minister Jake Epp, who called such an approach "arbitrary". The discourse surrounding this is discussed further in 7.4.1.2.

Other amendments to the motion were also proposed, but neither these amendments nor the main motion itself passed, leaving the government with no "sense of the House" and thus no guide for legislation. These procedural forms of depoliticisation point to a paradox: these measures diminished government responsibility and served as a pressure relief valve for caucus, yet also created debate and opportunities for parliamentarians' agency in voting for and advocating against a government motion. In the first motion, the efforts to constrain conflict only generated a new debate over the form and procedures of the motion, resulting in the government having to publicly back down and draft a new motion. Even with the more conciliatory approach of the second motion in July, a ***repoliticising*** effect emerged because the motion, accompanied with a free vote, removed party discipline and allowed even the government's own cabinet ministers and parliamentary secretaries to voice opinions, all of which ultimately helped defeat the motion.

7.3.3 Depoliticisation through a Caucus-Created Bill

The cabinet faced ongoing caucus challenges with the bill they proposed, which resulted in eventually establishing a caucus committee to develop the legislation, thus ***spatially politicising*** abortion by deferring responsibility to this committee and away from the executive.

Through the summer and early fall, the ad hoc cabinet committee (noted in section 7.3.1) had considered legislative options, resulting in the proposal for a gestational bill. The cabinet committee's proposals started with a three-stage gestational approach: no conditions on a woman's access to abortion in the first stage; some conditions in the second; and limited conditions in the third (Tromp, 2013). This then changed to a two-stage model with loose health requirements from conception until 20 weeks of gestation, after which strict restrictions were imposed (Tromp, 2013). However, none of the models proposed were seen as being able to transcend the significant divisions that existed within caucus on the issue. As a cabinet minister interviewed noted, "They could not come up with anything that they could all agree on and prepare to present to the caucus" (Confidential Interview).

As noted earlier, the gestational approach was controversial for some, particularly some pro-lifers, including Minister Epp, who perceived such measures as "arbitrarily" condoning some abortions, which they saw as antithetical to the pro-life philosophy.[93] This conflict mirrors one in the pro-life movement in general – a conflict that can be found even today (Flowers, 2019, 2020; Lima, 2010).[94] In response to hearing about the ad hoc cabinet committee's gestational proposal,

[93] Interestingly, two interviewees referred to C-43 as a gestational bill, remembering the early form of the bill and forgetting its final non-gestational form (Confidential Interviews).

[94] In brief, this conflict is described as being between "pragmatists" versus "purists" or "incrementalists" versus those supporting an "all or nothing" approach (Flowers, 2019, 2020). For those supporting incremental approaches, including possibly gestational approaches, their reasoning is that some fetal protection is better than no protection, and that incremental measures can work towards achieving better and better protection (Flowers, 2019, 2020; Lima, 2010). Others, however, see this as a betrayal of pro-life principles, as did some pro-lifers during the Mulroney government.

a group of PC MPs organized to express their opposition (Confidential Interview; Reimer, 2019). An interviewee noted that, "if we had 38 [PCs] MPs who would vote no to that position from the Conservative Party, that bill would … fail" (Confidential Interview). The Prime Minister was apprised of this,[95] resulting in the cabinet proposal being withdrawn.

With the cabinet committee's proposal dead in the water, the executive ***spatially*** deferred responsibility for the bill to caucus, establishing a caucus committee of 12 members representing both sides of the issue: 3 pro-life and 9 pro-choice members (Confidential Interview). Additionally, Stanley Hartt, the Prime Minister's Chief of Staff, was assigned to participate in the meetings, which was an unusual measure for such committees. The committee developed a unanimous proposal that, according to an interviewee and committee member, "wasn't that much different than what we used to have [the omnibus bill], which was the life or health of the mother. And if a doctor said the life or health of a mother was an issue, then you could have an abortion" (Confidential Interview). This proposal became C-43. Additional details concerning this committee, as recounted by an interviewee, are offered in Appendix I.

This ***spatial depoliticisation*** delegated responsibility to the caucus committee, thereby solving the practical issue of developing legislation that caucus would support, but it also served, whether intentionally or not, as a means of ***spatially*** delegating responsibility from the executive to the party caucus in a broader sense; it became the caucus' bill rather than the cabinet's bill. And yet, to ensure the bill passed, cabinet support would be required. Interestingly, the caucus committee's work on the bill also served to require and justify cabinet support for the bill. As

[95] This interviewee recalled that the Prime Minister was very upset with then Minister of Justice John Crosbie over this whole matter. The interviewee recalled the Prime Minister saying, "'John [Crosbie], why didn't you know? It's your job to know where the caucus is at.' John had ignored that. He made a mistake. He thought he could bluff his way through on it [the proposed bill]" and had not properly understood how caucus would react to the bill (Confidential Interview). Crosbie was moved to another portfolio before the introduction of C-43 in parliament.

explained by a cabinet minister at that time, “It was a bill that was drafted by members of our caucus, which was a very unusual situation. It was drafted by members of caucus when the cabinet committee couldn't come up with anything. … I think the Prime Minister felt that the caucus designed this bill and that the government should stand behind it” (Confidential Interview).

The inclusion of caucus in drafting the bill also helped to defuse the tension within caucus on the issue. This same cabinet member described this, saying, “And I think, all things considered, the way it was handled, … in creating this bill in caucus, allowed for a maximum amount of discussion of the issue” (Confidential Interview). Mulroney’s relations with caucus, with his affable personality and ability to connect with individual MPs, was also seen as part of how caucus tension were managed (Confidential Interviews). A cabinet member went on to reflect on the significance of caucus management, saying:

> [P]eople are often dismissive or cynical about political calculations made by a party leader and cabinet, etc. But I don’t think you should be because . … the instrument of governing in a parliamentary democracy is the caucus of the majority party. Not the cabinet, the caucus. Because if the caucus does not go along with the cabinet, you can’t govern. Because if the Prime Minister cannot keep the loyalty of his caucus members so they will support legislation . … then they can’t govern. So figuring out how to keep the peace and how to keep the commitment of your caucus to be able to deal with difficult issues is what party leaders should do. And that means sometimes not forcing your own views on people (Confidential Interview).

Another cabinet member echoed this sentiment, saying, “because we were so open with caucus to discussion and all through the way through … they felt they had been treated fairly and there was no open revolt or anything” (Confidential Interview). Altogether, the reaction to the bill was not enthusiastic support, but sufficient numbers of pro-choice and pro-life caucus members were able to accept it. As one of the committee members described in an interview,

> the principle was right. And the way in which the law of the House of Commons works is, if the principle is right, you can add amendments to it. But you couldn’t add an amendment to say, a proposal that was the 24 weeks, and then change it to conception.

> That would be changing the principle of the bill…but if the bill is now the life right through is a continuum of life right from beginning right through, then, yes, you can add amendments. So I thought, okay, … because the principle is correct, I'm going to support this bill. And because we can add amendments later – try to. Would they all pass? That's another matter (Confidential Interview).

7.3.4 Depoliticisation through Free Votes

Another means of ***spatially depoliticising*** the issue was the use of free votes. In Parliament, free votes were one of the first indications the government gave as to how it would handle the abortion issue. The cabinet minutes record in an early February meeting that, "The Prime Minister concluded the discussion by indicating that a free vote would ultimately be required on the issue. He was personally impressed with the sanctity of life arguments but would not attempt to impose his views on other Members" (Tromp, 2013, p. 3). An interviewee and cabinet minister from this period described how anything other than a free vote for caucus "would have been unthinkable. … It was too important. I mean, it was too personal of an issue" (Confidential Interview). The use of free votes can be understood as a form of procedural ***spatial depoliticisation***, where individual MPs are made responsible for their decision, decreasing the government's responsibility for the outcome of the vote. As such, there is a delegation of control from the government to MPs, insulating the government from the outcome of the decision and diluting blame, since the vote results represent the will of MPs rather than that of the government (Halfmann, 2011; Plumb, 2015; Warhurst, 2008).

Cabinet, however, was required to support the bill. One interviewee, a former minister, described it as "an understanding that cabinet, because it was being introduced as a Government

Bill, had to support it" (Confidential Interview).[96] As mentioned in the above subsection, it was also justified as requiring cabinet support because it was a bill developed by caucus.

The free vote decisions of individual MPs to oppose or support the bill were based on very different principles and goals. More specifically, while those who supported it saw it as a middle ground solution, those opposing it included MPs who thought the bill was *too* restrictive as well as MPs who thought it was *insufficiently* restrictive. In other words, there were both pro-lifers and pro-choicers – including within the PC party - united in opposing the bill, but for entirely different reasons. A pro-life MP, who voted against the bill, described it as "exceptions that you could drive a Mack truck through" (Confidential Interview). The interviewee recalled:

> I knew it was a half-hearted effort when the Prime Minister indicated that it would be mandatory for the cabinet to support the bill, which to me, told me that there were people in the cabinet who didn't support the bill, for one reason or another, either because they were not in favor of the bill, or they didn't think it went far enough or whatever. So my analysis was that by voting for it, it would be a basically a useless law, which would ultimately end up allowing abortion on demand (Confidential Interview).

Another interviewee, describing those who voted against C-43 because it was not restrictive enough, explained the thinking as:

> some of the people who wanted a more restrictive law said: "Vote against it. And if you vote against it, we'll get a better bill. It will pass. That will be great." So people were scratching their heads and saying, "Guys, if you're not happy with this one, you might risk getting none." They [pro-lifers opposing the bill] wouldn't see that. Similarly . … people who thought the bill was too restrictive would have preferred one that was less restrictive. In the end they got their way, but by default [when it failed] (Confidential Interview).

In the end, no "better bill" was proposed by either side, and no government bill was introduced thereafter.

[96] Another interviewee, but who had not been a cabinet member, stated that the cabinet was also free to vote their conscience, but this recollection is contradicted by the other interviewees and the literature (Confidential Interviews; Brodie et al., 1992a).

7.4 Discursive (De)politicisation Responding to R. v. Morgentaler and Defending C-43: From Seeking a 'Balanced Solution' to Defending the 'Balanced' Bill

The main story that emerges from the PC government following *R. v. Morgentaler* is that *a* balanced solution is needed, followed by defending C-43 as *the* balanced bill and solution. The different articles of 'a' and 'the' are used to indicate that, following the Morgentaler decision, certain elements of what *a* solution should be – namely balanced – are clearly articulated, but no concrete solution has yet been proposed. When C-43 is introduced and debated, however, it is now *the* solution, and positioned as the only possible option available to fit the problem.

This story is supported by several frames, summarized in Table 8 below, which serve to shift the government's responsibility, capacity and available time and thus served to (***de)politicise*** the efforts. This section first analyses the government's discursive response to the SCC decision, demonstrating how the government establishes that the divisive, difficult and moral problem of abortion (the problem, itself, is evolving and overall nebulous in this initial stage) needs to be met with a balanced solution. Then, when the government introduces and defends C-43 throughout the legislative process, the bill is defended as *the* balanced solution, emphasizing that only this specific legislation can provide the necessary compromise and accommodate the concerns on both sides of the issue. Here, C-43 is defended as the solution to several shifting and evolving problems, namely societal interest in the fetus, access to abortion, and chaos from a lack of legislation. This is described in section 7.4.2.

Table 8: Discursive (De)Politicisation after the Morgentaler Decision, 1988-Fall 1989

Problem	A lack of legislation? *Problematization not entirely clear – develops over the year*
Solution	Legislation (probably, type of legislation TBD)
	Story: Find ***a*** balanced solution
Frames Constructing Stories and Serving as Discursive (De)politicisation	
Capacity Politicisation	- "Serious" issue - "Unfortunate" events of paternity injunctions/court cases requiring action
Spatial Politicisation	- Exercising "leadership" on the issue - Committing to legislation
Temporal Politicisation	- "Urgent" issue, urgent action needed
Capacity Depoliticisation	- Nature of issue as difficult, sensitive, complex, divisive → lack of consensus - Abortion as "moral", "conscience" issue - Charter has created new judicial constraints, limits on legislature and legislation
Spatial Depoliticisation	- Need to collaborate with provinces - Jurisdictional/constitutional responsibilities - Free votes committed to initially, and free votes on motions used - Seeking a "sense of the House" through Spring/Summer 1988 motions
Temporal Depoliticisation	- Need to review SCC decision before making additional statements - Need to wait for collaboration with provinces - Nothing can be done until Parliament meets

7.4.1 Story 1: Seeking a "Balanced Solution": Responding to the SCC decision, January 1988 to Summer 1989

The government's problematization of the abortion issue in the aftermath of the Morgentaler decision is nebulous at best. The government, reacting to a complex and multifaceted SCC decision, treats the *lack* of an abortion law as a problem without defining exactly why that is the case. As described in section 7.3.1, the government is internally deliberating on how to respond, which likely delays public commitments to very specific types of action. On the day the

SCC decision came down, cabinet minutes state that, "Ministers noted the importance of not pronouncing on the issue, of avoiding promises or of publicly discussing options" (Tromp, 2013, p. 1). Articulating a solution also evolves over time, beginning with commitment to legislation and adding on additional qualifiers of what such legislation would do. This culminates in the story of seeking *a* balanced solution, which quickly becomes predominant within a few short months, setting the stage for *the* legislative solution, C-43.

7.4.1.1 Urgent Leadership, but Delayed and Deferred

Despite an unclear problem definition, the government was quick to assert that they would take leadership on and responsibility for the issue. What is unclear is how they would do so. The day after the decision came down, Minister of Justice Ray Hnatyshyn emphasized that, "there is a responsibility on all of us to look at this matter in a serious and urgent way. We are prepared not only to give leadership . … but to try to work with the provinces in a co-operative way . … to get a consistent approach concerning the situation today" (House of Commons Debates, 33rd Parliament, 2nd Session, Vol. 10, p. 12426). This asserts the responsibility of government over the issue, ***spatially politicising*** it, as well as emphasizing its urgency, ***temporally politicising*** it. However, this commitment to leadership was also tied to ***temporal*** and ***spatial depoliticisation*** through delays and appeals to shared jurisdiction, specifically highlighting the need for provincial collaboration. This is affirmed by Hnatyshyn, who stated that:

> We have responsibility for the Criminal Code, but there is a significant provincial jurisdiction with respect to the delivery of health services. It seems to this Government that we would want to work with the provinces as soon as we can to determine the issues which have to be faced in this matter in order to have a thorough understanding that there

will be a consistent approach across the country. This is the approach the Canadian public want us to take (Vol. 10, p. 12428). [97]

Capacity depoliticisation also serves as a defence mechanism against attacks from opposition parties, such as demands that the Canada Health Act (CHA) be used to force provinces to provide certain levels of abortion services. The government argued that using the CHA in this way was impossible - even unconstitutional - because the Act was only a funding statute and provinces had jurisdiction over healthcare, denying their federal capacity to act in this way. For instance, PS Pierre H. Vincent said that "it is not within the powers of the federal Government to dictate to provinces what those health services must be, or how they should be delivered" (33rd Parliament, 2nd Session, Vol. 11, p. 13882).

By February 9th, only two weeks after the Morgentaler decision came down, Minister Hnatshyn indicates that due to the legal "void" that leaves Canada as "the only western industrialized country which does not have legislative rules with respect to abortion", the government "believe[s] that a legislative approach on the federal level is appropriate and are therefore dealing and consulting with our provincial colleagues" (33rd Parliament, 2nd Session, Vol. 10, p. 12778). This continues to pair the ***spatial politicisation*** of taking responsibility for abortion through legislation with ***temporal and spatial depoliticisation***, allowing the government to delay and share responsibility through provincial collaboration.[98] As noted in section 7.3, the government also quickly indicated it would allow a free vote on whatever approach it would take.

[97] Within Hansard, the Borowski case, discussed in section 7.2, does crop up on occasion, generally to justify the government's delay in introducing legislation. For instance, Ray Hnatshyn, the Minister of Justice in the winter of 1988, notes that they were waiting on the SCC's ongoing Borowski case in regards to clarifying the status of fetal rights (33rd Parliament, 2nd Session, Vol, 10, p. 12425, p. 12480). Brodie (1995) also refers to this as the government "using the indeterminate legal status of the foetus [as a] stalling tactic in the long road to create a new federal abortion law" (p. 95).

[98] This contrasts somewhat to the memory of an interviewee, who located the decision to legislate as occurring later, likely following the 1988 fall election, linking the decision to legislate with popular demand for government action on the matter (Confidential Interview).

A free vote in this case also served a discursive purpose by signalling that the government was treating abortion as a "conscience issue" rather than one of party discipline. They also used this against the opposition, with Minister Lewis stating that "we have no difficulty on a sensitive, moral issue such as abortion, with having a free vote. … We do not intend to politicize this issue. …If the Opposition Parties feel that they must have a Party Whip on the vote, let them do so, but I say once again that there will be no Government Whip on this very sensitive issue" (33rd Parliament, 2nd Session, Vol. 12, p. 15701). The appeal to conscience also invoked a higher authority, ***spatially*** deferring responsibility to moral forces beyond the sphere of government.

The government lowered expectations for the sort of legislation that could be put forward through ***capacity depoliticisation***, framing how difficult of a problem the abortion issue is for governments, as well as how distinct it is from other issues. Abortion was repeatedly emphasized as being a difficult, sensitive, complex, serious, and divisive issue, upon which there was no Canadian consensus to build. Following the Morgentaler decision, Minister of Health Jake Epp said, "People on both sides of this issue generally recognize both its complexity and its difficulty not only for Governments but for Canadian society as well" (33rd Parliament, 2nd Session, Vol. 11, p. 13510). The nature of abortion as divisive was positioned as a limiting factor, helping to lower expectations for any policy solution, thereby mitigating blame. This ***capacity depoliticisation*** consequently sets up the government's task of creating a solution as challenging.

Emphasizing jurisdiction also indicated that any future federal legislation would be constrained by constitutional divisions of power, continuing ***spatial and capacity depoliticisation***. Even in personal meetings between ministers and citizens, responsibility was pushed to the provinces. For instance, when lobbied by pro-choice advocates, an interviewee told them to focus their efforts on the provinces, as this is where problems of access to abortion needed to be

addressed (Confidential Interview). Similarly, the relatively recent Charter of Rights and Freedoms was portrayed as tying the government's hands. Immediately after the SCC decision, the government emphasized how the case pointed to "the new realities under the Charter of Rights and Freedoms of our country and the role of the Supreme Court of Canada in defining the limitations and the abilities of legislature at all levels of government to deal with important issues" (33rd Parliament, 2nd Session, Vol. 10, p. 12383). These ***spatial and capacity movements*** emphasizing the constraints of the Charter as well as provincial responsibility and jurisdictional constraints continued to portray the government as having limited options in terms of what action it can take on abortion, thus lowering expectations and creating a narrower window of possible actions.

Altogether, the government's ***discursive depoliticisation*** in reacting to the SCC decision served to establish a lower threshold for the government to meet in terms of finding a perfect solution that would make everyone happy on such a difficult and divisive issue. This also helped to establish the need for a solution that could bridge a divided caucus and populace.

7.4.1.2 Getting a Sense of the House (or not): The July Motion Debates of 1988

As noted earlier in section 7.3.2, the government introduced a motion in July – its second attempt after significant backlash to the prior iteration in May that was intended to "get a sense of the House" on the issue and guide legislation. As explained by the motions' mover Doug Lewis, then Minister of State (Treasury Board), the intention was for Members of Parliament to "put their views on the record, for themselves, for their constituents, and as part of the input to provide it to the Cabinet and to the legislative drafters" (33rd Parliament, 2nd Session, Vol. 14, p. 17965). It was, in other words, a partial solution that would create the collaboration needed for legislation by, in words used frequently by government speakers, "getting a sense of the House".

The prominent story found amongst government speakers in the July motion debate was a need for a "balanced solution" between the rights (or "competing interests") of the woman and those of the fetus. However, this construction of the need for "balance" created an interesting tension, where opposing sides of the abortion issue within government support the idea of needing this balance but reject the motion as failing to achieve balance. More specifically, among pro-lifers, the motion was rejected by some because it did not adequately protect fetal life. As Minister of National Health and Welfare Jake Epp stated, "[T]he Supreme Court has invited Parliament to balance the competing interests of the unborn child and the pregnancy woman. I believe the motion before us fails to do that. … It is not a balance; it is a decision not to extend protection of life to the unborn child" (33rd Parliament, 2nd Session, Vol. 14, p. 18097). The government's "pro-life" amendment option within the motion was generally unpopular among pro-lifers who considered the graduating protection of the fetus according to the stage of pregnancy "arbitrary" and thus untenable. For instance, Parliamentary Secretary Benno Friesen opposed the motion, arguing, "how could we make a law that says that a child is safe [from abortion] during the seventeenth week of pregnancy but not in the sixteenth? What could be more arbitrary than that?" (Vol. 14, p. 17999). On the other side of the issue, Parliamentary Secretary Lise Bourgault, who identified as pro-choice, countered this logic, arguing that both the pro-life and pro-choice movements' demands for a law were unrealistic, and that she favoured "a solution that would go halfway; setting a legal limit of 18 weeks on abortion" (Vol. 14, p. 17988).

Overall, among government speakers, argumentation occurred along two themes: (1) support for the gestational approach of the motion, with some proposing more precise limits, as contrasted with strong opposition from others; and (2) a divide between those primarily focused on fetal rights and the need for a restrictive law versus those primarily focused on women's rights

and autonomy and a need for a permissive. Among parliamentary secretaries, there is some support for the approach of the government in soliciting direction from the House through this motion, yet also an assertion for the need for continued or improved leadership from the government to establish an "effective" law. Some secretaries demanded actual legislation, including Ken James, who moved an amendment, requiring two doctors to agree on the need for abortion, and, notably, used the language of achieving balance between both sets of "constitutional rights" of women and fetuses (33rd Parliament, 2nd Session, Vol. 14). Altogether, considering the fractures within cabinet itself, it is no wonder that neither the motion nor its amendments passed, leaving the government without the "sense of the House" that it wanted. The government, then, did not return to the issue until their next mandate.

7.4.1.3 The "Unfortunate" Events of the Summer of 1989 and a Renewed Push for Legislation

The Mulroney government formed a second majority government after the fall 1988 election, but abortion remained on the shelf for numerous months. Controversies surrounding provincial restrictions of abortion funding (B.C. in particular) and the Dodd and Daigle cases during the summer of 1989 brought renewed attention to the issue. Reviewing the media coverage of the Dodd and Daigle decisions from the summer of 1989 (Parliament was not sitting at that time) reveals that the government only infrequently commented on the cases. The opposition, conversely, often gave comments to the media, as did some provincial premiers or ministers (Delacourt, 1989a; Fraser & Mackie, 1989). One of the few government statements was from Prime Minister Mulroney when questioned on the recent injunctions in late July. Continuing to defer both ***temporally*** and ***spatially*** to the Supreme Court, Mulroney stated, "This matter is apparently going before the Supreme Court of Canada and it would be inappropriate for me to comment on it or to attempt to usurp the proper function of the court" (The Globe and Mail, 1989).

Continuing ***temporal depoliticisation***, he indicated that "There's no footrace on. We have to do the right thing," noting that "Nothing will be done until the House comes back" in the fall, at which time, "the House of Commons will meet and will consider the matter in the light of all of the developments, including the most recent" (The Globe and Mail, 1989).

However, as the court dramas continued, resulting in the SCC striking down the injunction against Daigle, a spokesperson for Justice Minister Lewis was reported as saying that they would not be waiting on the written decision from the SCC's Daigle case before preparing legislation: "Before all of this happened, the Prime Minister promised legislation in the fall. Nothing has changed. That's still the case" (Delacourt, 1989f). Shortly after his spokesperson's remarks, Justice Minister Lewis did respond to journalists on the subject on August 22nd, indicating that the controversy had shifted the public "mood". Lewis stated that, "I think the events of the past two months moved the issue to the fore. I think you would find they [the public] want it off the front pages and the television news. They think it is a private thing, and they want it dealt with" (Makin, 1989). Furthermore, said Lewis, these events "made the public more willing to accept compromise legislation. I think they have moved to consensus that if the Legislature brings in a reasonable compromise, the public will look on it favorably. I think there is a better climate out there" (Makin, 1989). This continues to emphasize the need for a "reasonable compromise" and appeals to Canadians as wanting the issue resolved by the legislature, continuing ***capacity and spatial depoliticisation*** respectively.

Lewis' remarks to journalists also continued to present the issue as a significant challenge for government, stating, "If there is one thing people are agreed upon, day in and day out, it is in saying, 'Doug, you have got a difficult one on your plate'" (Makin, 1989). Again, this continues to frame abortion as a difficult issue, using ***capacity depoliticisation*** to position the government's

task as challenging and unlikely to satisfy anyone entirely. This language, found in Minister Lewis's late August remarks, of "reasonable compromise", legislation demanded by the Canadian populace, and abortion as difficult are prominently found within the debates on the bill introduced that fall, as seen below.

7.4.2 Story 2: Defending the 'Balanced' Bill: Discursive (De)politicisation Defending C-43

Once C-43 was crafted and introduced, the government's story shifted somewhat to position this piece of legislation as *the* balanced solution, which was supported by emphasizing that it was necessary and the only means of adequately balancing both women's and fetal interests, but also finding a balance and bridging the divide between pro-lifers and pro-choicers. This balanced bill is, in many respects, the evolution of the compromise story discussed in chapters 5 and 6, as well as a stronger and clearer articulation of the need for *a* balanced solution found in section 7.4.1, particularly during the debates on the July motion. However, unlike the compromise story in those cases, the government does not offer other competing stories alongside it. Instead, the challenge within this discourse is with the very nature of "balance" itself, namely that it is very difficult for parties – even within government – to agree on what constitutes balance, as seen in the debates on the motions (see section 7.4.1.2).

In its presentation of C-43, the government clearly frames this bill as *the* only option that can provide a balanced solution to this divisive issue that has divided Canadians. However, the problem definition of the abortion situation is still somewhat unclear. As summarized in Table 9, there are a mix of problems, some of which are contradictory. These problems address concerns from pro-lifers by acknowledging the need to ensure fetal rights, and concerns from pro-choicers by arguing that this bill will provide the national framework needed to ensure access to abortion. It also, building on the "unfortunate" events surrounding the Dodd and Daigle cases, argues that

the current situation without a law is untenable and will produce further "media circuses" alongside chaos and anarchy. These very different problems that C-43 will somehow all solve creates a similar situation as with the omnibus bill, in terms of having contradictory stories and logics that do not always work well together. Although the omnibus bill was able to be passed into law, C-43 was not, and understanding these differing discourses may help to reveal cracks in the narrative that contributed to its demise.

This section outlines the main frames that underpin the balance story during the debates of C-43, both in Hansard and in committee.[99] These frames effect ***spatial*** and ***capacity depoliticisation***, which help to justify the solution of C-43. First, continuing to emphasize the controversial and difficult nature of the issue as well as the divided state of Canadians on the matter, the government positioned C-43 as the *accommodation that offered the best possible compromise*. Linked to this was an emphasis on the limits that the government faced (jurisdictional, relationship to the courts, etc.), being unable to create a more restrictive law as well as being unable to strengthen access to abortions.

The law is also defended as a tool *to* prevent *further "chaos" and "media circuses"*, utilizing the "unfortunate" events of the Daigle and Dodd cases and affirming the need to create a national legislative framework in criminal law specifically to prevent a "patchwork" of abortion regulations across the country. Finally, as in the 1969 omnibus bill, C-43 is justified with respect to *medical discretion*, helping, in the process, to wash the government's hands of the need to adjudicate the "balance", deferring to the authority and expertise of the medical profession.

[99] It should be noted that the analysis here is thematic; a chronological treatment of the post-Morgentaler and C-43 time period can be found in Vachon (2020).

Table 9: Discursive (De)Politicisation in Defense of C-43, 1989-1991

Problem(s)	Societal interest in fetus/legal protection of fetus needed	Abortion access and national framework needed	Lack of legislation is untenable – chaos and anarchy otherwise
Solution	C-43		
	Story: C-43 is *the* balanced bill		
Frames Constructing Stories and Serving as Discursive (De)politicisation			
Capacity Politicisation	- "Unfortunate events" of paternal injunctions require action		
Spatial Politicisation	- Showing leadership on this issue - Assuming responsibilities to meet the challenges of the issue - Bill establishes legal framework and "entitlement" - Requiring cabinet support for the bill (whipped vote)		
Temporal Politicisation	N/A		
Capacity Depoliticisation	- Abortion as "sensitive", "difficult", "ethical conundrum", "divisive" - Canadians divided, pluralist, have strong opposing convictions - Consensus difficult if not impossible - Bill as the "reasonable", "moderate" solution, "best possible" - Compromise, accommodation solution achieving "delicate" balance of rights of women and fetus, and balancing views of pro-life and pro-choice – achieves constitutional balance - Limited by jurisdiction, constitutional allocation of responsibilities; going as far as they are able - Necessary to avoid "unfortunate" events of the Daigle/Dodd cases, chaos and anarchy - Dire consequences without a national law and criminal legislation the only means to achieve this		
Spatial Depoliticisation	- Deferring to caucus through affirming free votes - Additional regulations raised by amendments need to be dealt with through provinces or medical profession - Deferring to authority of SCC justices' decision - Deferring to Canadians' recognition of a need for a balanced approach - Medical framework of bill defers to doctors as experts, allows for medical discretion		
Temporal Depoliticisation	N/A		

7.4.2.1 Reasonable and Balanced Solution to a Difficult Issue and Divided Population

The introduction of Bill C-43 in the House was accompanied by the argument that it represented the "*reasonable" and "compromise" solution to the abortion question*, achieving the needed "balance" between the rights of women and the fetus. This presentation of C-43 builds on the earlier story of needing a balanced solution and becomes increasingly positioned in the modified story as *the* one and only solution. This framing of the bill as the only option and the reasonable option continues to effect ***capacity depoliticisation*** by invoking fatalism, as will be discussed further in this section.

In introducing the bill, Minister of Justice Doug Lewis stated, "In approaching this sensitive and difficult issue the government took into account all the views of the Canadian people and balanced those views in a reasonable and workable way" (34th Parliament, 2nd Session, Vol. 4, p. 5644). Other ministers lined up behind this language, including Minister of National Health and Welfare, Perrin Beatty, who called the bill "a moderate and balanced compromise to an ethical conundrum" (Vol. 4, p. 5678). The compromise frame was used to bridge the polarized views within Parliament, with Beatty saying, "We do not seek to disguise the fact that the bill is a compromise. It is a proposal which accepts the validity of opposing points of view" (Vol. 4, p. 5675). This need for balance was rationalized, as such, by emphasizing that Canada was divided on the issue. For instance, Prime Minister Mulroney described Canada as having "vastly different ethnic and religious backgrounds, and disparate regional and local views" (34th Parliament, 2nd Session, Vol. 5, p. 6340). Consequently, consensus was near impossible in a pluralistic society and required a solution that could bridge the divide. Minister Kim Campbell, in noting the strong "convictions" of groups on both sides of the issue, calls on parliamentarians to "assume our responsibilities to bridge the gap created by such divergences [in views]. If we are unable to strike a balance then we are not fulfilling our duties as parliamentarians" (34th Parliament, Minutes of

Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 3, Issue 21, p. 12). This focus on how the government is fulfilling their duty and taking on their leadership role on this challenging issue is found with the speeches of all three ministers who appeared before committee, combining an apparent politicisation (taking responsibility) with this compromising, middle ground, balanced depoliticised policy solution.

This framing of abortion as difficult and divisive continues to reinforce ***capacity depoliticisation*** throughout C-43's legislative process, including at committee, in report stage and 3rd reading debates. The challenge is not only in the complexity of the moral, ethical, medical, and religious elements abortion contains, as noted by Lewis, but also due to the manner in which it divides an increasingly pluralistic and diverse society (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 1, Issue 1). As described by Lewis, this increase in societal diversity as "made it much more difficult for us to develop a consensus on the difference between right and wrong than it was for our parents" (Vol. 3, Issue 20, p. 5). Lewis also describes how the strength of beliefs has been made manifest in the many letters the government has received from both sides of the issue, with such beliefs "render[ing] compromise and consensus difficult" (Vol. 1, Issue 1, p. 31).

These ***capacity depoliticisation*** movements positioned abortion and society in such a way that it set up the government's job as, consequently, very difficult. This depoliticisation also sets up the need for a solution that somehow bridges the divide or at least can balance them. It is this "balanced" solution that the minister addressed next, using this language of "balance" as well as "compromise" to describe C-43. They are balancing "the constitutional rights of a woman with society's interest in the fetus" with the bill, specifically citing the Supreme Court's *Morgentaler*

decision that set them this challenge (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 1, Issue 1, p. 31).

In its last stages of debate, the government focused on defending C-43 against amendments, with new Minister of Justice Kim Campbell arguing that the law in its current form maintained a necessary "delicate balance" (House of Commons Debates, 34th Parliament, 2nd Session, Vol. 9, p. 11666). Accepting any of the proposed amendments would, as such, upset such a balance. Minister Campbell noted, "However imperfect it may be, the legislative process is still the best way to achieve a consensus" (Vol. 9, p. 11769). She further argued that C-43 represented an "honourable accommodation" on the divisive issue (Vol. 9, p. 11773).

7.4.2.2 Constitutional Limits and Constitutional Balance

The government also emphasized the limits of what it could do on the issue by referencing provincial healthcare responsibilities to highlight how Bill C-43 went as far as federal jurisdiction allowed, continuing ***capacity depoliticisation***. To do more, Minister of National Health and Welfare Perrin Beatty said, "would be an invasion of the provinces' role in Confederation" (34th Parliament, 2nd Session, Vol. 4, p. 5676), a sentiment that numerous other government speakers echoed. For this reason, a federal bill could not ensure access to abortion, said Minister of Employment and Immigration and Status of Women Barbara McDougall, defending the bill while identifying herself as pro-choice (Vol. 4, p. 5725). Conversely, Prime Minister Mulroney, speaking to pro-lifers who wanted a more restrictive law, stated, "[w]e have gone as far in this direction as constitutional constraints permit" (34th Parliament, 2nd Session, Vol. 5, p. 6351).

Ministers' support, which was required, appeared resigned. Language calling the bill the "best we can do" was found frequently, including in Minister of Justice Lewis' introduction of the bill (34th Parliament, 1989, Vol. 4, p. 5594), Minister of State Kim Campbell's affirmation of

her pro-choice view alongside support of the bill (34th Parliament, 1989, Vol. 5, p. 5966), and Prime Minister Mulroney's defence of the bill at second reading (34th Parliament, 1989, Vol. 5, p. 6339). After being appointed as Minister of Justice, Minister Campbell also appeared before the parliamentary committee studying the bill, endorsing the bill by referring to it as "the best possible" under the circumstances (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 3, Issue 21, p. 5).

In response to repeated concerns and questions from other committee members on the bill's constitutional compatibility, Lewis and Campbell both argue that C-43 meets the Charter and *R. v. Morgentaler* case challenge by reiterating how the bill removes the obstacles that existed under the previous abortion bill. At committee, Minister Lewis defended the compatibility of C-43 with the Charter and the SCC *Morgentaler* decision repeatedly, stating,

> The Supreme Court recognized that the section 7 rights of the woman could be subject to reasonable limits to protect the fetus. The reasonableness of any such limits, however, would be based on a balance between a woman's right to security of the person and society's interest in the fetus. This bill is designed to protect society's interest in the fetus while respecting the constitutional restraints set out by the court in Morgentaler (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 1, Issue 1, p. 33).

It is this careful "constitutional balance" that must be protected, with both Lewis and Campbell cautioning the committee against any amendments that would jeopardize this (meaning no amendments whatsoever, it seems). Campbell specifically notes that the amendments proposing additional restrictions would "give rise to serious Charter risks" (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 3, Issue 21, p.10). Beatty, who leaned pro-life, acknowledges his sympathy with

some of the pro-life amendments but argues that concerns like conscientious objection would be best dealt with through provincial legislation or collective bargaining (Vol. 3, Issue 20, p. 9-10).[100]

7.4.2.3 The Necessary Solution for a National Regime

Ministers defended the use of criminal legislation by invoking its necessity to achieving some degree of national uniformity on abortion, avoiding a patchwork of access across the country as well as avoiding the "sensationalized" "events of last summer", referring to the Daigle and Dodd cases.[101] This also continues ***capacity depoliticisation,*** positioning the government as taking necessary action to prevent a chaotic result. As Lewis notes, "the events of this past summer illustrated a clear need for a national position on the issue of entitlement to abortion and led many Canadians to realize that a balanced approach, recognizing the strongly-held views of all, was required" (House of Commons Debates, 34th Parliament, 2nd Session, Vol. 4, p. 5640). According to Beatty, these cases demonstrated "that without an abortion law we have confusion, uncertainty and unnecessary litigation", as well as "the prospect of becoming a Balkanized nation as far as abortion is concerned" (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 3, Issue 20, p. 8). Lise Bourgault, PS to the Minister of National Health and Welfare, described how she had not wanted abortion regulated through a criminal bill, but stated that, "I am a pro-choicer who was willing to compromise, because we must have legislation in order to avoid incidents of the kind we saw in the sad and sensational case involving Chantal Daigle and Jean-Guy Tremblay" (34th Parliament, 2nd Session, Vol. 4, p. p. 6133).

[100] Interestingly, an interviewee who worked with Beatty noted that, in their conversations, although he solicited the interviewee's personal opinion, he never shared his own personal views (Confidential Interview).
[101] Interestingly, except during the Question Period following their speeches, the ministers' avoided referring to these cases by name, instead using these references to "the summer".

This necessity is strengthened by the insistence that criminal law is the *only* means of achieving a national system, according to the ministers. When opposition members called for the Canada Health Act to be used instead of a criminal law, Beatty answers that it would be impossible because that Act transfers funds for health care, but the provinces retain their jurisdiction over health care and are responsible for – in conjunction with their health care professionals – defining what constitutes medical necessity. Federal intervention that used this Act would be unconstitutional and Campbell describes calls for its use to mandate abortion access as "based on a failure to understand the realities of Canadian constitutional law" (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 3, Issue 21, p. 7).

Campbell also describes the use of criminal law to establish societal values, indicating that, "By using the criminal law power as the basis for a new law on abortion, we are enshrining a certain set of values, which, in part, describes the kind of society we are" (Minutes of Proceedings and Evidence of the Legislative Committee on Bill C-43, An Act Respecting Abortion, Vol. 3, Issue 21, p. 5). Campbell furthermore pulls on the authority of the SCC for a criminal law approach, since the justices all acknowledged the "validity" of protection both the life and health of the women as well as the fetus (Vol. 3, Issue 21, p. 5). This approach legislates "entitlement", which could be described, perhaps, as the main thesis of Minister Lewis' speech, though it also appears in Minister Campbell's later appearance. They cannot guarantee abortion access (which is ***spatially depoliticised*** to the responsibility of the provinces), and staunchly reiterate this in response to questions from committee members, but by establishing entitlement, a legal framework has been established. As Minister Monique Landry states, the bill offers "a legislative framework that gives women the right to use their own judgement, that offers women

a measure of protection and finally, that it aimed at preventing abuse" (House of Commons Debates, 34th Parliament, 2nd Session, Vol. 5, p. 6036).

Chaos and anarchy resulting from this vacuum was invoked in the second reading debate for C-43, as Ministers Shirley Martin and Douglas Lewis and PS Benno Friesen and Lise Bourgault pointed to the "circus" of the Dodd and Daigle "events of this past summer [that] illustrated a clear need for a national position on the issue of entitlement to abortion and led many Canadians to realize that a balanced approach … was required" (34th Parliament, 2nd Session, Vol. 4, p. 5639). These events served rhetorically as justification for a compromise that would prevent such cases from occurring again (34th Parliament, 2nd Session, Vol. 5, p. 6133). PM Mulroney also argued that the bill, "by providing a national framework, sends the provinces a signal that they should clarify their approach and assist them in the provision of abortion as a medical service. This can only improve access and it is the most immediately effective way for the federal government to do so within our constitutional authority" (Vol. 5, p. 6342).

7.4.2.4 Maintaining Medical Discretion and Washing Government Hands

Bill C-43 allowed abortion for broad health reasons, thereby confirming doctors as gatekeepers to abortion. By structuring C-43 according to this medical framework, this deferred responsibility to the private sector and to the expertise of the medical professional, ***spatially depoliticising*** abortion by positioning doctors as experts in the matter. For instance, when introducing the bill, Minister Lewis said that in cases of health, "doctors must make that determination. No one else could" (34th Parliament, 2nd Session, Vol. 4, p. 56430). This not only deferred abortion to doctors but argued that *only* doctors were equipped to make these decisions. As Minister of Energy, Mines and Resources Jake Epp stated, "I do not shy away from placing that responsibility on those who are trained, those who are professional and those who must make

life and death decisions in the course of their work every day" (34th Parliament, 2nd Session, Vol. 5, p. 5957). Likewise, Minister Beatty indicated that a foundation of the bill "is that it is essentially a health matter to be decided between the woman and her doctor" (34th Parliament, 2nd Session, Vol. 4, p. 5679). For Barbara McDougall, who identified herself as pro-choice, "The trust of this legislation then is to define abortion as a medical act. Based on a definition of health and wellness, it entitles women to abortion under a wide variety of circumstances. In my view this will assist in providing the stable legislative and societal framework which I was seeking" (Vol. 4, p. 5725).

Following the failure of this bill, the Mulroney government was true to its word and made no additional efforts to attempt additional legislation. While some PMB were put forward – specifically by Liberal members (pro-life measures)[102] and an NDP MP (pro-choice measure), few received any actual debate. When one motion did go to debate,[103] responsibility was quickly deferred (***spatial depoliticisation***) to provinces.

7.5 Synthesis

This chapter noted the similar framing and dominant story of defending the status quo that emerged from 1984 up to the January 1988 SCC decision. PC government speakers continued to position themselves and their government along the same lines as the previous Liberal government, deferring responsibility for administration and enforcement of the law with the medical profession and the provinces.

The creation of the *Charter of Rights and Freedoms* in 1982 makes its effects known with the 1988 SCC *R. v. Morgentaler* case. Although changes in social mores likely also impacted the ruling on Morgentaler, the role of the Charter is pointed to in the literature as a watershed moment

[102] In 1991, several pro-life PMB bills are introduced by Liberals but did not receive debate.
[103] Lise Bourgault, PS to Minister of Supply and Services, addressed NDP MP Dawn Black's motion to reduce unwanted pregnancies through investments in Planned Parenthood.

for abortion policy. Despite the previous Liberal government's promises that the Charter was neutral on abortion and would not affect Parliament's ability to legislate on moral issues (see chapter 6), the Supreme Court struck down the abortion laws as contrary to s. 7 Charter rights. Morton's (1992b) account highlights the impact of the Charter on decision-making, the role of courts, and social movement strategy in regards to abortion. He writes that, "[t]he real achievement of the Charter was not so much the creation of new rights, but a new way of making decisions about rights, a process in which the courts now had a much more significant voice" (F. L. Morton, 1992b, p. 121). Contrasting post-Charter abortion politics with the 1969 omnibus bill reforms to abortion, Morton (1992b) argues that the omnibus bill was "entirely a government-parliamentary matter" and that at no time was a court challenge suggested as part of reform (p. 294). In fact, if groups were to bypass parliament and head to the courts, this would be seen as "an illegitimate attempt to do an 'end run' around 'responsible government'" (F. L. Morton, 1992b, p. 294). Post-Charter, with the augmented and more authoritative court role, interest groups who are unsuccessful in one arena could now turn to the courts, which represented a dramatic change in the operation of social movements and the role of parliament itself (F. L. Morton, 1992b, p. 300).

The government's commitment to legislation and eventual introduction of legislation is a significant procedural ***politicisation*** as it opens debate and creates contingency and around the abortion issue by paving a legislative path for change. However, other procedural forms of ***depoliticisation*** accompany the government's proposed legislative solution, namely the introduction of motions to "get a sense of the House", the use of a caucus committee to draft the legislation, and the commitment to and use of free votes. As will be also explained, some of these

depoliticising movements produced ***repoliticising*** "boomerang" effects, creating new sources of conflict, debate, and controversy

The government's immediate response to the watershed SCC decision in January 1988 was understandably cautious, using ***temporal depoliticisation*** to delay and defer responses. Free votes were quickly promised on whatever approach would be taken, which positioned abortion as moral, a conscience issue and outside of politics-as-usual. Instead of immediately legislating, the government introduced motions in the spring and summer of 1988 to "get a sense of the House" and guide future legislation based on the outcome of the motion. Procedurally, this enabled the government to diffuse responsibility throughout parliament by basing (theoretically) legislation on the preference of the House as a whole, rather than the government in particular. This ***spatial procedural depoliticisation*** backfired on the government in some respects because, not only was the motion and its amendments defeated, thus not providing the "sense" it had hoped for, but it created new sources of debate and controversy on abortion. In particular, the July debates, which were free vote for all members of the PC caucus, yielded an interesting discussion of ministers and parliamentary secretaries using similar frames to argue for opposite solutions or conclusions.

Following the 1988 election, which saw the Mulroney PCs return with another majority government, a cabinet committee was tasked with developing a legislative proposal, but its gestational proposal lacked sufficient support from caucus. A caucus-committee of pro-lifers and pro-choicers was established instead, which again, diffused responsibility for the resulting bill throughout caucus, rather than located in the executive specifically (***spatial depoliticisation***); this also provided part of the justification used by Mulroney to require cabinet to support the bill developed in this unique fashion. The caucus committee developed a bill like the previous omnibus bill, namely banning abortions in principle but allowing them for health reasons (loosely

defined) as determined by a doctor (rather than a hospital committee). As has been discussed, frames that positioned abortion as divisive and difficult by its nature within a pluralist society, that established the post-Morgentaler situation as dire and a law as a necessity, and that demonstrated how jurisdiction, court precedents and pluralism constrained the government, helped to establish a "balanced" solution as the only solution. As such, "balance" is the dominant frame used to set up and defend the government's policy solution of C-43. This "compromise" bill is presented by ministers and parliamentary secretaries alike as the "reasonable" solution that achieves a balance between rights and establishes the needed common ground. This is the predominant language used for the bill from government members on both sides of the issue.

Frames emphasizing the divisive nature of abortion and a polarized society set the stage for a middle-ground solution. Furthermore, by framing the government as limited—thanks to the divisive nature of the issue, the polarized nature of society, the constraints of jurisdiction and the federal system itself, and the *Morgentaler* decision—the government positioned itself as caught between a rock and a hard place, and so sought to limit blame and lower expectations for the resulting policy (***capacity depoliticisation)***. These frames continued with and reinforced C-43, where the bill was considered the best that could be done to find a solution that both sides could live with, even if it made no one entirely happy. Accompanying this and backed up by discourse were procedural forms of ***spatial depoliticisation***, putting forward the motions and using a free vote to further move responsibility for the resulting legislation towards Parliament.

Overall, this discussion of (de)politicising and politicising procedures and discourse conceptualizes the government's handling of abortion and construction of C-43 as a "balanced" policy solution. Immediately following *R. v. Morgentaler*, language that emphasized a need for action and legislation politicised abortion as it pushed it into the realm of debate. However, as

this language became tied to Bill C-43 as a specific policy solution, it became depoliticising because it positioned C-43 as the only reasonable solution to the dire situation of the legal vacuum.

Although these frames and procedures were used to help construct and defend C-43 as the best possible solution, they also appear to have contained the seeds of their own demise. For instance, this central argument of balance was itself a difficult balancing act for the government. Speakers, including parliamentary secretaries and other PC MPs, used the "balance" and "compromise" frame to argue against the government's proposals nearly as often as they used them to defend it, arguing that the government's proposal failed to attain its objective. Additionally, both pro-life and pro-choice supporters in the government often used the same frames but backed them up with contrasting motivations and concerns. Pro-life supporters were concerned with providing some degree of fetal protection and saw C-43 as the best they could offer at this time because the legislation would still consider abortion as a criminal act except in health circumstances. The pro-choice side justified C-43 as a means of ensuring safe, legal abortion access to women within a stable federal framework. It was difficult for legislation to simultaneously provide adequate protection for the fetus and guarantee adequate access to abortion for women.

Another confusion inherent in the frames being used also refers to "balance", as it was used to justify C-43 in multiple ways. More specifically, as seen earlier in the chapter, speakers emphasized they were seeking to achieve a balance between women's rights and the societal interest in fetus *as well as* achieving a constitutional balance *as well as* balancing both sides (pro-life and pro-choice) of the issue. The multiple aspects of "balance" thus creates multiple avenues

for that balance to be challenged: that it inadequately balances the woman vis-à-vis the fetus, that it is unconstitutional, or that it is too pro-life or too pro-choice.

After the failure of C-43, the government did not pick up the issue again, as Mulroney had indicated during the debates on the legislation. As one interviewee noted, "I do think that our attempt at legislating and its failure kind of took the steam out of it legislatively…it was sort of already a settled issue. There weren't any coals to rake over the fan . … We'd done our best. We tried to re-legislate" (Confidential Interview). Other concerns, moreover, occupied the government, including Mulroney's declining popularity and decision to resign, kicking off a leadership race that saw former Justice Minister Kim Campbell become PC leader and Prime Minister. Calling an election, Campbell's PCs were decimated as the conservative vote was split between the PCs, the rising Reform Party from western Canada, and the nationalist Bloc Quebecois. The Liberals under Jean Chretien won a majority government in the 1993 election. Their 13 years in power under Chretien and, more briefly, under Paul Martin, is discussed in the next chapter.

Chapter 8: An Uneasy Co-Existence: Conscience and Wedge Approaches to Abortion in the Liberal Governments of Chrétien and Martin, 1993-2006

Although abortion did not remain on the legislative agenda of subsequent federal governments following the failure of C-43, it remained a contentious issue both internationally and in Canada. This was in large part due to the ongoing activism on both sides of the issue. Political actors were less enthused about continuing the debate in parliament, however. During the 1990s, the Jean Chrétien Liberal government framed abortion was a no-win issue that should be avoided as much as possible and, closely linked to that, characterized it as a moral, conscience issue that should be handled in a more hands off approach. However, with the Progressive Conservative (PC) party having been reduced to a mere two seats in the 1993 election and the rise of the more right-wing Reform Party, abortion became an increasingly attractive political weapon and wedge issue that could be used against their opponents. When the Reform Party morphed into the Canadian Alliance and elected known social conservative politician Stockwell Day as leader, the Chrétien Liberals used socially conservative issues – including, and often prominently, abortion – as a weapon against the Alliance in the 2000 election. This trend continued under Paul Martin's government, notably in the 2004 and 2006 elections, where abortion as a "Charter right" was an important component within the "hidden agenda" messaging that the Liberals lobbed against the new Conservative Party of Canada (CPC), which had formed from the merger of the PCs and the Alliance.

This chapter presents the evolution in discourse and action, emphasizing the uneasy co-existence between an ongoing largely conscience-based approach to caucus and parliament on abortion and the increasingly prominent use of abortion (among other socially conservative issues) as a wedge and weapon during federal elections. Within these sections, (de)politicising

procedures and discourse are highlighted, demonstrating the awkward and often contradictory stories and actions playing out in the government's management of the issue.

The chapter is organized into three main parts. The first section provides the historical background. It begins by outlining the Liberals handling of abortion when in opposition from 1984-1993 to establish context. This demonstrates that the tension between a conscience approach and using abortion as a political wedge did not spring out of nowhere in the 2000, 2004 and 2006 elections, but was present to some degree at least a decade beforehand. Subsequently, an overview of the Chrétien Liberal government from 1993-2003 and then the Martin government from 2003-2006 highlights abortion's emergence as a political weapon within the election campaigns from 2000-2006.

Parts two and three first analyse the procedural (de)politicisation present in this period, followed by the discursive (de)politicisation. In brief, the analysis argues that the "conscience approach" allowed governments to depoliticise abortion by deferring responsibility to individual MPs for their own beliefs and manage a divided caucus and divided populace. Although this approach did remain somewhat in place throughout the 1993-2006 time frame when *in parliament*, the Liberal party diverged in terms of *election*-related approaches. More specifically, the party amended their constitution to more strongly control the nomination of candidates to run in elections, which served to politicise the issue, but also had long-term effects of tamping down controversy in the long-term. Also, beginning in the 2000 election and continuing through the 2004 and 2006 elections, the Liberal government used abortion in these federal elections as a wedge against conservative parties, which also politicises it, putting the issue into the public and political discourse and using it as a campaign issue.

In contrast to previous chapters, this chapter draws on a larger number of interviews, specifically interviews with nine Liberals, including those who served in backbencher and ministerial roles, as well as advisors and strategists involved in the PMO under Chrétien and/or Martin. The Hansard analysis is more limited in this chapter because abortion was much less prominent in terms of government-discourse in parliament. While there is less Hansard content here to consider compared to other chapters, this remains a fascinating and significant period in the evolution of the Canadian abortion issue. This is owed to the co-existence of the conscience and wedge approaches and the contradictory narratives involved in both. Another interesting aspect is that much of the discourse involving the weaponization of abortion occurred within election campaigns. Media coverage, thus, serves as an important repository of abortion discourse, politics and policy during these periods. As described in chapter 4, media searches serve to corroborate the interviewees' recollections of the period that were integral to this chapter.

8.1 Historical Overview

To understand how the Liberal governments under Jean Chrétien and Paul Martin approached abortion, a brief overview of the party's approach to abortion while in opposition is needed, first under Turner and then Chrétien prior to the 1993 election. Then, an overview of the 1993-2006 period of the Liberal government and federal abortion politics is provided, as visually depicted in Figure 12. The mandates of Chrétien's governments are dealt with in two subsections, with the first covering the 35th and 36th parliaments, spanning from 1993-2000. In this time, abortion has limited discussion in Parliament, although there is ongoing agitation from social movement activists outside of Parliament. In the second subsection, the 2000 election and subsequent 37th parliament are reviewed, which feature the beginnings of the use of abortion as a wedge issue and the use of the Charter framing in the Liberal's campaign rhetoric. Finally, Paul

Martin and the 38th parliament is then addressed, reviewing the increasing use of abortion as a wedge issue in the 2004 and 2006 elections.

8.1.1 The 1990 Liberal Leadership and Chrétien in Opposition

As noted in the previous chapter, John Turner, who succeeded P.E. Trudeau as Liberal Leader, only enjoyed a brief tenure as Prime Minister before calling the 1984 election that yielded a Liberal loss to Mulroney's PCs. Turner stayed on as party leader and as Leader of the Official Opposition and took the party into the 1988 federal election. After the Mulroney PCs won a second majority mandate, Turner stepped down as Liberal leader officially in May 1989, with the race to replace him culminating at the leadership convention on June 23, 1990. Thanks to the recent SCC Morgentaler decision and the Mulroney PCs' ongoing efforts to find a workable policy solution (see Chapter 7), Liberal leadership candidates had to contend with and position themselves on abortion, even if not a high priority item for most candidates. This was further compounded with avowedly pro-life candidates running for leader, including Tom Wappel and John Nunziata.[104] Though both Nunziata and Wappel eschewed a "one issue candidate" characterization of their campaigns (Delacourt, 1990; Howard, 1990c), their candidacy led to concern from some regarding the "successful penetration into the party by the anti-abortion cause" (Howard, 1990b). The leadership race was an aggravating factor for this, as leadership candidates typically draw in new members to support them, with Nunziata and Wappel garnering pro-life support from new and existing members (Delacourt, 1989d).

[104] Tom Wappel, a recently elected Toronto-area MP, was the first candidate to declare himself. His platform included "respect for life" as one of its pillars, and he wanted, as quoted in the media, "to see our party discuss the issue of human life and discuss the solutions to the problems that abortion raises" (Delacourt, 1989e).

Figure 12: Timeline of Abortion Related Events, 1993-2006



The efforts of a pro-life organization called Liberals for Life[105] were visible in the recruitment of pro-life delegates for the convention and they officially endorsed Wappel, who put the issue more "up-front" than Nunziata (Delacourt, 1989d). A member of the Jean Chrétien campaign called pro-lifers a "formidable force" in the race and in caucus, noting that "it was significant, there was a constituency. I would say about a third of the Liberal caucus at that point did not favour a woman's right to choose" (Confidential Interview). On the other hand, another Liberal strategist of the era reflected that he "wouldn't say that they were a formidable organizational force," but acknowledged that pro-lifers and Liberals for Life specifically did have "a base of strength in the party" and "were reasonably well organized" (Confidential Interview). The interviewee went on to describe how the pro-life movement "had basically floated a candidacy [Wappel] and turned it from a … complete footnote into something you had to take a little bit seriously" (Confidential Interview).

As described by journalist Susan Delacourt, a few months out from the party convention, "most of the candidates' organizations are now estimating that these one-issue crusaders [pro-lifers] will number between 200 and 300 at the convention – not a make-or-break voting block among the 5,200 Liberals eligible to cast ballots, but definitely a visible force in the race" (Delacourt, 1989d). The reporting indicated that the presence of such activists was felt cross-country and particular ridings targeted, although Liberals for Life specifically was mainly active in the Toronto region (Delacourt, 1989d). Jean Chrétien, who would emerge as the victor of the

[105] Investigation of Liberals for Life is limited but Delacourt's reporting describes the organization as having a "shoestring operation" with only one paid staff and a 6 person national executive (Delacourt, 1989e). Despite its appearance during the 1990 leadership race, Liberals for Life seems to have waned quite quickly. A pro-life Liberal interviewee involved in politics during the 1990s did not recall anything called Liberals for Life, noting instead the work of Campaign Life Coalition (Confidential Interview). Another interviewee, also active in politics in the 1990s and early 2000s, also recalled "zero" influence of Liberals for Life following the Leadership race (Confidential Interview). Further research on Liberals for Life is needed to assess its involvement and influence in Liberal politics, but this is beyond this dissertation's scope.

race, was on record as indicating his concern with the "one-issue delegates" that "become instant Liberals" and might "destroy" riding associations in the process (Howard, 1990b).

Jean Chrétien and Paul Martin were the frontrunners of the leadership race, with Sheila Copps, as the first woman to run for the party leadership, also a prominent candidate. Although contrasted strongly against Wappel and Nunziata, who were the "anti-abortion" candidates, Chrétien, Martin, and Copps' positions on abortion – when mentioned - were significantly milder than what they would use in the future. For instance, during a Saskatoon debate, Martin indicated that "although he personally opposes abortion, he said, women will seek access to them and 'the issue is whether it be in clean and safe circumstances in hospitals, or back alleys.' He advocates no criminal prohibitions on abortion" (Howard, 1990a). Copps, meanwhile, was described as supporting a law that would "allow access early in pregnancy but prohibit it in later stages" (Howard, 1990a).[106]

Chrétien easily won the leadership on the first ballot with 2652 votes, followed by Martin with 1176, Copps with 499, Wappel with 267 and Nunziata trailing with 64 (Curran, 1990). There had been apprehension expressed within the party, as recounted both in the news media (Howard, 1990b) as well as by several interviewees, about where Copps would finish relative to Wappel. As the first female candidate to run for the party leadership, party members were concerned how it would appear were she to finish behind the "anti-abortion" candidate. Although the news article indicated there were no official plans from front-runners Chrétien and Martin to provide Copps with support, other party members noted an interest in ensuring that Wappel would not finish ahead of Copps (Howard, 1990b). As reported, "At this point, neither Ms Copps nor Mr. Wappel is considered likely to win the leadership race, but a third-place showing has symbolic values,

[106] Chrétien was absent from this Saskatoon debate.

particularly if it falls to the anti-abortion rather than the feminist cause" (Howard, 1990b). The real possibility of Wappel finishing third is indicated by an interviewee with connections to the Wappel campaign who stated that, during the convention, Sergio Marchi, "an MP who was sort of like a bulldog for Chrétien, came to our team and said that he had us in a solid third place. What did we want in order to support Chrétien on the second ballot if it went to the second ballot?" (Confidential Interview).[107] Interviewees involved with the Martin and Chrétien campaigns confirmed that delegates from both camps were sent to support Copps to ensure a third-place finish (Confidential Interviews). As a party strategist described, "Nobody wanted the optics of the female candidate losing to the pro-life candidate" (Confidential Interview).

Although having pro-life leadership candidates helped keep the abortion issue relevant within the party, the long-term effects may have been less helpful for the pro-life cause. As discussed by a party strategist, the effect of Tom Wappel's bid for leader may have "marginalized the pro-life movement in the [Liberal] party" as pro-lifers had, "gathered around an extremist candidate. And so I think in doing that, they kind of delegitimized themselves a bit. And the idea…. became delegitimized a little bit" (Confidential Interview).

Having won the leadership, Chrétien became Leader of the Opposition from 1990 up to the 1993 election. Abortion was not a "big live issue" during this time, according to an interviewee, other than some "eruptions in caucus with some idiot. But those were obviously managed" (Confidential Interview). One party strategist commented that the issue was most prominent not in the "public discourse" but as "a real twilight backroom struggle that occasionally would pop out of the open in nasty nomination fights … when Liberals for Life would say that

[107] The main candidates had eschewed the possibility of making deals with a group like Liberals for Life earlier in the campaign, at least in terms of their statements to the media and at least on the issue of abortion itself (Delacourt, 1989e).

they're being victimized or, or what have you. So that's sort of the arena in which abortion politics played in the Liberal Party" (Confidential Interview). Overall, as another party strategist remarked, the "goal was not to have the debate come back, because it was inherently extremely divisive. And…I think it's fair to say that for a lot of folks active in Liberal politics, the abortion issue wasn't at the heart of why they were in politics" (Confidential Interview).

Moving into the 1993 election campaign, Chrétien faced off against Kim Campbell, who had just recently succeeded Mulroney as PC leader and Prime Minister. Although abortion was certainly not the issue it had been in 1988, it did come up within the 1993 campaign, but in mainly indirect ways[108]: for one, discussions of Kim Campbell's leadership usually included her views on abortion and her prior responsibility for C-43 (Cernetig, 1993; Howard, 1993; Sallot, 1993; Wilson, 1993; Winsor, 1993).[109] Instead, most of the abortion-related media coverage focused on issues with nominations in the lead-up to the election, where there were reports of interest from some Liberals interested in overriding the nominations of "single-issue" pro-life candidates or groups like Liberals for Life who were "hijacking" nominations and riding associations (Makin, 1993; Roberts, 1993). NDP leader McLaughlin also accused the Liberals of inadequately blocking the efforts of pro-life Liberals (Canadian Press, 1993). Halfmann's (2011) comparative study[110] also notes the issue of Liberals for Life seeking party nominations in 20% of ridings during the 1993 election (p. 142). Despite some within the party advising a "disavowal" of such activists, Halfmann describes how "Chrétien did not take this advice, instead simply saying that although

[108] More direct approaches to abortion during the campaign came from the NDP, who, under leader Audrey McLaughlin, contrasted their strongly pro-choice position with the other parties, asking, "'Do Liberals have a pro-choice policy or not? Mr. Chrétien should come clean on where they really stand on that and many other issues'" (Canadian Press, 1993).

[109] Chrétien's position is less clearly articulated, with Chrétien more likely to refer to abortion in reference to other issues such as free trade, which the Liberal leader referred to as "similar to moral issues such as abortion and capital punishment when a politician can ignore the wishes of his constituents" (York, 1993).

[110] His analysis of the nomination concerns draws on Toronto Star coverage to discuss the Liberal response (Halfmann, 2011).

he did not intend to introduce abortion legislation, the party had promised more power to backbench MPs and, as a result, Parliament would eventually vote on the issue" (Halfmann, 2011, p. 142). Chrétien then backed away from this, insisting that there was no plan to legislate (Halfmann, 2011, p. 143).

Overall, however, abortion not a "big issue" in the 1993 national campaign,[111] as described by an interviewee within the Chrétien war room (Confidential Interview). In part, this may have been due to other parties having similar views on abortion. As this interviewee noted, "I think we were assisted in that regard by Kim Campbell becoming the leader, because her position had always been favouring choice. Manning [Reform Party leader], of course was anti-choice. The NDP was with us. The Bloc Quebecois was with us. So it was really Manning was kind of off on his own" (Confidential Interview).

8.1.2 Civil Society Agitation but Minimal Parliamentary Debate on Abortion Under the Chrétien Government

The 1993 election results created a dramatically different 35th Parliament. The Liberals formed a majority government, Kim Campbell's PCs were decimated and the NDP shriveled alongside the rise of two regional parties: the Reform Party (based in Western Canada) and Bloc Quebecois, with the Bloc serving as Official Opposition.[112] Not only did this create new challenges for the operation of parliament, both for the government and the opposition, as it "was no longer the three-party system. It was like five parties, which caused them a lot of problems too" (Confidential Interview). It also meant that two thirds of the MPs elected in 1993 were

[111] Individual candidates also had to deal with the issue at the local level, facing questions and challenges from constituents (Confidential Interview).

[112] The PCs went from 169 elected in 1988 to only 2 elected in 1993, with even leader and Prime Minister Kim Campbell failing to win back her seat. The NDP had also been reduced from 43 to only 9 seats, the Reform Party had surged with 52 seats as did the Bloc Québecois. This resulted in the novelty of having the Bloc serve as the Official Opposition, with the party bound to one geographical location and advocating Quebec separatism, rather than enjoying a national base of support (Library of Parliament Election Profile, 1993; Library of Parliament Election Profile, 1988).

"rookies," without any prior parliamentary experience.[113] Caucus management, therefore, was important to Liberal government functionality, with an interviewee elected in this cohort describing how the huge influx of new Liberal MPs new members made it more challenging for Chrétien and his team to balance the party's "absolutely huge tent" between the red and blue Liberals (Confidential Interview). These newly elected MPs were told to "just be a good little boy. Take it easy for six months, learn the ropes and everything" (Confidential Interview).

As for the 1993 national election campaign, abortion was not a prominent concern for the government,[114] with interviewees noting the focus on national unity issues and economic concerns, as well as the significance of the same-sex marriage issue (Confidential Interviews). Abortion did remain in the news, however, thanks to the efforts of social movements and advocates. Dr. Morgentaler, for instance, continued to open clinics in other provinces to challenge provincial restrictions on clinics or funding. In the 1990s these battles were mainly in the Maritimes (Canadian Press, 1994a, 1994b, 1994c). Additionally, violence directed towards U.S. doctors providing abortions made headlines, leading to concerns that such violence might arise in Canada (Mitchell, 1993). Sniper attacks did target abortion providers in Canada, including Dr. Gary Romalis of Vancouver, which continued to raise fears over the safety of abortion providers and the radicalization of pro-lifers (Matas & Cernetig, 1994; The Globe and Mail 1994a, 1994b, 1994c, 1995).[115] Some bans on pro-life demonstrations at clinics were enacted, particularly in

[113] One interviewee called this group the "Class of '93" (Confidential Interview) and another remarked that "there's 295 [sitting MPs at that time] in the House of Commons. There was 90 of that re-elected. So there's 205 of us didn't know where the washrooms were" (Confidential Interview).

[114] For instance, no importance was given to the abortion issue in biographies and autobiographies from Chrétien and Martin (Chretién, 2007; Lawrence, 1995, 2003; Martin, 2008). This can be contrasted to P.E. Trudeau and John Turner (Litt, 2011; Mills, 2016; Trudeau, 1998). Interviewees also noted how the focus was on national unity issues and economic concerns, as well as the significance of same-sex marriage, and point to abortion as a lesser priority or non-priority for government (Confidential Interviews).

[115] An American who committed similar attacks in the U.S. and was prosecuted there was also charged with one Canadian shooting and suspected of the two others (CBC News, 2007).

Ontario (Breckenridge, 1995a; Mickleburgh, 1993). These issues sometimes filtered into Parliament but received minimal attention from the government, except perhaps an occasional response during Question Period.

PMB relating to abortion was also minimal, with only a few going to debate. Some such PMB were proposed by Liberals but those that received debate were from Reform MPs. These Reform PMB intersected with democratic reform measures, such as Garry Breitkreuz's 1996 motion to hold a national referendum concerning "federal government funding for abortions on demand" (35th Parliament, 2nd Session, Vol. 134, No. 050, May 27 1996).

Overall, as indicated by an interviewee and party strategist, the abortion issue had:

> largely stabilized by about '97…. because the court-parliament dialogue had produced an uneasy equilibrium. But inside the Liberal Party, there was a movement among some activists, like at the grassroots level, and some parliamentarians, to revisit the parliamentary side of the dialogue…with the court. So they wanted to reopen the issue in…the legislative milieu (Confidential Interview).

In the 1997 federal election, abortion featured only minorly in media coverage. Pro-life activists were still, according to media reports, campaigning for pro-life candidates during the election to some degree.[116] The abortion issue was also raised somewhat when discussing the Reform Party, which was generally seen as more socially conservative and whose policy would allow for citizens to initiate national referendums on issues of great importance, including abortion (Sallot, 1997).

8.1.3 The Rise of the Wedge in Chrétien's Government: The 2000 Federal Election, the Canadian Alliance, and the Spectre of Social Conservativism

Prior to the 2000 federal election, the Reform Party recreated itself as the Canadian Alliance with the aim of broadening their base of support from Western Canada and becoming a

[116] Reporting on the removal of third-party spending limits on election advertising included mention that pro-life groups were planning to purchase ads in support of pro-life candidates, alongside other lobby and interest groups campaigning for or against parties or individuals (Howard, 1997).

pan-Canadian party. Stockwell Day won the leadership race against former leader Preston Manning earlier in the year and took over as Leader of the Official Opposition. Day had been a cabinet minister in the Alberta government and, contrasted with Chrétien, was seen as more appealing. Former Chrétien strategist Warren Kinsella describes how Liberals became concerned that Day's "loony flat-tax idea, plus his law-and-order proposals – along with his youthful, athletic media image – were winning him some voter support, even among women. So those of us doing oppo[117] in the Grit war room made certain that Canadians, particularly Canadian women, had all the facts" (Kinsella, 2007, p. 49). These facts included highlighting Day's positions on abortion and other issues.[118] As the media reported, party strategists wanted to "define Mr. Day as an extremist before he has time to define himself for the electorate" (McIlroy, 2000b).

Although Day repeatedly "insisted that the party is not planning to reopen the abortion debate. 'Abortion is not even on the platform', he said," the party policy that citizens could trigger referenda on such issues left the Alliance open to critique (Ibbitson & Scoffield, 2000). A leaked internal party handbook indicated that petitions meeting a 3% of Canadians threshold would be sufficient for such referenda, which opened another line of attack on the Alliance who faced repeated questions (McCarthy & Laghi, 2000). This was used against the Alliance by their opponents. As reported by the media, "'Do you want a referendum on abortion,' a hoarse Mr. Chrétien asked the crowd in Hamilton yesterday. 'No,' they shouted back. Liberals have been thrilled to see Mr. Day on the abortion issue, believing it could prove fatal for the Alliance with many women voters" (Adams & McCarthy, 2000).

[117] "Oppo" refers to opposition research, which is information collected by political parties on their opposition or opponents, which then can be used against them.

[118] Memorably, Kinsella mocked Day's views on creationism on CTV's Canada AM show by quipping that, in response to creationists thinking that humans co-existed with dinosaurs, "The Flintstones was not a documentary" and waving about a stuffed Barney toy as an example of "the only dinosaur that recently co-existed with humans" (Kinsella, 2007, p. 143).

A "hidden agenda" was repeatedly referred to during the election (Nolen, 2000a, 2000b). Although not the only issue included in the "hidden agenda" accusations, it was prominent. Additionally, the fact that it was linked to other issues and frequently referenced both in the media and by politicians, allowed the issue, itself, to serve as a broader symbol with which to brand the Alliance party. The attacks appeared to be effective, with a mid-campaign poll reflecting that "Nearly half of the people polled said they fear the party [Alliance] has a hidden agenda" (Adams, 2000c).[119] As the strategist in Chrétien's office noted, their strategy was "informing people about who this guy [Stockwell Day] really was. And so, … some of the main drivers of opinion were his willingness to use his religion to form policy,. … his privatization of health care, and third was abortion. … [E]qual marriage was in mix and gun control was in the mix, but those - the three big ones: healthcare, abortion, and religion - that's how we beat him" (Confidential Interview).

8.1.4 A Continued Shift to the Left under Martin's Government and Sharpening the Wedge in the 2004 and 2006 Federal Elections

By the time Martin took over as Liberal leader and Prime Minister, the party had become increasingly pro-choice and much more comfortable framing abortion as a Charter right and a woman's right. The Liberals' continued left turn was, according to an interviewee, more pronounced under Martin thanks in part to his "key advisors… [who] were more left-wing people, less balanced than Chrétien's" (Confidential Interview). The rising number of women in caucus was also pointed to as part of the change within the Liberal party, as was the influence of the

[119] Following the election, coverage noted the challenges the Alliance had faced with the "hidden agenda" charge, with Day "frequently put on the defensive, explaining his party's policy on key issues such as abortion" (McCarthy, 2000). Day, himself, "told reporters in an election postmortem yesterday that the next four years will give him the time he needs to dispel the Liberal claims the party would impose a hidden agenda" (Laghi, 2000b). Coverage also noted party discussions on the need to prevent future campaigns being derailed on such issues (Laghi, 2000c; Mahoney, 2000).

women's caucus within the Liberal party, which held stronger pro-choice views (Confidential Interviews).

This shift, combined with the rise of the Reform Party, Alliance Party and subsequent merger of the Alliance with the PCs into the CPC, offered an opportunity for abortion and social conservative issues broadly to be used as a wedge against the Conservatives, who were now more divided than the Liberals on such issues. As a Liberal interviewee commented, "we knew what our success was over the years, which was the fact that the conservative - the other side of the House was divided. So because they were divided, we were able to be the one party that united across many different opinions" (Confidential Interview). Accordingly, because the merger of the conservative parties "gave them [the CPCs] the opportunity to be the alternative that the Progressive Conservatives were formerly under Brian Mulroney," (Confidential Interview), the Liberals would need to exploit any cracks that might exist within a now more formidable, united foe.

As Chrétien's team had done following Stockwell Day's leadership election to the Alliance, Martin's team immediately began to position Stephen Harper as "right-wing"[120] following his election as leader of the new CPCs (Laghi & Walton, 2004). As will be discussed further in chapter 9, the new party was pushed off message thanks to statements made by some candidates/MPs that brought issues like abortion back into discussion; this was compounded by Harper indicating that, although a CPC government would not introduce legislation on abortion, they would not prevent backbenchers from doing so with PMB (Chase, Lunman, & Fagan, 2004; Clark, 2004; Laghi, 2004b).

[120] Former PC leader Joe Clark did not help such a characterization, accusing Harper of a "hidden agenda" and indicating that he would "prefer to support Prime Minister Paul Martin – the 'devil' he knows – over Mr. Harper" (Laghi, 2004a).

Notably, in this election, the Liberals released attack ads that alleged a CPC "hidden agenda", including abortion within this. A Liberal strategist noted that, in the face of polls indicating the Liberals were "going to lose the election", that their "task was to educate people on what their positions were on things so that they could make a more informed comparison between two parties. And so, that culminated in what, certainly up to that point in time, was the most hard-hitting negative ad ever run in Canadian politics" (Confidential Interview). The attack ads targeted Harper on a range of issues including Iraq, gun control, the Kyoto Accord and health care, but also indicated that Harper "won't protect a woman's right to choose".[121] As described by a Liberal strategist,

> The theory behind that ad was that we were going to start pulling people back from the Conservatives based on their values differences with the Conservatives and that we were going to start with women. And so that ad was fundamentally geared around issues that would make women realize what they did not have in common with Harper. And so abortion was very, very much part of that because that party was fairly explicitly pro-life (Confidential Interview).

The approach was not universally supported within the campaign team, because not only were negative attack ads uncomfortable for some, but the inclusion of abortion was also controversial, resulting in "a real fight to get that ad on the air" (Confidential Interview). Some thought the ad went too far and might backfire on them and others argued against the use of abortion as a wedge issue, because "that's just not an issue we do that on, right? And there's lots of Liberals who disagree with you on that, and we shouldn't be making that a wedge issue" (Confidential Interview). A female spokesperson for the party even refused to defend the ad because of the abortion content (Confidential Interview).

[121] Descriptions of the ads can also be found in news coverage, for instance (see CBC News, 2004). Election ads can be viewed on Youtube (see Liberal Party of Canada, 2004).

Despite these concerns, however, the ad was seen as highly effective. An interviewee described how the ads including abortion "went on TV hard for the last weekend of the campaign and it went through the Conservative vote like acid. And we [the Liberals] ended up with 103 seats … because the women's vote for the Conservatives just melted in the last weekend" (Confidential Interview). Of course, the focus on abortion was not universally appreciated by all Liberals, causing "real consternation amongst Liberals who were pro-life" (Confidential Interview). A pro-life backbencher referred to the use of abortion as a wedge issue as "desperate times calls for desperate measures. Paul [Martin] was desperate, he knew he was going to lose" (Confidential Interview).

The Liberals were able to pull through and win a minority government but, despite the pro-choice rhetoric of the 2004 election campaign, once Parliament was sitting, it was business as usual according to interviewees. For one, abortion was not a focus; in terms of social issues, the concern for both Liberals and the CPC was the issue of same-sex marriage. One interviewee in the PMO at that time noted that, "I recall zero about abortion. The whole thing was same-sex marriage by that point" (Confidential Interview).[122]

In the 2006 election, the Martin Liberals were again facing the possibility of a loss. Abortion, alongside the broader hidden agenda narrative, played a role in Liberal attempts to emphasize value-differences between the parties. While the attacks were somewhat successful in hurting the Conservatives, the results were not quite what the Liberals had intended. As a strategist recalls, due to the sponsorship scandal and the income trust scandal that dogged the election and the Liberals' credibility, "for every two votes that the Liberal attacks shook loose from the Conservatives, one of them went to the NDP" (Confidential Interview). In the end, the

[122] This was also, in part, due to the focus from social conservatives on same-sex marriage rather than abortion (Confidential Interviews).

Liberals were unable to repeat their coming-from-behind victory of 2004, losing to the Conservatives, who formed a minority government with 124 seats to the Liberals 103.

8.2 Procedural (De)politicisation: Caucus Management and Electoral Strategies

Having reviewed the history of this period, we now examine the government's management of abortion, highlighting the dual – and often contradictory – approaches to abortion taken by the Liberal governments of Chrétien and Martin. While the next section, 8.3, analyses the discourse accompanying these approaches, this section discusses the concrete actions taken. First, the use of the "conscience approach", to borrow the term used by interviewees, continued to defer responsibility to individual MPs to vote and represent their own beliefs (***spatial depoliticisation***). This functioned as an important way of managing a caucus that was divided on abortion, and/or that found themselves representing ridings that were divided. This approach – and its evolution – is discussed over the Chrétien years (1993-2003) and then during Martin's leadership (2003-2006).

A procedural mode of ***politicisation*** intended to address party and caucus cohesion involved changes made to increase party leaders' control over candidacy nominations; this is not entirely focused on abortion, but concerns with avoiding having riding associations "captured" by single interest groups like Liberals for Life and avoiding "candidate eruptions" on issues like abortion was clearly part of the calculus in making the changes. While making changes to the party's constitution to exert further control and discretion over who could become nominated as a candidate for the party is a clear sign of ***politicisation***, the intention was to tamp down controversy and conflict over the long-term, resulting in ***capacity depoliticisation***. In the short-term however, these changes spurred conflict and ***repoliticisation*** from those who saw such changes as ongoing executive encroachment over grassroots political organizing. Finally, the use

of abortion in election campaigns as a wedge issue is discussed from the procedural (de)politicisation standpoint, emphasizing how this choice to adopt abortion as a symbolic issue within their discourse provided not only discursive politicisation (as discussed in 8.3) but also a ***spatial procedural politicisation***. These actions are summarized in Table 10, below.

Table 10: Procedural (De)Politicisation, 1993-2006

Procedural politicisation		
Types of procedural politicisation	*Elements that feed the types of politicisation*	
Capacity	- Increased control over nominations through party constitution changes - "Squeeze out" pro-life candidates; appoint women candidates	
Spatial	- Use of abortion as wedge issue against Alliance and CPCs	
Temporal	N/A	
Procedural depoliticisation		**Repoliticising/boomerang effect**
Types of procedural depoliticisation	*Elements that feed the types of depoliticisation*	
Capacity	- Limit capture of riding associations by single-issue candidates like Liberals for Life	- Creates conflict over concerns with executive encroachment over grassroots
Spatial	- Conscience approach and free votes on conscience issues - PMB treated as separate from caucus affairs	- Allows MPs to take on strong positions, creating new conflict over their advocacy
Temporal	N/A	N/A

8.2.1 Depoliticisation through the Conscience Approach to Caucus Management

Maintaining a "conscience approach" to abortion within the Liberal Party and within Parliament was emphasized by interviewees on both sides of the issue and from those with backbench and leadership positions. This involved not only allowing MPs to vote their conscience on the abortion issue (free votes), which emerged periodically during PMB, but also allowing PMB on abortion to be introduced by their own members. This continued to ***spatially depoliticise*** abortion, deferring responsibility to individual members for their positions and voting decisions.

This was in continuity with the approach under party leader John Turner, who maintained an approach of conscience votes on moral issue, with an interviewee who served under him stating, "For John Turner, this was always a free vote. Completely. John Turner never, never tried to influence anybody on that issue. … This was an issue of conscience" (Confidential Interview). The issue did come up under Turner's tenure as leader within caucus, with MPs advocating positions on both sides of the issue, said the interviewee, but "Mr. Turner would have never … even described his own position, as far as I can remember" (Confidential Interview).

In terms of how the issue was handled when it emerged in Parliament under the governments of Chrétien and Martin, Liberal interviewees emphasized that conscience votes were allowed on issues like abortion. One former MP stated, "I can say that both Jean [Chrétien] and Paul [Martin] maintained the position, as far as I can recall it, that members of parliament could vote their … consciences on moral issues" (Confidential Interview). This MP reflected that he was able to bring from abortion-related PMB under both leaders:

> nor was I ever … punished by removal from committees or chairmanships or anything like that, for bringing forward private member's bills that raised the subject of abortion. Whether they went anywhere or not is another matter. … I didn't get a call from the Prime Minister or his lackies saying, "Under no circumstances are you to bring forward any legislation that brings up the issue of abortion, or you will be cast into the fires of the backbench." No, nothing like that. (Confidential Interview)

Another backbencher described Chrétien as "a great believer in the rights of individual MPs to have their views on things" (Confidential Interview). The approach, recounted the interviewee, was fairly hands off:

> the main feeling was that … this thing's an emotionally loaded issue, there's strong feelings both ways, we respect your right to have your position on it, we respect your right as an MP to speak out either way on this issue. Don't be looking for the government to tackle the issue of abortion (Confidential Interview).

As described in previous chapters, this approach shifts responsibility from the party and government to individual MPs, serving as ***spatial depoliticisation***. PMB, at that time, was not as closely scrutinized by the executive as well, and thus PMB served as another means of pushing the issue out of the government sphere of responsibility. As an interviewee noted, PMB "were not discussed in caucus. That's a rather recent thing" (Confidential Interview).[123]

Interviewees connected the continuation of a conscience approach with several factors, including Chrétien's – and later Martin's – own conflicted views on abortion. Interviewees, for instance, noted how Chrétien, himself, struggled personally with his views on the issue, which. One of Chrétien advisors describes Chrétien's "journey that he had made as a person and as a politician" as they ironed out his policy on abortion for his 1989-1990 leadership bid:

> And what was interesting about Chrétien was that he came from a small town, pretty devout Roman Catholic background. So … he was not, at the outset of his career, pro-choice – he just was not. And so, in that period in '88, '89, we sat down with him. And I think the thing that really persuaded him . … was the Law Reform Commission Report.[124] You know, kind of the delineation of trimesters and so on. And when he saw that . … he found that attractive from the perspective of the law (Confidential Interview).

Another interviewee, who served as an MP under Chrétien, recalled that in a private setting, "if we were invited to dinner at the prime minister's house or something, he would jocularly say, 'You know, my initials are JC [i.e., Jean Chrétien having the same initials as Jesus

[123] For this interviewee, it was only after Svend Robinson's (NDP) PMB motion went very badly that parties began adopting a practice where, "from here on . … private members bills, you bring them to caucus and see if we can live with this thing because you're embarrassing the rest of us, even though it's a private member's issue" (Confidential Interview).

[124] The Law Reform Commission of Canada was created as an independent body in 1971 to study and propose reforms to Canadian criminal law (Law Reform Commission of Canada, 1989, p. 1). In 1989, they published a working paper entitled "Crime Against the Foetus", in which the majority opinion proposed Criminal Code changes that would clarify legal protections of the fetus but provide exceptions for "lawful" abortion when "medically authorized": "(a) before the foetus is capable of independent survival, to protect her [the mother's] physical or psychological health; (b) to save the woman's life or to protect her against serious physical injury; or (c) because the foetus is suffering from a malformation or disability of such severity that medical treatment could be legally withheld upon its birth" (Law Reform Commission of Canada, 1989, pp. 53–54). The interviewee, as such, is likely referring to exception (a), where viability serves as a marker to restrict or allow abortion.

Christ], I'm the 13th child. If my mother had an abortion, I wouldn't be the Prime Minister today, you know' – this kind of thing, behind closed doors and quietly" (Confidential Interview). Another interviewee stated, "Chrétien's view was that he wouldn't want his wife to have one, but it wasn't his business to tell anyone what their choice would be" (Confidential Interview). This distinction between personal and policy decisions was also noted by another Liberal interviewee, who stated that,

> For Jean Chrétien, I think, the distinction was how he felt about it personally and what was right to do as a public policy - it wasn't the same thing. He may have, personally, as a matter of conscience, hoped that he never had to deal with abortion in his own family or anything like that. Fine. But he could not impose that on society. I think that's the distinction for him (Confidential Interview).

As with Chrétien, Paul Martin, was known as a practicing, church-going Catholic. Interviewees, both those on his team in the PMO as well as backbencher MPs who served under him, described a certain awkwardness that Martin faced on the issue due to his religious and personal beliefs. As a party insider indicated, Martin was a "devout Catholic - and a man. And so he struggled mightily with this issue" (Confidential Interview). Another interviewee agreed, noting that, "there were no right-to-life Liberals on Martin's [PMO] team. The closest was Martin himself, who as a believing Catholic, had qualms about politicising the abortion issue" (Confidential Interview). As such, "everybody understood that Martin was in an awkward position vis-à-vis his religious beliefs and the political approach that he knew the Liberal Party had to take" (Confidential Interview). His position, as described by interviewees, was "personally pro-life" but "pro-choice reluctantly" for pragmatic reasons:

> he was no question personally pro-life and that was just part of his ethos. On the other hand, he rationally knew that banning abortions didn't mean abortions didn't happen. And that women shouldn't be put in that position of having to seek the kind of alternatives they were seeking in order to terminate a pregnancy. So that was his position. And believe it or not, in 1989 that was a fairly progressive position, even though he could never answer

> the question in a debate or town hall context without first stating his sort of theological pro-life position…before arriving at a rational pro-choice position (Confidential Interview).

Likewise, as described an interviewee, Martin's discomfort with the issue was "a factor to be managed":

> Martin was foursquare for a formulation that says the state shouldn't get between a woman and her body; he had no problem with that. But he did not have an easy facility or comfort with the issue. And you can see it, you can see it – like, this was not a secret. Everybody understood that he wasn't comfortable with this one. (Confidential Interview).

The reality of a divided caucus was also linked to this need for a conscience approach by several interviewees. One interviewee described the party on abortion as having "no official Liberal Party position" with a caucus composed of both those strongly opposed to and strongly in favour of abortion rights, as well as everything in between (Confidential Interview). Therefore, according to this pro-life former MP, the Liberal leadership had to be "very careful because of the strong feelings in the caucus… And it was seen as – correctly – seen as a moral…issue, a matter of conscience for MPs" (Confidential Interview). An influx of more pro-life Liberal MPs in the 1993 election also contributed to this challenge, reported one interviewee, as "there would have been at least one quarter of the caucus that was very strongly pro-life. … That number grew to one third of the caucus if you included a few more MPs that were mostly pro-life but were not necessarily going to make an issue out of it or risk anything on their career when it came to a vote" (Confidential Interview). As another interviewee noted, the Liberal caucus went from predominantly urban to having a large rural component "full of people from Ontario and Atlantic Canada who should never have been in a Liberal caucus…. because the [Progressive] Conservative Party was so…weak that if you wanted to be an MP from Essex, you ran for the Liberal Party-even if you weren't really a Liberal (Confidential Interview). This, in turn, impacted the balance of pro-life voices in Parliament because there were "suddenly a lot of social

conservatives in the Liberal caucus, which was really a problem…So that by definition makes you a little less coherent ideologically and it prevented the party from ever exploiting the values differences between us and the Conservatives in an effective way" (Confidential Interview).

Regardless of the precise distribution of views on the issue, there was a mix within the party and within caucus. Likewise, Rayside, Sabin and Thomas (2017) note that, while pro-life Liberals were less likely to hold senior positions in these governments, "their caucus presence was a continuing brake on the Liberals developing an unequivocally pro-choice stance" (p. 78). Some pro-lifers from this period understood the issue as, "for individual candidates to have their own point of view on" and there were Liberals MPs "known as strongly pro-life, proudly pro-life, and the leadership had no position, no problem with that whatsoever" (Confidential Interview). Others, however, described the situation as less free and open, with the implicit message being understood as "don't bring in a bill. We don't need this issue. We don't need to wear it" (Confidential Interview).

And while some pro-life private members motions or bills did get put forward, a member of Chrétien' team described how this served as a sort of "trade off", where "you let them…make this pro forma private member's bill crap…but everybody would understand that it would go precisely nowhere" (Confidential Interview). Another interviewee noted that, regardless of free votes, party members would be in contact with their party Whip about how they planned to vote:

> then what the Whip would take and do is, if it was something that had to be passed, he would go to the opposition and say, 'Do you want to be sick that day?' You know, sort of thing so that the vote would pass. Or, 'Do you want to make sure that you're there?' So he would basically neutralize my vote one-on-one. So 9 times out of 10 . … that was tactics as to how that was handled." (Confidential Interview).

Overall, the governments displayed an aversion to the issue in parliament, with "keeping it away from the House of Commons was seen to be the principal motivation … whether you're

for it or against it. First, for the … centre right or centre left, it was a question of, … we could just leave it out right now despite how we feel about it personally" (Confidential Interview). More specifically, as the interviewee noted, there was a tension between these MPs' local situation and their Ottawa situation, particularly for those who were church-going Christians:

> That's what made a lot of backbenchers, both Conservative and Liberal, uneasy, because there were a lot of them that went to their local parish, church, whatever it may be, and talked about the fact that they believed in life in conception. … But when they got to Ottawa, they just didn't talk about it (Confidential Interview).

Overall, however, the policy for the Liberal government was still a conscience approach under Martin, but with the added emphasis that the government would not let pro-life legislation pass. As noted by a Liberal strategist, it was "clearly understood that the government's position was against any private member's bill on this. So highly unlikely it would pass in our situation [due to whipping cabinet]" (Confidential Interview). An MP from that era recalled that, "Paul Martin wasn't really that strict about it. I think, from what I recall, their attitude was okay, you can talk about the fact that you are, that you are pro-life, but . … Paul Martin made it clear that it will never become part of any … Liberal's policy … [which] is pro-choice and that's it. There is a bottom line" (Confidential Interview). A former MP interviewed emphasized the "big elements in the party – probably in the youth wing – … that were fairly strong pro-choice. And I'd say the party generally was pro-choice" (Confidential Interview).

Another interview concurred that a conscience approach was the Liberal approach, but noted that "there's no…such thing as a free vote in Ottawa, if by free, you mean free of consequences" (Confidential Interview). The interviewee emphasized that taking positions contrary to the party still had consequences:

> that stuff is held against you more and more. All this stuff's being assessed, right? ... But they're taking notes … and that impacts your career. And if you don't know that, you're incredibly naive as an MP. Committee appointments, travel…, delegation appointments,

> promotions [could be lost]. So . … if you take an independent stance, particularly against sort of the general view of the party, or the majority view in the party, you pay a price. And we knew that (Confidential Interview).

8.2.2 Short-Term Politicisation and Long-Term Depoliticisation: Changing the Rules of the Nomination Game

Having examined the general conscience approach that ***depoliticised*** abortion, we now turn to an instance of ***politicisation***. Under Chrétien's leadership, the party's constitution was amended to facilitate greater leader control over the nomination process within individual Liberal riding associations, serving as ***capacity politicisation*** by creating a stronger ability to control ridings and candidates. This change is generally described as a reaction to conflicts and controversies that emerged when associations were "captured" by particular interest groups or when the party's preferred candidate was unable to secure the nomination, as described briefly in section 8.1.2 (Clarkson, 2014). Abortion was not the only factor involved in this but was one referenced when this centralization was occurring. For instance, Carty (2015) describes how groups, including pro-lifers, can destabilize the party by "quickly transform[ing] the social basis or policy preferences of a local association, separating it from its past and/or from other Liberal associations" (p. 84). If such candidates advocate

> "a policy at odds with that of the national party….[m]embers in other parts of the party will demand that the leaders disavow the candidates and overrule the constituency association's selection. This flies directly in the face of the party's traditional franchise bargain, which was designed to provide local autonomy in choosing local representatives; however, in the heat of an election contest, the political pressure to intervene can be very strong" (Carty, 2015, p. 84).

The 1992 constitutional amendments of the Liberal Party gave the "national campaign committee (appointed by the leader) carte blanche to 'adopt and publish rules regarding the procedures to be followed in the nominations of candidates'" (Clarkson, 2014, p. 165, quoting the convention amendments). This was not universally appreciated, as Clarkson (2014) notes, as

some felt that "draconian control" was applied to nominations, particularly in winnable ridings (pp. 165–166). This was in marked contrast to an interviewee's experience of running for office under Turner's leadership, with Turner having "declared that nominations would be free, open and democratic and not influenced by the party hacks, either in Toronto or in Ottawa" (Confidential Interview).

An interviewee on Chrétien's campaign team describes control of nominations as one "technique" for managing abortion, using the "blunt instrument" of Chrétien's "appointment power as leader to appoint women, because in our experience, women as candidates…understood the truth of the [abortion] issue. And we didn't have to spend a whole lot of time trying to convince some caveman to adopt a more moderate position" (Confidential Interview). More specifically, continued the interviewee, "you're trying to persuade them [pro-lifers] that this is the position of the leader, and this is the policy position of the party. … And if they don't listen to it, you get rid of them, you squeeze them out, you get them challenged at their nomination meeting" (Confidential Interview).

8.2.3 Politicisation, Ad-Buys and Wedge Campaigns: The Strategic Benefits of Abortion in Electoral Campaigns

A major shift, both in the discourse and in concrete behaviour, was the adoption of abortion and other social conservative issues as wedge issues in federal election campaigns starting in 2000. As will be described in the next section, this involved significant shifts in discourse, but concrete actions were also taken to pursue this strategy, including the choices to adopt this campaign messaging, the creation of attack ads that involved abortion and the ad-buys that distributed such ads. This procedural ***spatial politicisation*** pulled abortion back into the federal government's purview and is discussed in this section.

As described in 8.1.3, in the 1988 federal election, Liberal party strategists had proposed using abortion as a wedge issue against Mulroney's PCs (Litt, 2011). With the *R. v. Morgentaler* decision having raised the issue and providing an opportunity for the government to legislate, the strategists recommended that the Liberals campaign on a policy allowing abortion up to 22 weeks of pregnancy, supported by polling indicating that such a proposal could help the party with the urban women vote in swing ridings (Litt, 2011, p. 367). Turner shot this idea down, rejecting using abortion as a wedge issue.

However, approaching the 2000 election, the use of abortion as a political weapon against the Canadian Alliance became more feasible and attractive. For one, ongoing shifts within the Liberal party had pushed it towards pro-choice views. As noted by an interviewee involved in Chrétien's office, "in the seven years between '93's campaign and the 2000 campaign, we had weeded out a lot of pro-life types in caucus. … And by 2000, the party was, caucus and candidates were reflecting a much more aggressively and proudly pro-choice view" (Confidential Interview). This made it easier to take these positions and campaign accordingly, in contrast to the earlier 1990s when the party had made inroads in more rural, socially conservative ridings.

The use of attack ads in the 2000, 2004 and 2006 elections set up abortion as one battleground issue between the Liberals and their conservative (Alliance and then CPC) opponents. An interviewee described how, "we worked on preparing for a position for Chrétien for the party, in order to really…highlight the contrast between the two main [electoral] choices" (Confidential Interview). Endorsements were also sought by party advisors, such as coordinating with prominent activist and pro-choice icon Dr. Morgentaler. Dr. Morgentaler, as reported in the news, was a "boost" to the Liberals late in the campaign when he publicly endorsed them, despite normally voting NDP, in "an effort to stop what he calls the Alliance's hidden agenda against

choice. '[Alliance Leader Stockwell Day] is opposed personally to abortion and will be pressured by his supporters to do whatever he can to diminish or abolish Canadian women's acquired rights to reproductive freedom,' Dr. Morgentaler said" (Nolen, 2000).

These campaign attacks were helpful for the Liberals in the 2000 election, with an interviewee describing how, "what we found was with abortion, if we could get our position and Day's position seen and heard by Canadian women, irrespective of whether they were rural, urban, they would become alarmed. So that became just a critical wedge issue for us" (Confidential Interview). The interviewee went on to describe these attacks as "internally a useful caucus management tool, because we were able to say to some of the lugheads who still remain in the caucus, 'Watch what happens to this guy when we're finished with him. Because … your position is kind of like his, watch what happens.' And of course, we eviscerated him [Stockwell Day]. And one of the main reasons was… that issue" (Confidential Interview).

However, some procedural ***depoliticisation*** also aimed to take the edge off the conflict that these choices engendered. The ads, which came out at the end of the campaign as it "went into the toilet….and headed for quite a bad defeat", were not even presented to the entire campaign team prior to them running to minimize the debate over it within the team (Confidential Interview). However, despite this discomfort, there was also a shared sense within Martin's PMO and campaign teams concerning "the political approach that he knew the Liberal Party had to take" (Confidential Interview).

8.3. Discursive (De)politicisation: From "No Win" to a "Charter Right"

Moving into the discourse of this period, the 34th to 38th parliaments have much more limited debate in the House of Commons on the topic of abortion, and some of the most interesting discursive stories are most prominent during the election campaigns, rather than in parliamentary

discourse. As such, this section analyses both Hansard debates as well as articles from *The Globe and Mail* concerning abortion and the elections from 1993-2006. It also considers themes that emerged in the interviews conducted with those involved in Liberal politics, both in elected and staffer positions.

This period is interesting because of the juxtaposition of the parliamentary and election language, as well as the connections between the two and their evolution over time. The main stories that emerge are first, the framing of abortion as a *"no win" issue*, connected with frames that use ***spatial*** and ***capacity depoliticisation*** to defer responsibility to other actors – mainly the provinces. This story emerges primarily from interviews and the parliamentary debates. The second story emerges from the media review and is that of *abortion as a Charter Right and a woman's right*, which is connected to framing the Canadian Alliance and then CPC party as having a "hidden agenda" on abortion and other socially conservative issues. Despite the increasing dominance of this story, the ***spatial*** and ***capacity politicisation*** of the second story is tempered with some ***depoliticisation***, with some space still maintained for the conscience story through the *acknowledgment of abortion as a moral issue* and separate from politics as normal. The interaction between the conscience story and the Charter rights story is very interesting, particularly as the Martin government attempts to both position themselves as the paragon of progressive virtues and defender of women's rights, as well as pursuing democratic reform and giving nods towards free votes and PMB. This is summarized in Table 11, below.

Table 11: Discursive (De)politicisation, 1993-2006

Problem	Abortion as divisive in Canada and caucus	Conservatives are a threat to the status quo on abortion 'hidden agenda'
Solution	Conscience approach	Wedge/Weapon approach
	Story 1: Abortion as a "no win" issue (and any problems with it are not our problems)	Story 2: Abortion as a Charter right and a woman's right threatened by the conservatives' hidden agenda
Frames Constructing Stories and Serving as Discursive (De)politicisation		
Capacity Politicisation	N/A	- Abortion as a fundamental Charter and woman's right
Spatial Politicisation	N/A	- Liberal Party as defenders of the Charter - Will enforce Canada Health Act against provinces not providing adequate abortion access
Temporal Politicisation	N/A	N/A
Capacity Depoliticisation	- Nature of issue sensitive - Lack of constitutional authority to address - Inappropriate to use Canada Health Act to address abortion	- Abortion as Charter right outside of the realm of regular politics
Spatial Depoliticisation	- Provincial responsibility and matter of professional standards, outside of federal jurisdiction - SCC decision (*Dobson v. Dobson)* presented it as a problem for provinces - Appeals to Canadians as satisfied with the status quo	- Appeals to Canadians as not wanting a party threatening a right to choose - Still free votes for caucus
Temporal Depoliticisation	N/A	N/A

8.3.1 Story 1: A "No Win" Issue, And It's Not Our Problem

This story was emphasized by several interviewees involved in Liberal politics in this period, who characterized abortion as a "*no win*" issue that the party was not interested in pursuing. This was particularly true in the aftermath of the failure of C-43, with the new Chrétien government signalling that they would not be attempting legislation. An interviewee stated that abortion "was seen as…kind of a no winner for the government to get into" (Confidential Interview). This characterization yielded a hands-off approach to the issue, according to another interviewee and former MP, reflecting that abortion "wasn't an issue that was talked about openly. … [I]t was sort of … the issue that people wouldn't talk - didn't want to talk about in particular, because politically [it] was a losing issue" (Confidential Interview). Another Liberal interviewee echoed this, emphasizing that, "this is a no-win scenario. This is absolutely a no-brainer that it's a no-win scenario. And if it can be avoided, it should be avoided, which is basically, by and large, what we did, because we knew that nobody was going to win" (Confidential Interview).

In parliamentary debates from this period, covering the 34th to 38th Parliament, abortion discussions were much more limited than previous years. In the 34th Parliament, there are several pro-life PMB introduced by Liberal MPs, but starting in the 35th Parliament, pro-life PMB mainly emanated from Reform and then Canadian Alliance MPs, often linked to aspects of their democratic reform policy. More specifically, as will be detailed further in chapter 9, the Reform and then Alliance parties had a policy that MPs should represent the views of constituents – even on matters of conscience – and that such issues should be resolved through national referenda. It is unsurprising, therefore, to see several PMB motions from Reform and then Alliance members that called for a referendum on abortion. And although only a limited number of PMB introduced had debate, changes in parliamentary Standing Orders allowed for limited debates on PMB motions even when not on the Order of Precedence.

When abortion was raised on occasion, government speakers were quick to wash their hands of federal responsibility, usually through deferring to provinces or by denying any problem with the status of abortion by pointing to court decisions and Canadian public opinion. For instance, in response to a Reform Party member's PMB motion calling for a referendum on abortion funding, Parliamentary Secretary (PS) to the Minister of Justice, Gordon Kirby, emphasized the provincial role in the matter, ***spatially depoliticising*** the issue, by declaring that, "it is not within the constitutional authority of the federal government to dictate the specifics of the operation of provincial health plans" (House of Commons Debates, 35th Parliament, 2nd Session, Vol. 134, No. 050, May 27, 1996, p. 2981). Kirby emphasized the impossibility of the PMB motion under debate by stating that "The government does not have any choice but to oppose this motion within the context of the Canada Health Act. The determination of what services to insure is a matter of provincial and territorial jurisdiction" (p. 2981).

Responding to another PMB in the 36th Parliament, this time a bill to establish conscience rights protection for medical personnel who did not wish to participate in abortions, Yvon Charbonneau, PS to the Minister of Health also appealed to jurisdictional issues to characterize the motion as an inappropriate use of the Criminal Code. Charbonneau stated, this "attempt to trump jurisdiction through the…use of the criminal code runs against all legal and policy protocols in health" (36th Parliament, 2nd Session, Vol. 136, No. 023, Nov 18, 1999, pp. 1473-4). Charbonneau did acknowledge abortion as an "important and sensitive matter" but argued that "it remains an issue that falls outside of the jurisdiction of Health Canada and the federal government" (pp. 1473-4). A couple years later, PS Charbonneau, in response to another PMB, this time a motion calling for parliament to define a human being from conception on, continued to defer to provinces, but this time drew on a recent SCC case, *Dobson v. Dobson*, to argue that

"What did the Supreme Court of Canada say? It said it was up to the provincial legislature . … to find a solution to these questions, given the limitations imposed by the charter" (37th Parliament, 1st Session, Vol. 137, No. 034, Mar 22, 2001, p. 2149).

Regarding yet another PMB motion, this time calling on parliament to appoint a committee to review the legal definition of a human being, PS to the Minister of Justice Harold Macklin reminded the House of the previous failure of C-43 and characterized the status quo as neither a "legislative or legal vacuum" because regulation was occurring at the provincial level and through the medical profession (37th Parliament, 1st Session, Vol. 137, No. 190, May 23, 2002, p. 11696). Macklin stated that, "The delivery of abortion services is currently regulated by provincial governments who are responsible for the delivery of health care services, and by the standards set by the medical profession itself. The majority of Canadians are satisfied with this division of regulatory responsibilities and that abortion is regulated as a health and medical matter, and not a criminal matter" (p. 11696). Macklin emphasized repeatedly that Canadians were "comfortable" with the status quo, which – borrowing from the "balance" story that was so important to the discourse following *R. v. Morgentaler* and during the C-43 debates – provided "a delicate balance in Canada" between the fetus and women.[125] Therefore, he stated, "Given the delicate balancing that was required to get to where we are today, I cannot support opening up the definition of a human being in the criminal code (p. 11696).

8.3.2 Story 2: Charter Rights and Women's Rights (but still some space for conscience?)

As discussed earlier, the story of abortion as a Charter right and a woman's right appears in the election campaigns as a means to drive a wedge within the conservative party (Alliance and

[125] According to Macklin, "The criminal code provides a certain degree of protection to the fetus by stating that a person commits homicide by killing an unborn child in the act of birth, under certain conditions" (37th Parliament, 1st Session, Vol. 137, No. 190, May 23, 2002, p. 11696).

then CPC), to differentiate the parties from each other, and to paint the CPCs as possessing a "hidden agenda". Here, the government strongly characterizes the problem as the prospect of a conservative party upsetting the status quo of abortion rights, characterizing themselves – the Liberals - as the defender of Charter rights. Drawing on medical coverage from *The Globe and Mail* (as a sample of national coverage of the national campaign), we can see the development and strengthening of this story over time. This story has both ***politicising*** and ***depoliticising*** elements. By advancing this narrative as a particular choice, the Liberals put abortion on the political table (***politicisation***), even while not committing to actual action on it. Instead, they positioned themselves as safeguarding abortion rights contrasted against the dark social conservative forces within the Alliance and CPC, who threated to roll back these rights. However, by invoking the Charter and positioning abortion as a Charter right and a woman's right safeguarded by the Charter, this, too pushed abortion into a similar position as it had been as a moral or conscience issue, in the sense that it was beyond politics and beyond reproach (***depoliticisation***).

In the 2000 election, the Liberals faced off against Stockwell Day, the new leader of the the new Canadian Alliance party. An interviewee noted that Day's physical appeal and financial experience in Alberta helped make him an attractive candidate: "He was young and Chrétien wasn't. He was able bodied, and Chrétien was seen as yesterday's man. He was bilingual - Manning hadn't been bilingual. On paper, he made some sense" (Confidential Interview). Chrétien, in a March 2000 speech that media called overall a "little flat", was "at his strongest when he took on the Reform Party" and forthcoming Alliance, with the media reporting that:

> He said Canadians do not want a right-wing party that threatens the Canadian Charter of Rights and Freedoms and would make it more difficult for women to get abortions. Mr. Day, who is taking on Mr. Manning for the leadership of the new party, is against abortion. "We don't want a party that is very much in the hands of the fundamentalists of the right.

> … Canadians do not want a party that threatens a woman's right to choose," Mr. Chrétien said (McIlroy, 2000a).

Chrétien, in another news article, "likened Mr. Day to a car dealer who keeps two sets of books with a hidden agenda on health care and abortion" and the goal to "reopen the debate over abortion" (Laghi, 2000a). Interestingly, however, even amidst the amped up campaign rhetoric of the election, within Parliament, the Liberals still gave some discursive space to the conscience story. Chrétien even raised the issue of abortion as an example of matters receiving a free vote when defending his government against accusations of heavy party discipline regarding the GST: "We had free votes before on capital punishment and abortion. We had free votes on problems of morality or moral decisions" (35th Parliament, 2nd Session, Vol. 134, No 030, April 22, 1996, p. 1768).

In the 2004 election with Martin at the helm, abortion was again used to differentiate the Liberals from the new CPC party. As noted in 8.1.4, the attack ads that included abortion were described as a move of desperation, to shore up a sinking campaign, but the messaging of the Liberals on campaign had continued the trend from the 2000 election of increasingly characterizing abortion as an issue of women's rights and of Charter rights. Yet Martin, who also was attempting to address concerns around corruption in the Liberal party thanks to the sponsorship scandal, was also trying to emphasize democratic reform, including lessening party control over backbench MPs. This led to an awkward co-existence between demonizing the CPCs as threatening women's Charter rights while also promising more free votes within Parliament. For instance, even while levelling the "hidden agenda" frame against the CPCs, Martin also tried to emphasize that free votes would still be protected, stating that,

> "Never, never would I let the rights of women be infringed upon," Mr. Martin told reporters in French in Ottawa yesterday. "I will allow free votes, but never, never would I let the rights of women be infringed upon by legislation in that area." Mr. Martin said

> that if his party wins the June 28 election, he would not allow abortion rights or minority rights be decided by free votes in the House of Commons. Nor would he ever invoke the Constitution's notwithstanding clause to override a court ruling. (Scoffield, 2004).

Also, while abortion was only ever part of a broader "hidden agenda", it was, like in the 2000 election, usually mentioned in the same breath, serving as a symbol or emblem of the issues the Liberals were lumping together. Same-sex marriage was the prevailing social issue of concern in federal politics at the time, due to a recent SCC decision, but abortion was often linked to it under the banner of social issues and the allegations of a "hidden agenda". Martin and the Liberals used these issues to position the CPC and the Liberals, emphasizing the values at stake. For instance, a strategist referred to the Liberal understanding that

> the Harper Conservative Party was the Canadian incarnation of the Republican Party, that it was a Reform Party offshoot, very different from anything Canadians were used to, and that it was really vital to stamp…that party very clearly with that brand of U.S. style, right-wing evangelical politics. So, the Liberals felt they were counter attacking against evangelical Christian conservative politicking in raising the abortion issue in the 2004 campaign. And we knew it was a very telling counterattack (Confidential Interview).

Alongside this, by indicating that the not-withstanding-clause might be used to overrule the SCC on gay marriage if Parliament voted accordingly, Harper created an opportunity for attacks concerning the Charter of Rights and Freedoms. Martin then positioned himself as the defender of the Charter of Rights and Freedoms on same-sex marriage but also abortion, stating,

> "I think that you trifle with the Charter of Rights at great peril to the social cohesion of this country," Mr. Martin said. "And my refusal to use the notwithstanding clause, whether it be for a woman's right to choose, whether it be for gay marriage, or whether it be for other acquired rights, is a very clear indication of the depth of the gulf between Mr. Harper and myself" (Clark, 2004).

In the 2006 federal campaign, the Charter continued to be closely connected to the hidden agenda narrative, with a fight during the election over "Harper's unwillingness to remove the override clause in the Charter," and Martin's allegations that " 'Members of Mr. Harper's party have promised right-wing conservative groups that if they are elected, they will ensure

parliamentary votes on a woman's right to choose [abortion], on same-sex marriage and other issues, and that these votes will not matter unless Mr. Harper retains the power to override the Charter. That is the hammer he wants to keep'" (Galloway, 2006b). As the election date drew closer, Martin argued Harper would "politicize" the Supreme Court by appointing those who would "allow a social-conservative agenda drawn from the 'extreme right' in the United States", citing both same-sex marriage and abortion rights as those that could be adversely affected by such appointments (Clark, 2006a). Martin continued to emphasize a connection between Harper's conservatives and the "extreme right" in the United States, stating that, "'It's not an ordinary election. Never have we seen a large political party with such a conservative agenda as this one, an agenda that is really drawn from the extreme right of the United States, of the conservative movement in the United States,' he said" (Clark, 2006a). In line with this, as a strategist recalled,

> In the closing part of the campaign, when we were really fighting to keep as many seats as we could, when it…had become probable that we would lose the election, the Martin campaign again went pretty hard on characterizing… the Harper Conservative Party as a right-wing Republican organization. And there was a very sharp confrontation on that issue (Confidential Interview).

However, the Liberals did not benefit in 2006 from off-message remarks from some Conservative candidates and MPs on social issues, like they had in 2004. The Liberals, as such, even drew attention to the "disappearance" of these controversial voices in the media, with a report that, "The Liberal Party, which benefited from controversial statements in the past, has accused the Conservative Party of shutting down its outspoken MPs. 'There are a lot of disappearing acts among some of the more notorious members of the Conservative caucus,' Liberal strategist John Duffy said earlier this year. 'Some of them appear to be in hiding'" (LeBlanc, 2006).

8.4 Synthesis

This chapter demonstrates the ascendancy of a pro-choice position and discourse within the Liberal Party during the 1993-2006 period, but also before. However, there is also a tension between this growing, stronger pro-choice approach and the more traditional conscience approach. As noted in the historical overview, some in the party were interested in using a more pro-choice position on abortion as a wedge against the PCs in 1988 while there was also an increasing effort among pro-lifers to establish a stronger foothold within the party, particularly during the 1989-1990 leadership race with prominent pro-life candidates and the work of Liberal for Life. The importance of the party leader in adjudicating these tensions can also be seen, with Turner rejecting the wedge and Chrétien and Martin slowly being willing to adopt a stronger pro-choice position in their later federal election campaigns. This tension, as established during their decade in opposition, helps to contextualize how we arrive at the tension between a more conscience-rights approach versus using a more pro-choice political wedge approach in both the Liberals' governance actions and discourse.

This divided caucus helped maintain a conscience approach in parliament, in terms of how party leaders allowed MPs to bring forward abortion-related PMB and vote according to their conscience. However, as discussed by Liberal interviewees, there was a gradual attrition of pro-life Liberals from the party, which created space and opportunity for the party to take a harder line on the abortion issue, particularly during elections and particularly in light of the rise of the Alliance and the CPC. An interviewee noted that the dwindling pro-life Liberal numbers were due to "whoever was pro-life was beginning to feel that there was no home for that particular viewpoint in a party that was going in a much more socially progressive - in the small sense of the word - leftist direction" (Confidential Interview). Another Liberal interviewee agreed, noting

that, “Fewer and fewer pro-life MPs…were getting elected in the Liberal Party. So there were indicators that the party was taking a significant shift to the left” (Confidential Interview). Furthermore, as a Liberal strategist pointed out, “don't forget, after two campaigns [of] the Liberal Party, publicly and enthusiastically messaging a right to - a pro-choice position…., a lot of Liberals who were pro-life just went, ‘This isn't my party anymore.’ They kind of connected the dots” (Confidential Interview).

A more homogenous pro-choice caucus and party base allowed the Liberal government to weaponize abortion, using it to divide or wedge the Alliance and CPC caucuses, as well as use it symbolically within the election campaign as a means of highlighting the differences in values between the Liberals and their opponents. Here, then, the governments’ presentation of the problem of abortion shifts dramatically, from it being a “no-win” issue that they need to stay away from, to it being a “winning” issue, in the sense that it becomes a useful campaign tool.

However, while useful as a wedge issue, abortion itself did not become a policy priority by the Liberal governments. A Liberal strategist described this as “it was kind of treated as a victory more or less won on abortion rights and a battle that . … the front had moved on from. Okay, it wasn't where we were fighting anymore - unless challenged on . … a roll back from the right” (Confidential Interview). Despite the use of abortion as a wedge and weapon, the CPC was able to oust Martin’s Liberals in 2006, forming their own minority government. The CPC’s management of abortion from 2006-2015 is covered in the next chapter.

Chapter 9: Strategic Conscience Rights and Shutting Down Debate: Harper's Conservatives, 2006-2015

After narrowly losing the 2004 election, the new Conservative Party (CPC) under Stephen Harper won a minority government in 2006, defeating Paul Martin's Liberals and ending the Liberal's 13-year grip on power. The CPC was the product of a merger between the Canadian Alliance party (formerly the Reform Party) and the Progressive Conservatives (PCs), uniting not only two parties, but also different philosophies of populism and conservatism. Harper and the new party contended with both progressive and socially conservative views on issues like same-sex marriage and abortion, and while these were far from the main items on the new government's agenda, the party had learned – through the elections of 2000, 2004 and 2006 – that such issues could be highly distracting and required careful management.

More specifically, over time, moving from the Reform Party into the Alliance, abortion was initially managed through linking abortion to democratic reform policies,[126] making abortion a matter which MPs would vote upon based on a "consensus of their constituency." This consensus of the constituency policy had conceptual and practical challenges, however, and, as the Alliance merged with the PCs into the CPCs, moral questions became treated more along the lines of a traditional conscience and free votes approach. The CPCs, with a divided party base on social problems like abortion, adopted a policy whereby the government would not introduce or support abortion legislation, while still allowing backbenchers to exercise their rights to introduce Private Members' Business (PMB) and vote their conscience during free votes. This government commitment against legislating on abortion became more pronounced due to the 2000 and 2004

[126] Referring to a commitment to increase democratic participation and representation through an increased use of direct democracy measures such as referenda, as well as having MPs more accountable to and representative of their constituents in votes.

election campaigns and the Liberals' attack of a Conservative "hidden agenda". Once in power, as the Conservatives went from minority to majority government in 2011, an increasingly hard line appears to have been taken against the efforts of individual CPC MPs who continued to bring forward PMB that implicated abortion in some way.

This chapter analyses Hansard and committee transcripts, other secondary sources, and 15 interviews to discuss the 39th, 40th and 41st Parliaments and the CPC government under Prime Minister Stephen Harper. This chapter first presents a historical overview of this period, introducing the rise of the Reform Party, the creation of the Canadian Alliance, and the merger of the PC and Alliance to become the Conservative Party of Canada (CPC). This discussion contextualizes the evolution of the CPC's management of abortion based on earlier Reform policies before examining how it evolved over their time in government, which is further detailed in section 9.2.

Following this overview, an analysis of procedural (de)politicisation highlights the dynamic between balancing a respect for MP rights and a conscience approach alongside increasing control of candidates and caucus. The conscience approach drew on both the more traditional approach found under the Liberals and PCs historically and on the Reform Party's commitment to democratic reform, providing a strategic means of balancing out diverse views and philosophies within the party. However, an increasing control over caucus is found as the CPC approaches and takes power, with an evolution from the CPC caucus expressing broad support for a PMB in 2008 compared to shutting down the possibility of even voting on a PMB in 2013. However, these efforts to minimize debate and controversy through ***procedural depoliticisation*** also produced ***repoliticising*** effects, creating new sources of conflict, including, for instance, conflict over the rights of MPs to speak on issues of import in Parliament.

The discursive analysis points to a similar dynamic and presents parallel stories of abortion. The first story responds to the problem of abortion as being a *divisive issue for the country and their caucus that could be managed through a conscience approach*, with the "solution" being that individual MPs have the right to vote their conscience and introduce PMB (which is entirely separate from the government). Within the second story, we can see an evolving understanding of the "problem" of abortion for the government, moving towards understanding it as a political weapon, where it is destructive and distracting to the party and its agenda. This, then, requires an approach of discouraging and shutting down debate, with the story that *the abortion debate is closed, and the Conservatives are not reopening it*. Overall, in both procedural and discursive ways, we see the Conservative government addressing abortion as a political weapon that they must defend themselves against, rather than a policy problem to be solved through legislation.

9.1 Historical Overview

As discussed in Chapter 8, the Reform Party emerged in Western Canada under the leadership of Preston Manning and expressed populist dissatisfaction with existing political parties and their policies, which some perceived as ignoring Western needs (Farney, 2017a). Although the Reform Party organized in 1980s, its political breakthrough came in the 1993 election when it secured the third-most seats of any party in the House, knocking out the PC's western seats (Farney, 2017a). But, as described by Farney (2017a), "By the late 1990s, dissatisfaction with what seemed the [Reform] party's perpetual opposition status led to a series of attempts to unite the right," eventually creating the Canadian Alliance party in 2000, which attempted a more pan-Canadian rather than Western-focused approach (p. 99). Following the 2000 federal election and disappointment in the leadership of Stockwell Day, Stephen Harper

secured the Alliance leadership and negotiated a merger with PC leader Peter MacKay, resulting in the 2003 creation of the Conservative Party of Canada (CPC), under which banner Stephen Harper again won the leadership. Only a few months after the merger, the new party was thrust into the 2004 federal election, but Martin's Liberals were able to eke out a minority government and the CPCs formed the Official Opposition. Two years later, when the 2006 election was called, Harper's Conservatives won a minority government.

As is further discussed in this chapter, the CPC government continued to contend with accusations of a "hidden agenda" on social conservative issues - especially abortion, an accusation that dogged the party from the elections of the early 2000s and onwards, as noted in chapter 8. Although Prime Minister Harper and the party leadership continued to assert that a CPC government would not legislate on abortion, pro-life PMB brought forward by CPC backbenchers continued to raise the issue. These PMB did not directly target the legality of abortion, but measures addressing fetal rights of any sort triggered discussions of abortion both in Parliament and in the media.[127] Additionally, the maternal health initiative developed by the Harper Government for the G8 meetings[128] occurring in Canada also spurred debate when the initiative's lack of funding for abortion attracted criticism. This section briefly reviews the abortion issue throughout the CPC's rise to power, first to minority and then majority government.

9.1.1 The Road to Government: Navigating the "Hidden Agenda"

As discussed further in section 9.2.1, the Reform Party dealt with social and moral issues like abortion through their democratic reform policies. Such issues of deep personal belief

[127] For the sake of simplicity, these PMB that touch – directly or indirectly – on abortion and/or fetal rights are being referred to as pro-life PMB. It should be acknowledged, however, that the MPs introducing them, although known as pro-life MPs, emphasized that bills like M-312, M-408, C-510, and C-484 were not directly about abortion and would not impact the legality of abortion.

[128] Also referred to as the Muskoka Initiative, as the G8 meetings were held in Muskoka, Ontario.

required free votes, but specifically free votes whereby MPs would vote according to the wishes of their constituency, rather than according to their own personal conscience. This "consensus of the constituency" policy posed practical challenges, such as determining what consensus was, particularly on polarizing issues like abortion. The Reform Party policy also indicated that social issues should be decided by referenda triggered by a petition from Canadians. The question of what threshold a petition needed to trigger referenda became a point of contention in the 2000 election and led to negative press and attacks from the Liberals against Reform's successor, the Canadian Alliance, and its socially conservative leader Stockwell Day (see chapter 8). The attacks that the Alliance harboured a "hidden agenda" on issues like abortion then transferred to the new CPC party, even though Harper himself did not have Day's socially conservative background.

As described by interviewees, Harper's views on abortion were not known, with one stating that, "I have no idea what his personal view would have been. It doesn't matter. Politically, he saw that this … was divisive within the party, that it was not a vote winner outside the party" (Confidential Interviews). Farney (2017b), likewise, describes Harper as quiet on personal positions, but tending towards "a laissez-faire stance on such issues" (p. 117). Instead, writes Farney (2017b), "Whatever Harper's personal beliefs about social conservatism, they have been subsumed into his broader goal of refashioning the party into an efficient electoral machine. To this end, he has worked hard to minimize strife between different factions in the party and to craft party platforms that have wide appeal in the electorate" (p. 118).

The June 2004 election was the first campaign fought under the CPC banner, the party having only been founded in December 2003.[129] According to academic and former Harper campaign manager Tom Flanagan (2009), the campaign suffered from organizational, logistical

[129] The party's founding convention was, in fact, held in 2005, following the 2004 election.

and communications issues but, at times, also looked poised to best the Liberals and form government. The party's platform, entitled *Demanding Better,* aimed to position the CPC as "'moderate, modern, and mainstream.' In that connection, the silences in the platform spoke volumes. There was nothing about bilingualism, multi-culturalism, abortion, and capital punishment" (Flanagan, 2009, p. 156).

However, despite these silences, such issues were raised by the Liberals, advancing the hidden agenda narrative throughout the campaign. This involved raising several social conservative issues, especially abortion. Comments from CPC candidates did not help to dispel this narrative, including comments on bilingualism and gay marriage, as well as abortion (Flanagan, 2009). On abortion specifically, CPC health critic Rob Merrifield was reported in the media as having "urged" third-party counselling for women prior to abortion (Mahoney, 2004). As Flanagan (2009) notes, "Merrifield's intervention worked at cross-purposes with Stephen's [Harper] position that he would not legislate on abortion, so Rob had to . … resign as critic, and stress that this was only a personal view" (p. 166). CPC team members were frustrated at the backlash Merrifield's comments elicited, when they were substantially the same as comments Paul Martin had made the week before (Flanagan, 2007). Within a few days, reports on comments made by CPC MP Cheryl Gallant during a pre-campaign pro-life event added fuel to the fire, with Gallant having compared abortion with the recent beheading of US reporter Nicholas Berg by terrorists (LifeSiteNews.com, 2004). Flanagan reflects that, "This wasn't a gaffe in the usual sense, because it hadn't happened during the campaign and Gallant wasn't a critic and hadn't claimed to be speaking for the party. Still, it put the focus back on abortion, which wasn't supposed to be part of our script" (Flanagan, 2009, p. 168).

These comments and media stories were exasperated due to the CPC campaign having not prepared communications and scripts for the end of the campaign. As journalist Paul Wells (2006) recounts, "With no positive Conservative story to tell, reporters and the Martin campaign . … were free to concentrate on a series of Conservative MP eruptions" (p. 127). And as an interviewee and former staffer reflected, "we didn't manage it [the hidden agenda attacks] very well in 2004. I'd say we were kind of caught flat footed" (Confidential Interview). Such comments and media coverage forced Harper to respond to the abortion issue several times, taking the campaign off message.

Harper strengthened his statements on abortion over the course of the campaign, reaffirming his opposition to any action on behalf of a CPC government (Fowlie & Laghi, 2004; Laghi, 2004b). However, any perceived gap in Harper's statement left room for opposition attacks and further media questions. For instance, Flanagan (2009) describes how Harper's statements regarding not legislating on abortion during "this Parliament" still allowed for the possibility of *future* legislation in a future Parliament:

> Yet Harper's reference to "this Parliament" was troubling, as were other statements that he would not prevent backbenchers from bringing private member's bills to restrict abortion. In an intellectual sense, both statements were true; a prime minister cannot prevent private members from introducing bills, nor can he make binding commitments about what future Parliaments might do (pp. 168-169).

This qualification allowed the Liberals "to allege that Harper had a long-term agenda on abortion different from his short-term position in this campaign" and continued to pull the campaign off-message (Flanagan, 2009, p. 169).

Despite these issues, the Conservatives still had a path to electoral victory, and the Liberals launched attack ads that reinforced the hidden agenda narrative, including direct reference to abortion. A Liberal interviewee described these ads as the result of desperation (Confidential

Interview), and the ad alleged that Harper "wouldn't protect a woman's right to choose", accompanied by the image of a young woman in a clinic setting, sitting on the floor, rocking herself back and forth (Liberal Party of Canada, 2004). The Harper team struggled to respond to the ads, fearing that responding in kind would only "reinforce the 'scary' image that the Liberals were pinning on Harper" (Flanagan, 2009, p. 171).

Academics and interviewees highlighted the significance of the ad and the hidden agenda narrative overall (Farney, 2017b; Flanagan, 2009; Marland & Flanagan, 2013). Practically, it eroded the ability of the CPC to make "progress into inner suburbs and into urban areas" (Confidential Interview). It was effective because, as described by a Harper staffer, it enabled voters to project their "subconscious fears" onto Harper:

> So, the brilliance of "hidden agenda" is that, because it's hidden, it means different things to different people, depending on what you impute as Harper's motive. … Part of the problem was, it wasn't about abortion, it was about whatever your deepest, darkest fears were about, about Harper. … [I]t was therefore a very effective attack because it would mean different things to different people. And . … it invited voters to invent their own fear about…about Harper" (Confidential Interview).

However, CPC interviewees also noted that the attacks had the side-effect of hurting the Liberals' chances of a majority in 2004 and "backfired" in the subsequent 2006 election that saw the CPC beat out the Liberals for a minority government (Confidential Interview). The attacks against pro-lifers in the CPC would also hurt social conservatives within the Liberal party and meant that the party had to be "prepared to burn those seats [in rural, more socially conservative ridings] in order to solidify an urban, progressive, feminist core of the party, and [they] decide[d] that was the future of the party" (Confidential Interview). As an interviewee noted, "to this day, I'm convinced that the Harper hidden agenda attack may have stopped us from winning the 2004 election, but it's also what sacrificed the Liberal majority in the 2004 election – it backfired very

badly. And if they had … played that differently, they could have kept all those seats, and they decided not to" (Confidential Interview).

As the party settled into being the Official Opposition against the Liberal government, preparations were underway to prevent similar campaign issues in the next federal election. The fragile minority status of the Liberals meant that an election would not be in the too-distant future, requiring the party to be prepared. And, as described further in the remainder of the chapter, this involved stronger message control during the 2005-2006 campaign and thereafter. This included assembling "a big library of quotations from Liberal members who had taken similar positions [on social issues] in the past. So it was kind of a Tu Quoque response" (Confidential Interview). They also decided to go negative against the Liberals, which Harper apparently had vetoed in the 2004 campaign, "and so we kept the Liberals busy answering our attacks" (Confidential Interview).

When the 2005-2006 campaign included similar "hidden agenda" attacks, they were insufficient to prop up the beleaguered Liberals again and the Conservatives won a minority government. Reviewing the *Globe and Mail*'s coverage of the 2006 election campaign, Liberal PM Martin continues to attack the CPCs on charges of a hidden agenda, but these are referred by journalists as the "same last-ditch" tactic used in 2004 (Clark, 2006b; Galloway, 2006b). Harper and his team's responses are focused and disciplined, and the articles themselves acknowledge that the Conservative platform commits to not supporting abortion legislation.

9.1.2 Minority, Minority, Majority Governments

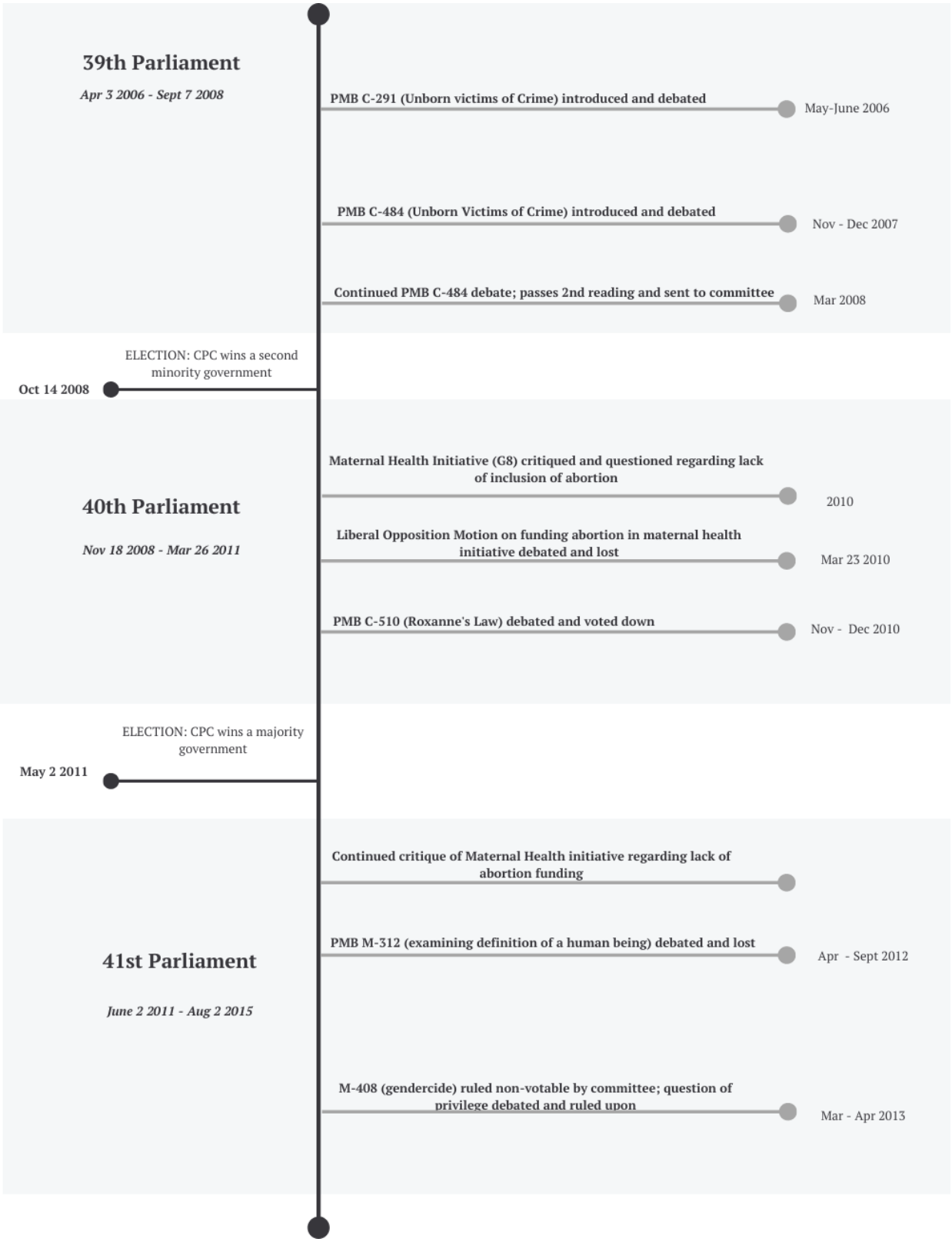
The Conservatives won the January 2006 election, with 124 CPC seats to the Liberals' 103 (Library of Parliament, Election Profile 2006). This period is summarized in Figure 13, below. Once in government, abortion was not a major issue for the government. As one

interviewee described, it was "not a massive data point" for them, with many other priorities occupying their attention, including the 2008 economic recession and ongoing military operations in Afghanistan (Confidential Interview; Wells, 2013). However, abortion did arise at times, including due to PMB introduced by pro-life CPC backbenchers, and had the potential to – as it had during the elections – drive the new Conservative government off message and distract from its priorities. These PMB are discussed in more detail within the analysis of sections 9.2 and 9.3.

Abortion also became more prominent with the introduction of the Maternal Health Care Initiative in 2010 as part of the G8 Summit being hosted in Canada's Muskoka region. This initiative was aimed at addressing maternal and child health care and did not include funding for abortions, the absence of which was heavily critiqued by the opposition and some within the aid community and media. Despite the maternal health kerfuffle, the Conservatives finally won a majority government in the 2011 federal election, aided by the collapse of the Liberal party.

The Liberal Party, meanwhile, brought the stronger pro-choice discourse from the election campaigns into the House of Commons, pushing against the CPC government when private members raised pro-life PMB, as well as critiquing the government's Maternal Health Care Initiative. The Liberals, however, were also facing their own internal challenges. Martin had stepped down after the 2006 loss and the Liberal Party went through the leadership process, but new leader Stéphane Dion was unable to find success for the Liberals in the 2008 election, resulting in another CPC minority government and another Liberal leadership race.

Figure 13: Timeline of Abortion Related Events, 2006-2015



Michael Ignatieff, the next leader, likewise struggled to restore the Liberal fortunes, facing off against the Conservatives in the 2011 election. In the 2011 election, the Conservatives finally secured their long-sought-after majority government as the Liberals were reduced to third party status, going from 77 seats after the 2008 election to a mere 34 seats in 2011. Justin Trudeau, son of the late former Prime Minister Pierre E. Trudeau, subsequently won the Liberal Party leadership in 2013.

Within the elections of 2008 and 2011, meanwhile, abortion remained much less of a factor.[130] In the 2008 coverage of the pre-writ period, articles noted that Liberal Leader Stéphane Dion did bring up abortion, but there is much less coverage of this and the attacks seem tamer than they had under Martin (Clark, 2008a). PMO officials, while reiterating that the government would not support abortion but would allow free votes, also described how, "'This [abortion] is the sort of thing that they usually trot out at election time'" (Clark, 2008a). Another article, as campaign polls showed the Conservatives in the lead, cited Kory Teneycke, Harper's communications director, as speculating that, "'I imagine there will be a lot of desperate smears made, particularly by Mr. Dion. We expect there will be a desperate smear this week on abortion. The last four campaigns, the Liberals have launched a nasty abortion attack from a women's event in Toronto. ... I imagine that's what we'll be seeing'" (Scoffield, 2008). In the 2011 campaign, if the matter did arise, the CPC refrain was now quite familiar. For instance, when remarks by pro-life MP Brad Trost were published in the news, Harper's response was quoted as, "As long as I'm prime minister we are not reopening the abortion debate" (CBC News, 2011).

[130] The 2008 campaign also featured discussions of Ken Epp's Unborn Victims of Crime bill, as the government had come out shortly before the election to announce they were not supporting the bill and proposed their own bill to address the same issue without implicating abortion rights (Clark, 2008b). This was briefly discussed in section 9.2.3.

9.2 Procedural (De)politicisation: From Strategic Conscience Rights to Increased Control over Caucus

Although the merger of the Canadian Alliance with the PCs to form the Conservative Party of Canada (CPC) helped oust the Liberals in 2006, it also created challenges for the party, namely reconciling strong populist Reform roots with the PCs. And although abortion was not a priority agenda item in any iteration of the conservative party (Reform, Alliance or CPC), it remained contentious among caucus and party members.

This section presents two main findings that emerge from the procedural (de)politicisation analysis from this period, summarized in Table 12. First, the policy of treating abortion as a "conscience issue" provided a strategic means of managing the divisions in caucus, linking back to the Reform democratic reform policies. Managing abortion through consensus of the constituency and referenda policies (as described 9.1.2) served to ***spatially depoliticise*** abortion in that it deferred responsibility not only to candidates and MPs but ultimately to the constituencies that they represented. The milder conscience rights approach of the CPC continued to ***spatially depoliticise*** abortion to MPs and their PMB. Both the conscience rights politics and its predecessor also had ***repoliticising*** effects, however, with controversy and critiques arising due to statements or initiatives of individual candidates or members of caucus.

The second main finding is that the party's leadership exercised increasing control over candidates during campaigns and over caucus over time. As the Alliance had experienced in the 2000 election and as the newly merged CPC discovered in the 2004 election, issues like abortion could drive an election campaign off message. This yielded stronger message and candidate control during the 2006 election and thereafter.

Table 12: Procedural (De)politicisation, 2006-2015

Procedural politicisation		
Types of procedural politicisation	*Elements that feed the types of politicisation*	
Capacity	- Possibility of whipping the cabinet vote on Woodworth's M-312 discussed, though ultimately decided against	
Spatial	- Leadership on G8 maternal and child health initiative/ Muskoka Initiative	
Temporal	N/A	
Procedural depoliticisation		**➔ Repoliticising/boomerang effect**
Types of procedural depoliticisation	*Elements that feed the types of depoliticisation*	
Capacity	- Ensure passage of resolution indicating the party would not legislate on abortion at 2005 CPC convention - Stronger message control on social issues during 2006 election campaign and onward - Exclude abortion funding from maternal health initiative - Increased party discipline/discouragement of MPs bringing forward pro-life PMB, including M-408 being declared non-votable	➔ Backlash from media, opposition and some parts of NGO community regarding lack of abortion funding in maternal health initiative; Liberals put forward an Opposition Motion to include abortion in the initiative ➔ Discontent from backbencher CPC MPs expressed – 'backbench spring' ➔ Warawa brings forward Point of Privilege – leads to debate on these issues
Spatial	- Consensus of the constituency and democratic reform policies (roots in the Reform Party/Alliance) → Free votes, referenda on moral issues, referenda triggered by petition - Allowing PMB	➔ Media and opposition criticism regarding abortion, particularly during election campaigns and when backbenchers introduce pro-life PMB
Temporal	- Potentially delayed committee review of Epps' bill C-484	N/A

Achieving a minority government in 2006, Harper's CPC government discovered the challenges of contending with diverse views on abortion within their caucus, particularly as backbenchers continued to bring forward pro-life PMB, yielding stronger discouragement of such PMB over the course of the governments' mandate. The mechanisms that enabled increased control, such as controlling committees, ensuring certain resolutions passed at convention, and increasing party discipline in general, effected ***capacity*** depoliticisation by limiting agency and debate on abortion. These would have some ***repoliticising*** effects, however, as it prompted public dissent from some backbenchers, particularly when Mark Warawa's motion M-408 condemning sex-selective abortions was declared non-votable. The inadvertent ***repoliticisation*** of abortion through the government's G8 Maternal Health or Muskoka Initiative is also discussed. This initiative, which, not being a bill or motion, did not require parliamentary debate, nonetheless resulted in extensive questions and critiques as well as debate on an Opposition Motion.

9.2.1 Depoliticisation (and Repoliticisation) in Moving Away from Democratic Reform and Consensus of the Constituency Approaches

As noted above, the merger that created the CPC also meant the party had to contend with differing philosophies and approaches, from the more populist to conservative to progressive. Even within the Reform Party, different philosophies had been at play, struggling to "reconcile populism with conservatism…. This dual nature meant that the party would sometimes act on conservative principles and sometimes on the basis of what Manning had decided was the popular will" (Farney, 2017a, p. 99).[131] Coming into being at a time when abortion was "still a hot issue politically" due to the Morgentaler decision and subsequent attempt to legislate on the issue, the new Reform Party had to position itself on this "political nightmare" and "minefield" of an issue

[131] Farney discusses how this was more clearly tested through the issue of gay rights rather than abortion, as abortion was comparatively a much less prominent social issue in federal politics in the 1990s.

(Confidential Interview). This issue was also more complex for the party because, although the party attracted social conservative party members and MPs, these issues were far from priorities for the party (Farney, 2017a).

Reform Party Leader Preston Manning and the party managed social issues – including abortion – by linking them with their democratic reform policy. Included in their 1989 *Platform & Statement of Principles*, also known as the 1989 Blue Book, was a commitment to "free and recorded votes in the House of Commons and in a Reform Party Caucus; referenda and plebiscites on moral and social issues; lessening of party discipline and pressure group power" (Reform Party of Canada, 1989, p. 5). In discussing the need for more free votes and direct democracy, the Blue Book specifically mentions abortion when indicating that voters can initiate a plebiscite with a petition representing 3% or more of eligible voters, stating "We believe that this is most applicable to public policy that involves the most deeply held values of Canadians. Issues like capital punishment and abortion require a directly democratic process without partisanship or suppression" (Reform Party of Canada, 1989, p. 11).[132] Part of this democratic reform approach included the consensus of the constituency policy, where Reform MPs would be expected to consult with constituents and vote according to the consensus. In other words, quipped an interviewee, it was a policy of MPs having "to stuff their own personal opinion … and vote their constituents' [views]" (Confidential Interview). This policy served to ***spatially depoliticise*** moral issues like abortion by deferring responsibility not only to individual MPs through free votes, but

[132] This was echoed in the 1991 Blue Book, which indicated, "We believe in freedom of conscience and religion, and the right of Canadians to advocate, without fear of intimidation or suppression, public policies which reflect their most deeply held values" (Reform Party of Canada, 1991, p. 2). This included re-affirming the right of the public to initiate referenda and legislation on such issues (p. 3, 11), as well as affirming their support of more free votes for MPs in the House and committing MPs to vote according to the wishes of their constituents on such matters (p. 9-10).

to Canadians generally, as it would be Canadians' petitions that would initiate referenda and constituents who would guide MPs' free votes.

However, these democratic reform/moral issues policies posed practical issues. Interviewees described the challenge of implementing the policy and measuring "consensus" (Confidential Interviews). It was, according to an interviewee, "flawed empirically, because how do you establish a consensus? In many ridings, there would be no consensus. There would be polarization" (Confidential Interview). Reform MPs tried to ascertain the consensus based on "what they heard personally from voters, whether it was in mail or what voters said in meeting… And, of course, that's obviously an empirical problem because who writes and who attends meetings? And what do they say? What do you hear?… [It] never turned into a methodology that was even close to scientific" (Confidential Interview). A former staffer described the policy as "left deliberately vague because different MPs used different methods from polling to local meetings, to different ways to gauge the views of their constituents" (Confidential Interview).

The challenge for the party to operationalize this policy once MPs were sitting in parliament became more pronounced over time. A former Reform staffer expressed the challenge for the party because, "increasingly, there were MPs who had strong views on these things, and … it was becoming increasingly … apparent that some MPs were interpreting the will of their constituents in a way that aligned with what they believe" (Confidential Interview). Interviewees who ran for the Reform and Alliance parties also described varying levels of comfort with the policy, which for some, attracted them to the party and for others, was a violation of their right to freedom of conscience (Confidential Interviews).

Overall, interviewees describe the inclusion of abortion with the democratic reform policy as a means of managing the issue. A party insider described how it was, "more political than

anything else. It was to produce internal peace within the party" (Confidential Interview). As such, "consensus of the constituency, it's…a kind of word magic, which is not…uncommon in politics. You try and find some verbal formula that people can accept. … It was a verbal formula that…papered over differences" (Confidential Interview). Another interviewee stressed that it was a pragmatic approach, because "politically, it was also essential for the survival of Reform. Because, if…the party were to take a stand on abortion, it would have ripped the party apart" (Confidential Interview). Agreeing, an interviewee described it as "an impossible issue in our party. And so we try find ways to not take a position on it" (Confidential Interview). Another interview concurred, describing abortion as "a minefield to negotiate. So Preston's attempt to do that … was this consensus of the constituency" (Confidential Interview). It was a delicate balancing act for the leadership, with an interviewee noting that, "The leader's office was certainly not encouraging MPs to raise this as an issue, because, frankly, the leader and his advisors and senior MPs would have been quite happy for this never to be discussed because it was so divisive. But there were MPs who wanted to bring it up. Reform didn't squelch those, but they didn't encourage them either" (Confidential Interview).

By deferring responsibility to MPs and their constituents, it enabled the party to avoid having a position on abortion and continued ***spatially depoliticising*** the issue. Yet the democratic reform policy's emphasis on individual MP rights also contributed to the party having a limited ability, according to a party insider, to control and manage the agenda. This seriously constrained the leadership's ability to steer the ship where they felt it needed to go. The main tool they had was the "suasion" of the leader to keep everyone on track with their agenda, however,

> "our ability [on a policy committee] to keep things off the agenda was extremely limited. … [I]f the local constituency associations wanted to bring forward policy proposals, and if they could get support from other local constituency associations, then that was going to be on the agenda for debate at… the assembly, and there was nothing that we could do

> about it except maybe … exercise a power to amalgamate them [similar motions]. And in doing so … we could adjust the wording a little bit. That was basically the only management tool that we had. … And that didn't keep things off the agenda if the membership wanted it on (Confidential Interview).

As the Reform Party became the Canadian Alliance, it maintained the referenda on moral issues and consensus of the constituency policies. The Alliance's first leader, Stockwell Day, was a known social conservative, which the Liberals seized upon and used against the Alliance during the 2000 federal election. The Liberals were able to tar the youthful appeal of Day by emphasizing his social conservativism on issues like abortion, characterizing Day and the party as having a "hidden agenda". Furthermore, with the Alliance trying to attract a pan-Canadian base of support, the Alliance had, "even less incentive … to deal with abortion," reported an interviewee (Confidential Interview). The message coming from the campaign was "basically, that this is a matter of conscience. … And let's not talk about anything else. Look … squirrel over there, look at the squirrel!" (Confidential Interview).

The democratic reform agenda of the Reform became increasingly muted as the Alliance merged with the PCs to form the CPC. This was, in part, the result of the "larger tent" that the merger created, in terms of the views both in caucus and among the electorate. As an interviewee noted,

> And because the whole point of the united alternative [merging the parties] was to widen the road, widen the tent … there were a lot of Progressive Conservatives coming into it who viewed themselves as … fiscal conservative but social liberal, is what they would have said. … So that made … an abortion policy for the party even more controversial and more divisive. So, the pressure was all about, "Let's just stay away from it" (Confidential Interview).

There was also a sense that these policies were not helpful to winning an election and forming government. As noted by a former staffer, the democratic reform policy shrank over time because, "the more democratic reform stuff a party has in this platform, the less likely it's ever

going to get elected, because it's just a signal that they can't resolve problems and challenges within their … midst" (Confidential Interview). Harper, too, according to an interviewee, "saw problems with consensus of the constituency as a doctrine. … I've never known exactly what his private views on abortion were, but clearly as … a political person, he just wanted to manage the issue. It wasn't the main thing he was interested in politically, so he wanted to keep the issue from … rearing up and causing problems" (Confidential Interview).

Altogether, says a former staffer, the parties "moved through these different machinations of trying to … keep MPs who felt strongly about this [abortion] and party members who felt strongly about this, try to keep them engaged" while also keeping the party attractive to the broader electorate who were generally pro-choice (Confidential Interview). As a result, "the party fought with that tension. … [I]t started on this democratic kick with Preston Manning and ended with Stephen Harper saying, we're not going to legislate on abortion - period. And getting from A to B took…. a bunch of interesting turns to get between those two formulations" (Confidential Interview). This included experiencing ***repoliticising*** effects from the ***spatial depoliticisation*** involved in the democratic reform policies. As discussed in the subsections below, this would increasingly be supplanted by increased ***capacity depoliticisation****,* as the party leadership exerted stronger control over its candidates and caucus members.

9.2.2 Depoliticisation in Responses to the 2004 Election: The 2005 Convention and Preparations for the 2006 Election

The new Conservative Party narrowly lost the 2004 election and accounts from CPC interviewees emphasized the lessons learned from this experience, including the need for better message preparation and control, both for the leadership and for candidates. This was not exclusive to abortion but did feature abortion as a significant issue that contributed to taking the campaign off-message. As explained in section 9.1, Stephen Harpers' response to a journalist's

question that he could not stop a backbencher for bringing forward legislation on abortion impacted their polling results, and "[CPC] support among women dropped 7 or 8% overnight" (Confidential Interview).

An interviewee granted that this was not the only factor in losing the 2004 election but called this "abortion mistake" "a pivotal moment", through which they learned that leaving any door to change on abortion open would result in losing women's votes (Confidential Interview). This was "eye opening about … the raw political consequences of opening a door on this issue.… [It] just made, just made women not want to vote for us" (Confidential Interview). As a result, "in the review of that campaign, it became clear that we would have to have a much stronger line in a future campaign to deal with that" (Confidential Interview). This ***capacity depoliticisation*** can be found in the party leadership's efforts to pass a resolution at the party's 2005 inaugural convention, ensuring that the membership voted down pro-life resolutions and voting for, as Flanagan (2009) describes it, a "promise that a Conservative Government would not introduce or support any legislation on abortion (to prevent being trapped by an issue that had hurt us in the 2004 election)," as well as getting rid of the Reform-legacy direct democracy measures, including referendums, in which abortion had originally been included (p. 204). Journalist and author Paul Wells notes how this was, as described by an unnamed Conservative strategist, intended to get "closure" on the abortion issue by having the membership "'confront abortion head-on, and let the generally pro-choice forces of the party win. Because the grassroots of the party *are* generally pro-choice.' The pro-life component tends to be louder and often better organized. But here was one issue that could actually be left to the silent majority" (Wells, 2006, p. 142).

The convention was "managed" carefully by the leadership of the convention, who "made clear" that they wanted pro-life abortion motions to fail, with their team working "very hard to

make sure those motions didn't pass" (Confidential Interview). More specifically, convention leaders had

> a roving group of 200 people that were loyal to the leader running from room to room making sure the votes went the right way. … You'd be in a room and there'd be a long debate, and about five minutes before the vote would happen, you'd see like 200 people come into the room and vote. And that was all . … run from the back [leadership of the convention]. And we didn't make a huge secret of it" (Confidential Interview).

This resolution, and the room coordination that helped them pass it, served as ***capacity depoliticisation***, as a means of committing the party to not legislating on abortion, shutting down debate on the policy of the party on the issue.

Capacity depoliticisation can also be seen in the much tighter discipline exerted over candidates and MPs in the lead-up to and during the 2006 election, which limited the Liberals' ability to exploit off-message comments (Farney, 2017b; Marland, 2020). Marland quoted from an interview he conducted with campaign team member Ken Boessenkool, who stated,

> In severe cases, I've been the person who had to call a candidate who went off-message, and my edict to them was very simple: "Dig a hole and get into it. When you're done, take the shovel and put it through your phone. If you don't do that, I will dig a hole, put you into it, and you will never get out. You can't be talking a divisive issue that will drive us off-message for three or four days when we're trying to tell the Canadian public how we plan to run the government. If you can't stay on-message, then you won't be a candidate for this party." A version of that has been told to everyone who has worked in politics, particularly communications people (Marland, 2020, p. 129).

This message discipline was also found as the Liberals again turned to the hidden agenda narrative in the 2006 campaign, with Paul Wells describing Martin was having "tossed out his platform, for the second election in a row, to transform his home-stretch campaign into a defence of a woman's right to choose and abortion" (Wells, 2006, p. 232). However, unlike in 2004, stronger message discipline within CPC ranks made it harder for the Liberals to point to clear evidence for a hidden agenda on abortion and other issues (Flanagan, 2007, p. 264). This time, as Flanagan reports, "We didn't have to win this battle in the media, all we had to do was to fight

the Liberals to a draw by getting the story to state that the views they were attacking were also held by many within their own party" (Flanagan, 2007, p. 265), drawing on a "library" of similar quotations from Liberals on social issues that they had assembled (Confidential Interview).

Overall, the attacks on the hidden agenda and abortion were less impactful and less of a prolonged distraction than in 2004. As an interviewee from that campaign noted, attacks only work to the extent that certain conditions hold true, including that they resonate as truth with the public and are confirmed by your opponent (Confidential Interview). Therefore, "in 2004, the anti-abortion ads that…. ran against us, were only successful the day after Stephen Harper said he would open the door to legislate on abortion" (Confidential Interview). In 2005-6, by contrast, Harper's consistent line of not bringing forward and opposing legislation on abortion meant that the tactic failed, because "we did not reinforce or give a proof point to that accusation. And so… that accusation didn't work" (Confidential Interview).

9.2.3 Depoliticising PMB in a Minority Government: Unborn Victims of Crime

The ***capacity depoliticisation*** seen through increasingly control exerted over the agency of candidates during elections also begins to appear in Parliament. Having endured the "hidden agenda" election attacks, the Harper government was not keen to have abortion raised after forming government in 2006. This created a challenge for the party when backbench members continued to introduce what were seen as pro-life PMB. The party leadership had to contend with the Reform-related ethos of many MPs and party members, while also managing party discipline in a way that kept them on message and advancing the CPC legislative agenda. While an interviewee described Harper as recognizing pro-lifers as "an essential part of the party," Harper also believed that "it's not the government's job to lead on these things" given that society had not interest in changing the law (Confidential Interview).

The control is difficult to describe with precision because much of it is bound up in how interviewees perceived an increasing discouragement of pursuing such issues by the leadership. These perceptions did, however, have real consequences on MP behaviour. Interviews described an intensifying push to keep abortion off the table once the party was in government, with Harper doing "whatever he needed to do to ensure that … it didn't go forward (Confidential Interview). As a former staffer noted, "The Conservative Party wasn't nearly as … pick your word: open, transparent, naïve … [W]here…even Reform wanted to keep it off the agenda, … the new Conservative Party was even more committed to keeping it off the agenda" (Interview 23). The message coming from Harper was along the lines of, "we are not talking about abortion . … not only are we not going to have a policy, but you're not going to talk about it. … [F]eel free to think whatever you want … but don't talk about it" (Confidential Interview). An interviewee described the caucus management as "fairly heavy-handed" for social conservatives, with abortion being a key issue for many such MPs, on which the "best they could do was occasionally a private member's bill" (Confidential Interview). The message from the leadership was, "We're not allowing discussion on that. And we're not supporting it, if you managed to get it on the agenda'" (Confidential Interview).[133]

The most significant PMB during the 39th Parliament (2006-2008) with connections to, if not abortion exactly, at least some recognition of fetal life and rights, was "unborn victims of crime" legislation. This legislation proposed the application of penalties to attackers when a pregnant woman was injured or killed and the fetus died as a result. Cases in Canada included the

[133] Another interviewee described a more lenient approach, with views expressed in caucus or on a free vote not necessarily affecting who was appointed to cabinet, parliamentary secretary and committee chair positions (Confidential Interview). The cabinet included those with both socially conservative and progressive views on issues like abortion. Another interviewee also described caucus relations as generally congenial, noting Harper was not "autocratic", explaining that "when it came to decision making [in caucus], he was very group oriented. Only after decisions were made did he insist that the party should speak as one voice … And for that he got a bit of a bad rap" (Confidential Interview).

2005 murder of Oliva Talbot and her unborn child, Baby Lane, with Talbot's mother Mary vocal in support of Ken Epp's Bill C-484, described below. At present, there are no additional penalties applied to attackers who cause the death of the fetus, whereas such laws do exist in several U.S. states.

Leon Benoit, an Alberta CPC MP, introduced Bill C-291, An Act to amend the Criminal Code (injuring or causing the death of a child before or during its birth while committing an offence) early in the first mandate. However, the Subcommittee on Private Members' Business (referred to as SMEM) deemed C-291 non-votable,[134] resulting in it being dropped from the order paper. Because the meeting was in-camera (i.e. not open to the public) and has no available transcript, the reasons for the decision are unknown (Subcommittee on Private Members' Business, 34th Parliament, 1st Session, May 29, 2006, Meeting No. 1, Minutes).[135] Mr. Benoit appealed the decision to the Standing Committee on Procedure and House Affairs (referred to as PROC), where he testified that he was told his bill violated the Charter but was not told what part of his bill was problematic or why (Standing Committee on Procedure and House Affairs, June 6, 2006, No. 10, p. 2). At this meeting, a letter from Minister of Justice and Attorney General Vic Toews was distributed, expressing the government's opposition to the bill. The committee upheld the subcommittee's decision. It is unknown whether the PMO played any role in the committees' decisions, although it is possible that CPC members of both SMEM and PROC may have been influenced to some degree by the PMO's opposition to the bill or by the Justice Minister's letter of opposition, submitted just before the appeal hearing. A recorded vote was not taken at PROC,

[134] Criteria for determining votability is outlined in Appendix I.
[135] It is also unclear as to why some SMEM meetings on non-votability are in camera and others have recordings and evidence (transcripts) available.

but the transcript indicates that three members of the committee abstained from the vote, without recording the names of those members.

In the fall of the next year, November 2007, Ken Epp introduced a bill along the same lines as Benoit's. C-484, An Act to amend the Criminal Code (injuring or causing the death of an unborn child while committing an offence) was introduced and debated in late 2007 as well as spring 2008, passing at 2nd reading on March 5. All but four members of the CPC caucus voted in favour of the bill, along with 27 Liberals and one NDP MP, allowing the bill to pass 2nd reading 147 to 132 (Canada, Journals, 39th Parliament, 2nd Session, No. 60, Vote No. 58). An interviewee noted that PM Harper even privately said that he would support the bill and that the cabinet had agreed on a free vote for both caucus and cabinet (Confidential Interview).

The bill faced criticism from other quarters, however, including the Abortion Rights Coalition of Canada (ARCC), who expressed concerns that the bill was a trojan horse that would lead to restrictions on abortion down the line (Arthur, 2008). Government support for the bill also dissolved with Minister of Justice Rob Nicholson delivering a press conference shortly before the 2008 election, announcing government opposition to the bill and promising government legislation that "will punish criminals who commit violence against pregnant women, but do so in a way that leaves no room for the introduction of fetal rights" (CBC News, 2008). However, as the article notes, because an election was imminent, it was expected that the bill would not actually make it through parliament, which was indeed the case; the bill was also not reintroduced by the government under their next mandate (CBC News, 2008).

Epp's bill was never actually reviewed by the Justice parliamentary committee. A government insider described how it was "on procedural grounds rather than substantive that we didn't want Ken's [Epp] bill taking up the very valuable . … committee time," because the

government's criminal justice reform agenda was already incredibly bloated with more than a dozen bills going through parliament and required the Justice Committee's review (Confidential Interview). Accordingly, they were "trying to persuade … all sorts of backbenchers … [to] just reroute their bill someplace else" in order to pass the Tackling Violent Crime Act (Confidential Interview). Any additional bills that would go to the Justice Committee, as Epp's would, "meant taking time away from the government legislative agenda in the House Justice Committee" (Confidential Interview). The interviewee described how Justice Minister Rob Nicholson, "put on a major effort at the end of 2006, and then continued through all of 2007, to persuade backbench MPs to hold off on private member's bills that would end up in the Justice Committee. There was a concerted effort … not to kill their bills, but to hold … off those bills until we can get the Tackling of Violent Crime Act through the … Justice Committee" (Confidential Interview). Other interviewees felt that the party leadership was deliberately delaying the legislative progress of C-484 due to its connection with abortion (Confidential Interviews), possibly constituting ***temporal depoliticisation***. Regardless of the precise intentions of Minister Nicholson and the party leadership, the result was that Epp's bill was never able to have its committee review and died on the order paper when the 2008 election was called.

Although difficult to identify all the precise mechanisms at work, this section indicates that interviewees perceived a strong and increasing discouragement of pro-life PMB. This ***capacity depoliticisation*** appears through direct opposition to the bills expressed by the government at varying points, including backtracking on prior support for a PMB and proposing a government replacement bill instead. Additionally, the delays that Epp's bill faced in getting to committee, while also possibly due to broader issues with a bloated justice agenda, might also be an instance of ***temporal depoliticisation***.

9.2.4 Repoliticisation (Inadvertently) with the Maternal Health Initiative

In 2010, the government introduced a maternal health initiative in preparation for the G8 summit meetings Canada was scheduled to host in Muskoka, Ontario. The initiative was aimed at addressing maternal and child health to support the United Nations' Millennium Development Goals. The program received significant criticism because it did not include abortion funding (which itself could be understood as ***capacity depoliticisation***, by attempting to keep abortion off the agenda), resulting in the government facing down daily opposition accusations of a "hidden agenda" and "regressive ideology". This ***repoliticisation*** of the abortion issue launched significant controversy and conflict, which nearly "derailed the whole thing" (Confidential Interview).

Those involved with the policy were taken aback at the negative response it received.[136] One interviewee stated, "never in my wildest dreams did I connect maternal and newborn child health with abortion. It was naïve on my part, I guess" (Confidential Interview). Since abortion funding was already part of other federal international aid programs, they thought there can be "one program that is dealing … in maternal and newborn child health, that…does not have to have an abortion component. … It just seemed reasonable that funding expressly for newborn child health wouldn't include abortion. And as I saw, … not everybody saw that as self-evident" (Confidential Interview).

Another interviewee described the policy position represented by this program as neither pro-life nor pro-choice, but neutral: "because we were neither going to fund pro-choice activities, nor were we going to fund pro-life activities, nor are we going to spend money to oppose pro-life

[136] There was also controversy after Minister of Foreign Affairs initially said the program would not include family planning, which was quickly backtracked on. An interviewee familiar with the program described surprise at the minister's comments, attributing them to a "misunderstanding" (Confidential Interview).

or oppose pro-choice… We're just not going to spend money on abortion. It was the fiscal equivalent of we're not going to legislate on abortion" (Confidential Interview). However, not everyone agreed:

> The problem is, while the social conservatives, I think, understood the nuance, … - they were just happy that we weren't going to just fund abortions - the people on the left, including … the public service and CIDA [Canadian International Development Agency], completely failed to see that nuance. They were incapable of it. It was either you're pro-choice or you're a monster. So I had some really fun discussions with public servants, because I'm pro-choice, and I'm saying to them, "Look, there's actually a neutral position where we just don't want to engage on this issue." (Confidential Interview).

The interviewee noted that, "in a lot of these countries, you couldn't even perform abortions legally, so it'd be pointless funding it" and they were ultimately able to work well with many NGOs to advance the program (Confidential Interview). The program itself was "well advanced" and on track to be their "centrepiece" for the G7 summit when the criticism began, and "all of a sudden, … the PMO suddenly started saying, 'Whoa! What the heck's going on with this [controversy]? You never told us about this!' And we said, 'Yes we did'" (Confidential Interview). Further recounting the relationship with the PMO,

> [A]pparently, the abortion thing was a big surprise when it started coming up. Because they were saying…, "We just spent … four years … keeping the abortion issue buried, and here we are willingly bringing it up ourselves." And so there's some toing and froing, but I think in the end, they seemed to just calm down about it. And then the PM embraced it wholeheartedly and everything, and the issue never really had any traction, except in aid circles, the NGO community (Confidential Interview).

Despite the controversy, the PMO opted to "manage" the issue, which was helped along by having other NGOs "on side publicly. So it was like, if these guys are okay with it, it can't be that horrible" (Confidential Interview). An interviewee also noted that "Harper's working style" usually tended to pull things from the agenda if they caused too much controversy, "But in this case, he decided to continue with it" (Confidential Interview).

Repoliticisation of not including abortion in the initiative also resulted in the Liberals' Opposition Motion, which called for the inclusion of abortion and contraceptives in the initiative. It was also, said an interviewee, a sign of "how far the Liberals would…go to make abortion an issue" (Confidential Interview). There was a real fear that this motion, debated on March 23, would pass – or worse, that it could bring down the minority government along with the policy, recounted an interviewee, describing the motion as a "near death experience" (Confidential Interview). If the Liberals had played their hand better, the interviewee said, they could have succeeded in dividing the "heavily split" Conservative caucus over the abortion issue (Confidential Interview). Instead, the Liberals "overstepped, in my opinion, tactically. They overstepped how aggressive they were, and their motion was just completely over the top. And the Conservative caucus rallied and basically decided to fend it off" (Confidential Interview). A united CPC caucus[137] was met in Parliament with a not-quite-so-united Liberal Party. Even though it was a Liberal motion and even with a whipped vote, several Liberals were absent, three known pro-life Liberals voted against it, and another Liberal MP abstained. The motion, consequently, failed to garner sufficient votes to pass, embarrassing the Liberal Party with headlines that read, "Liberals defeat own family planning motion" (CBC News, 2010). Despite this, however, the motion had contributed to ongoing criticism and debate in the House, helping to ***repoliticise*** the issue.

The government had to deal with some international criticism as well. A PMO staffer described the PM's messaging when facing critiques over the lack of abortion funding in the measure saying, "Mr. Harper said that … within Canada, abortion was a highly divisive issue,

[137] The Conservatives also argued that the motion was "Anti-American", as the motion's text referred to "failed right-wing ideologies previously imposed by the George W. Bush administration in the United States, which made humanitarian assistance conditional upon a 'global gag rule'" (House of Commons Debates, 40th Parliament, 3rd Session, Vol. 145, No. 015, Mar. 23, 2010, p. 784).

and therefore, they simply weren't going to go there. Because everybody thought it was a good thing that we were going to do something worthwhile for people in the third world" (Confidential Interview).

Overall, interviewees involved in the maternal health initiative expressed a great deal of satisfaction with the program and its outcomes (Confidential Interviews). An interviewee went on to describe the commitment that PM Harper had to the initiative, even continuing his involvement with the UN committee when "he got no political benefit out of doing it. … So the idea that … he would have … risked all of that [the cause of maternal and newborn health] in order to make a statement about abortion, when he had spent all of his time in government trying to … suppress discussion about abortion, it just didn't make any sense (Confidential Interview). Additionally, added an interviewee, despite abortion getting dragged into it, "we sort of politically got away with [it], I don't think it was a . … big political hit. And the Conservatives went on to get a majority the very next year. So how bad was it?" (Confidential Interview). Johnson (2021) describes the initiative as having "played to Harper's socially conservative base", but because that base is "too small (in terms of potential votes) for a domestic policy focus…[,] Harper expressly avoided the abortion issue on his domestic agenda" (p. 10). However, while the Conservatives weathered the storm of criticism from their opponents on the maternal health initiative, they were less and less interested in dealing with ongoing pro-life PMB, as discussed below.

9.2.5 Depoliticisation and Discouraging PMB: Motions 312 and 408

After the government won its majority in 2011, it continued to face pro-life PMB. This section discusses increasingly strong ***spatial*** and ***capacity depoliticisation*** movements that aimed to manage these PMB but also provoked other forms of ***repoliticisation***.

Motion 312 was introduced by CPC MP Stephen Woodworth and moved that a special parliamentary committee be formed to investigate the definition of a human being in the Criminal Code,[138] with Woodworth referring to the definition as 400 years old and in need of review (Canada, House of Commons Debates, 41st Parliament, 1st Session, Vol. 146, No. 111, Apr. 26, 2012, p. 7243). The question of how to approach the motion within caucus was another matter for the government. It was certainly not something appreciated by the Prime Minister, with an interviewee describing the perception that the PM wanted the government "to exercise every means at their disposal to try to ensure the defeat of the motion" (Confidential Interview). For instance, Mr. Woodworth had given prior notice to the CPC House Leader that he would be delivering a press conference on the motion but, as described by an interviewee, partway through the press conference, "reporters were being distracted because the Justice Minister had just made a statement and held a sort of a mini scrum on the [same] issue himself" (Confidential Interview), expressing opposition to it. The clear opposition from the PM and other senior cabinet ministers likely also gave pause to MPs who had career ambitions of rising in the ranks of the party since, as noted by an interviewee, "peer pressure isn't something that's confined to grade school or … mean cliques at high school. There is certainly a very important component of peer relations in Parliament" (Confidential Interview).

While PMB have traditionally been free votes, there was, according to interviewees, talk of possibly whipping the cabinet to vote against it. This "corridor talk", as an interviewee described it, first suggested "that there was a discussion [in cabinet] that there should be a vote in unison. And then I heard that that's not how it was going to be" (Confidential Interview). Another

[138] The definition referred to is found in Subsection 223(1) of the Criminal Code, which states that "a child only becomes a human being within the meaning of this Act when it has completely proceeded, in a living state, from the body of its mother, whether or not (a) it has breathed; (b) it has an independent circulation; or (c) the navel string is severed" (Criminal Code, R.S.C., 1985, c. C-46).

interviewee confirmed that the discussion was whether to allow the backbench a free vote but whip cabinet in order to "see solidarity among cabinet on the Woodworth motion" (Confidential Interview). However, adopting this policy would have reportedly resulted in multiple cabinet resignations, and ultimately the free vote policy was reaffirmed (Confidential Interview). The conversation revolved around whether this motion was a matter of conscience:

> The strong consensus around the table was . … that the party itself had always been committed to free votes on matters of conscience and this is the quintessential matter of conscience. There were some arguments, I believe, made by the Whip's office and maybe by some people at the PMO at the time, that this wasn't actually a conscience vote, because it was just a proposal to study it [abortion]. I remember being told, if you approve abortion or not, that's a conscience issue. If you're being told, should somebody study something, that's not really a conscience issue . … But on the flip side, the argument that prevailed was, well, if we can't even show that we support studying the issue, if we can't even vote for that, then how do pro-life members of the party, how will they ever believe we'll ever vote for anything pro-life, if we won't even vote for a study? (Confidential Interview).

Ultimately, in the vote on the motion at 2nd reading, 10 minister voted in *favour* of the bill, alongside 76 CPC backbenchers and 4 Liberals (Canada, House of Commons, Journals, 41st Parliament, 1st Session, No. 153, Vote No. 466). PM Harper did not. While some of the cabinet votes were unsurprising, such as Jason Kenney's vote in favour of the motion, there was significant uproar over Minister of the Status of Women Rona Ambrose's vote.[139] Following the vote she tweeted, "I have repeatedly raised concerns about discrimination of girls by sex selection abortion: no law needed, but we need awareness!" (Rennie, 2012). The opposition used the opportunity to attack Minister Ambrose for taking this position, even to the point of demanding her resignation as Minister for the Status of Women (41st Parliament, 1st Session, Vol. 146, No. 154, Sept 27, 2012 & No. 155, Sept 28, 2012). An interviewee noted it would not have been

[139] Ms. Ambrose was also concurrently the Minister of Public Works and Government Services.

difficult for Ambrose to have abstained or to have been absent, so it was "a real surprise at the PMO when she voted for the motion" (Confidential Interview).

Here, although free votes are ultimately decided upon for Motion 312, continuing the traditional conscience approach and ***spatially depoliticising*** abortion by deferring responsibility to individual MPs, the possibility of whipping cabinet would have served as ***capacity depoliticisation***, limiting debate and dissent and helping to shut down the PMB with a show of government force. However, it appears that this would have produced resignations from cabinet and, therefore, ***repoliticisation***, resulting in the continued use of free votes. The latter too, however, also produced ***repoliticisation***, particularly with Minister for Status of Women Rona Ambrose voting in favour of the bill and receiving calls for her resignation as a result. The debate and controversy stirred up by Motion 312 seemed to have an impact on how the CPC leadership looked at and managed the next abortion related PMB to appear on the scene: Motion 408. An interviewee linked the experiences of M-312 to the challenges subsequently faced by Mr. Warawa's Motion 408, saying, "Everything got worse in Parliament. … Well, you can never know . … if event A causes event B causes C, but I do think things got worse after that [Motion 312]" (Confidential Interview).

The day after Motion 312 lost its voted in the House, Motion 408 was presented by a CPC backbencher. Although the timing seemed to suggest an effort amongst pro-lifers to, as reported in the media, "keep the abortion issue simmering" (Rennie, 2012), this assumes that the timing was deliberate and coordinated. However, time allocated for PMB is set by procedure and the House itself, with interviewees affirming that the timing of the motions is purely a function of the parliamentary calendar and the order in which the names for the order of precedence had been drawn: "you have to go when it's your turn to go" (Confidential Interviews).

Mark Warawa's Motion 408 consisted of one line, "That the House condemn discrimination against females occurring through sex-selective pregnancy termination", also referred to as sex-selective abortion or, by some, female feticide (House of Commons Bills, 41st Parliament, 1st Session, M-408). Interestingly, the challenges Warawa's motion encountered contrasted with previous statements expressed by parliamentarians on the same subject months earlier after a CBC hidden camera investigation reported that ultrasound clinics were providing early information on the sex of the fetus, connected with wider concerns of sex-selective abortions targeting female fetuses (CBC Investigation: Unnatural selection, n.d.).[140] In reaction to news of the CBC investigation, all parties in the House excepting the Bloc Québécois (BQ) condemned sex-selective abortions targeting female fetuses or, in some cases, the use of non-medical ultrasounds for this practice (CBC News, 2012). However, Motion 408 elicited negative feedback from the opposition, who tied it to perceived ongoing anti-abortion advocacy (Rennie, 2012).

M-408 did not actually go to debate, because SMEM, the sub-committee that evaluates PMB, as previously discussed in relation to Benoit's Unborn Victims of Crime bill, found M-408 non-votable.[141] This was despite Library of Parliament researcher Michel Bédard identifying no issues and reporting to the committee, "A motion does not enact in itself a rule of law; it's not an act of Parliament. It does not put in place rules. This motion refers to the deliberative functions of Parliament, which are protected by parliamentary privilege. If we look at the criteria, it is within federal jurisdiction, it does not clearly offend the Constitution, and there's no similar motion

[140] The investigation was in response to research reporting on demographics in certain Canadian immigrant communities as well as an editorial by the Interim Editor of the Canadian Medical Association Journal in March 2012, in which he had proposed a ban on releasing sex information until 30 weeks to help alleviate this problem (Kale, 2012). Other concerns and research had been raised about the phenomenon at a global level, such as journalist Mara Hvistendahl's book (2011), as well as studies on the demographic and other impacts of sex-selective abortions that skew towards a son preference (Hesketh, Lu, & Wei Xing, 2011).

[141] Unlike the SMEM meeting at which Benoit's bill was discussed, this SMEM meeting was recorded, with an audio recording and a transcript available.

currently on the order paper" (Subcommittee on Private Members' Business, 41st Parliament, 1st Session, No. 007, 2013, p. 1). However, the committee decided that the motion would impinge upon provincial jurisdiction, as it "involves ultrasound and health care delivery" as well as being "very similar in nature to a former motion that was debated in the House, motion M-312" and, as such, the motion was deemed non-votable (p. 2).

Some alleged there was coordination between the opposition and government to kill the motion at this stage at SMEM, as noted by an interviewee (Confidential Interview) and as reported as rumour by a parliamentary journalist (O'Malley, 2013).[142] Another journalist cited an anonymous Conservative who stated that the PMO had been very clear that no more pro-life bills or motions should come forward from caucus, which supported this allegation (Payton, 2013a). This concern was strengthened, for some, when Mr. Warawa's appealed to the PROC committee. Unlike the Leon Benoit appeal, Mr. Warawa's statement at his appeal resulted in no questions from the committee members who then immediately went in camera before returning to confirm that they had made a decision that would not be disclosed until their report was tabled (Subcommittee on Private Members' Business, 41st Parliament, 1st Session, No. 007, 2013). As an interviewee present described, "No one [at PROC] asked a single question to Mark – I'd never seen that happen before. So they all knew, before going in, that they weren't going to listen to what Mark had to say and they had all their minds made up. I mean, that looks like collusion to me" (Confidential Interview). Mr. Warawa was quoted by media as saying that, "Well, it appears that minds were made up", referring to the committee (Payton, 2013b). The committee ultimately upheld the previous decision, dismissing Warawa's appeal.

[142] Although the original article describing this is no longer available at CBC.ca, it can be accessed through the Way Back Machine internet archive. A tweet by the same author, linked to an article, refers to the committee decision as "Government, opposition unite to moot sex-selective abortion motion http://dlvr.it/36cZbk #hw" https://twitter.com/kady/status/314753090978992128

The possible use of the committee to shut down the motion and the consideration of whipping cabinet point to an increasing exercise of control and ***capacity depoliticisation,*** effected through the shutting down of opportunities for debate and controversy through these PMB. Although some of these allegations of increased control rest partially on rumours and conjecture, the fact that interviewees as well as media members were speculating to this effect points to the fact that this would have sent a message to members of caucus to toe the line. However, as discussed below, unforeseen ***repoliticising*** effects would result as well.

Following the failure of his appeal, Warawa had the option to drop this PMB and introduce another, or to appeal to the House of Commons, an unprecedented step that would call on the House to hold the committee in contempt. Prior to deciding on the fate of his PMB, Warawa attempted to raise the issue of sex-selective abortions in a member's statement, also referred to as an S.O. 31. He was told shortly before he was to speak, however, that he had been stricken from the House Leader's list of those who could make S.O. 31s in the House that day. This prompted Warawa to raise a Question of Privilege in the House, asking the Speaker to rule on what Warawa argued was a violation of his rights as a Member of Parliament to speak to issues of concern. This, then, prompted a debate, with other pro-life MPs relating similar concerns and stories about their own challenges in addressing the abortion issue due to party interference, as well as a broader discussion about the role of parties vis-à-vis members, becoming an issue more about party discipline and members' rights than abortion itself. Speaker Andrew Scheer issued a ruling that indicated that nothing prevented MPs from standing and waiting to be recognized to speak, regardless of whether or not they appeared on the party lists (House of Commons Debates, 41st Parliament, 1st Session, Vol. 146, No. 238, Apr. 23, 2013).

Called a "backbench revolt" by the media, this Question of Privilege and resulting debates kept the issue of MP rights and party discipline, alongside abortion, in the news. As discussed by Thomas and Sabin (2013), the approach to M-408 was part of a broader trend of cracking down on the abortion issue, even being willing "to endure weeks of negative headlines regarding Mark Warawa's question of privilege [which] demonstrated the extreme lengths to which it would go rather than let one of its MPs speak on an abortion related subject" (p. 11). This can be seen as ***repoliticising*** the issue based on controversy over the motion having possibly been squashed and, as such, subject to ***capacity depoliticisation***.

Overall, during its majority mandate, the CPC government clearly found abortion-related PMB to be a distraction at best and a point of vulnerability at worst. As one interviewee noted regarding matters like M-312 and M-408,

> the prime minister and a lot of his staff felt that these motions were just an unnecessary distraction, and . … if we're going to lose these motions anyways, then it doesn't even really help … with showing pro-life people within the Conservative Party that we're bent to the cause. … So what was the point of these? Why … do we need to have that internal and public fight for no obvious gain? (Confidential Interview)

As described by some interviewees, the PM "adopted the approach that he would not give any quarter to those who supported abortion law reform. He was firmly committed to opposing abortion law reform. And so, when measures did arise, no matter how reasonable they were, he used whatever influence he had to try to see them defeated" (Confidential Interview). These measures ranged from persuasion inside and outside of caucus, and while it was never explicit that active pro-life efforts would bar MPs from cabinet, there was a felt sense among many that "if you disagree with the Prime Minister on things that he feels or she feels strongly about, you're probably not helping your prospect of getting appointed to cabinet. And so, one could say that by letting his position on this issue be known, the Prime Minister … is telegraphing their willingness

to have you in cabinet if you don't, if you're not on side with them" (Confidential Interview). Another interview noted that officially, parties cannot control PMB, but the party also can provide them – or remove from them – committee memberships or chair positions, as well as travel, beyond the cabinet possibilities: "[t]here's ways to coerce MPs, because you can say, 'Well, you're going to be taken off this committee, you're going to … stop any traveling that you do. … [T]hose things do happen. So MPs can be threatened that way - whether that happened in these cases, I don't exactly know" (Confidential Interview). As one noted, at least in terms of direct relations with their caucus mates, "I don't recall being dragged over the coals or anything … because they gave it up, they knew it wasn't worth it, they were wasting their breath" (Confidential Interview). However, for their colleagues that had pro-life views but were "a little less deep in their convictions on this," as an interviewee put it, they:

> may have had others lean on them and say, "You know, you're ain't getting a trip off to God-knows-where in the next month if you do this, or you're not going to be promoted to a chair of a committee, or that kind of thing," you know what I mean? So, … I suspect that there were these…carrot and stick kind of approaches that were used in respect to some members, you know (Confidential Interview).

9.3 Discursive (De)politicisation: MPs have Conscience Rights, but the Debate is Closed

Moving now into the discursive analysis, this section, summarized in Table 13 below, explores two stories that are present in the government's discourse from 2006-2015. The first story focuses on the *conscience rights of MPs* and responds to C-484 in 2008 as well as other PMB in 2010 and beyond, although in a much-diminished way. The story is centered on deferral of responsibility to individual MPs, who, although entitled to their own statements and PMB, do not necessarily represent the government. The story therefore reveals ***spatial depoliticisation*** of abortion as well as **c*apacity depoliticisation*** through the government's appeal to the procedures and rules of the House that govern PMB, positioning the matter as beyond their control.

The second story deflects the opposition criticism in other ways, by asserting that the *abortion debate is closed, and the government is not and will not be re-opening it*. This story is somewhat present in the 2004 campaign but more emphatically in 2006. Although this chapter is not analysing the discourse of the elections per se, media articles covering the 2006 campaign are drawn on to illustrate the presence of the story therewithin. Although the conscience approach appears as the first line of defense for PMB like C-484 in 2008, ongoing criticism triggers the story of the debate being closed and not re-opened through the PMB or otherwise. This story also unfolds in defense of criticism against the maternal health initiative in 2010 and thereafter, as well as in response to PMB including C-510 (Roxanne's Law) and Motion 312. Supporting this story is an emphasis on the divisive nature of the abortion issue (which produces ***capacity depoliticisation***), which is then tied to Canadians' desire to not re-open the debate (producing ***spatial depoliticisation***).

The government's emphasis that their position is consistent and that they have already responded to the criticism also ***temporally depoliticises*** the issue. Some milder ***politicisation*** is present, in terms of the government positioning themselves as leaders on the maternal health initiative for instance, although even this is tied to ***depoliticisation*** as it also represents a deflection of the criticism towards the objectives of the program.

Table 13: Discursive (De)politicisation, 2006-2015

Problem	Abortion as divisive in Canada and caucus	Abortion as destructive and distracting to our party and agenda due to media and opposition attacks
Solution	Conscience approach	Discourage/shut down debate
	Story 1: Abortion is divisive, but individual MPs have conscience rights.	Story 2: The debate is closed and we're not reopening it.
Frames Constructing Stories and Serving as Discursive (De)politicisation		
Capacity Politicisation	N/A	N/A
Spatial Politicisation	N/A	- Leadership on the initiative to save mothers and children - Canada makes its own decisions on its foreign policy vis-à-vis G8
Temporal Politicisation	N/A	
Capacity Depoliticisation	- Constrained by rules governing PMB and the processes PMB follow	- Emphasizing that the government has been 'very clear' on the issue - Issue is divisive
Spatial Depoliticisation	- Deferring to private members' as having their own views, pursuing PMB	- It is the opposition re-opening the abortion debate (especially the Opposition Motion of Mar. 23, 2010). - Maternal health initiative supported by G8 - Canadians support the Initiative and are not interested in reopening the debate - Supported by Parliament through defeated Opposition Motion vote
Temporal Depoliticisation	- N/A	- Questions already answered - Government position consistent, unchanged

9.3.1 Story 1: Abortion is divisive, but MPs have conscience rights

This conscience rights story connects to aspects of the Reform philosophy, which linked moral issues to underlying issues of democracy and a need for more agency for individual MPs as they represent their constituents. With the merger of Reform and the PC party, we see some

continuation of this theme, although tied into the more traditional conscience approach that the PCs had tended to use, rooted in the personal consciences of the MPs rather than representing the consensus of their constituents.

As the Conservative take power, this story appears to be the first line of discursive defense against opposition criticism of backbencher statements or PMB related to abortion. However, with ongoing questions and criticisms that continue to connect PMB and the statements of Conservative backbenchers with that of the government, the second story, that insists the government is not opening the abortion debate, becomes increasingly present.

In their first mandate (2006-2008), the government was relatively friendly towards Ken Epp's bill C-484 on unborn victims of crime. As interviewees described, it was not smooth sailing when the motion was introduced, but ultimately a significant portion of the caucus – including cabinet ministers – voted in favour of the bill at 2nd reading. During 2nd reading, although no minister or parliamentary secretary (PS) from the Justice department spoke to the bill, Tom Lukiwiski, PS to the Leader of the Government in the House of Commons and PS to the minister of Democratic Reform did offer his support, undercutting opposition to the bill with his remarks that, "I do not think that anyone in the House could oppose the intent of this legislation" (House of Commons Debates, 39th Parliament, 2nd Session, Vol. 142, No. 058, Mar. 3, 2008, p. 3513). However, he did add the caveat that the bill was "technically complex and therefore, in my opinion, should be carefully reviewed if it is referred to committee for study", deferring to the committee and ***spatially depoliticising*** it as a result (p. 3513). Much of his remarks were focused on how the government is advancing related justice agenda items, but he does specifically endorse the bill, stating "The intent of the bill before us today aims to protect women. It is a bill that I wholeheartedly support, and I encourage all of my colleagues to support it as well." (p. 3514)

However, Question Period for weeks thereafter featured questions from opposition members – especially the BQ and NDP– relating to the bill, including interrogating how ministers would vote – especially Minister Josée Verner, Minister of Status of Women. Minister Verner responded by noting that "we had a free vote yesterday. I exercised my right to vote freely on the question" (39th Parliament, 2nd Session, Vol. 142, No. 061, Mar. 6, 2008, p. 3748). A few days later she reiterated, "this is a private member's bill and I exercised my right to vote, which was entirely free" (Vol. 142, No. 063, Mar. 10, 2008, p. 4446). This ***spatially depoliticises*** it, deferring responsibility to individual MPs. Minister of Justice Rob Nicholson also emphasized that the matter was a free vote on private members' business (Vol. 142, No. 062, Mar. 7, 2008), and deferred to the committee's work, noting that the questioner "is welcome to make any representations before the committee that is having a look at that private member's bill" (Vol. 142, No. 071, Apr. 3, 2008, p. 3852). Nicholson continued to reiterate, in increasingly terse language, that, "for umpteen days we have been getting this question from the Bloc Québécois on this private member's bill. It is up to each member to decide how he or she wants to treat the bill," thus deferring ***spatially*** to individual MPs who make such decisions on voting for themselves, as well as emphasizing ***temporally*** that the questions have been asked and answered, positioning the ongoing critique as redundant (Vol. 142, No. 080, Apr. 16, 2008; No. 081, Apr. 17, 2008; No. 083, Apr. 28, 2008; No. 092, May 9, 2008). Later in that spring, Nicholson also asserted that PMB are governed by House procedures, using ***capacity depoliticisation*** to emphasize that this is outside of the government's control, as well as positioning the critiques as inappropriate:

> Apparently the hon. member is upset that private members can introduce private members' bills, but those are the rules that we have and each member can vote accordingly. … I guess the Bloc does not understand. Maybe it does not like the rules of the House, but all members are entitled to introduce private members' bills. If it really upsets the Bloc, why

> does it not introduce a private member's bill to get rid of private members' bills, if that is what it does not like? (Vol. 142, No. 103, June 2, 2008, p. 6411).

As questions continued, however, Minister Nicholson increasing adopted language that affirmed that no, the government would not be legislating on abortion, as discussed further in the next section.

Similarly, in the 40th parliament, addressing questions about extra-parliamentary statements from CPC backbencher Brad Trost, the government responded to questions and demands that the minister "repudiate her colleague's beliefs with respect to a woman's right to choose" by drawing a dividing line between the rights of MPs to their own opinion and the opinion of the government, continuing ***spatial depoliticisation*** and stating, "each member of the House is able to have his or her own opinion. It does not mean it represents that of the government" (40th Parliament, 2nd Session, Vol. 144, No. 117, Nov. 25, 2009, p. 7197). This response is reiterated the next day (Vol. 144, No. 118, Nov. 26, 2009) and the next day again, perhaps a bit more exasperated, Minister Helena Guergis retorted that: "our government has been clear on this subject: all members of Parliament have the right to their own opinion. What is my opinion? I am in favour of freedom of choice" (Vol. 144, No. 119, Nov. 27, 2009, p. 7320).

The maternal health initiative, discussed in the below section, features the closed debate story. But, as PMB arose following this, the government's deference to PMB is less apparent than it had been with Epp's PMB. Bill C-510. This decreased deference to conscience rights can be seen in the case of Woodworth's Motion 312, where only brief remarks are made that continue the story of conscience rights and private members rights. In this case, Minister of Justice Nicholson and his PS Kerry-Lynne Findlay, respectively, reminded their questioners that "Private members can come forward with resolutions The resolution in question will be dealt with according to the rules of the House of Commons. Why is that so upsetting to the hon. [honourable]

member?" (41st Parliament, 1st Session, Vol. 146, No. 152, Sept. 25, 2012, p. 10415) and "As I said before, private members' business is just that, and we have rules and procedures around private members' business, as the hon. member knows" (Vol. 146, No. 150, Sept. 21, 2012, p. 10280). The remainder of government responses to M-312, however, focused on the closed debate story, as discussed below, as well as offering Chief Government Whip Gordon O'Connor's more robust pro-choice argument against the motion, which notably deferred minimally to the conscience approach.

9.3.2 Story 2: The Debate is closed (and we're not reopening it)

The second story becomes predominant and relies on very similar phraseology in government speakers' responses, likely reflecting tightly scripted "Talking Points" distributed by the PMO. Media reports of elections show that this story was present in the messaging used in the 2006 election and subsequent elections. In 2006, for instance, a spokesperson for Harper is quoted as stating, "'The bottom line remains that a Conservative government won't support abortion legislation,' Mr. Stairs said. 'If a Conservative government won't support it, I don't see it going anywhere.'" (Galloway, 2006a). In the same article, Senator Marjory LeBreton, an advisor to Harper, was quoted for a pro-choice CPC view: "Ms. LeBreton said there would be opposition to anti-abortion laws within Conservative ranks, 'starting with people like me.' She noted that even non-controversial private member's bills, which are chosen for debate in the House of Commons through a lottery, rarely make it to the House 'so this would never survive'" (Galloway, 2006a). Although there is, still, some balancing occurring around the rights of MPs regarding PMB, for instance, with acknowledgement that a free vote would occur in such a case, Harper is quoted as saying, "'I'll use whatever influence I have in Parliament to be sure that such

a matter doesn't come to a vote.'" (Clark, 2006b) Others echo this, saying that cabinet would not support such bills (Puzic, 2006).

Here, the problem being responded to is the ongoing allegations of a hidden agenda on abortion, which the government receives from the opposition and media. And while earlier responses had emphasized the rights of private members to represent their beliefs and put forward PMB, the government increasingly emphasized that they had been "very clear" that it was not going to legislate on abortion or reopen the debate on the issue. This section unpacks this story and the (de)politicising discourse underpinning it in over the government's mandates, divided into three periods of time. First discussed is the transition in stories within the government's response to C-484 in 2008, where while being generally more supportive of PMB, as described in 9.3.1, the conscience story gives way to the closed debate story. Second is a discussion of the government's attempt to defend its maternal health initiative, depoliticising an initiative that had become inadvertently politicised. Third, the continued strength of this story is demonstrated in response to PMB between 2010 and 2015, including bill C-510 and motion M-312.

9.3.2.1 The Lessons of C-484, Unborn Victims of Crime bill

While in the CPC government's first minority mandate, Ken Epp's PMB C-484, the Unborn Victims of Crime bill, was debated in 2008. Although not government business, the government faced questions and critiques about the bill, both before and after its debate and vote. The government, in response, as discussed in section 9.3.1, did start with the conscience story, reminding the opposition that private members' business is private members' business and not government business and ***spatially deferring*** to individual members to vote freely on the matter. However, as ongoing questions and accusations continued, the government message shifted to re-

emphasizing, in increasingly terse tones it seems, that the government is not opening the abortion debate.

This closed debate story has ***capacity depoliticisation*** effects, by trying to shut down debate and discussion on the topic. For instance, with Minister of Justice Rob Nicholson questioned over his vote in favour of C-484 at 2nd reading, he deferred to the committee that would study the bill, saying, "Mr. Speaker, the hon. member is welcome to make any representations before the committee that is having a look at that private member's bill, but as I indicated, the government has no plans to introduce legislation in that area" (House of Commons Debates, 39th Parliament, 2nd Session, Vol. 142, No. 071, Apr. 3, 2008, p. 3852). By May, the responses have become shorter and more focused on the closed debate story: "Mr. Speaker, the Minister of Justice has been perfectly clear and the Prime Minister has been clear. This government is not going to reopen the debate on abortion and that is the answer to that question" (39th Parliament, 2nd Session, Vol. 142, No. 092, May 9, 2008, p. 5678). When raised in a June Adjournment Motion, Tom Lukiwski, who had spoke in favour of the bill during the 2nd reading debate, responded to a BQ MP's questions, emphasizing that: "The bill is not in any way, shape or form a backdoor attempt to reopen the abortion debate. As I said, the bill specifically excludes abortion from the bill. It is to protect women" (39th Parliament, 2nd Session, Vol. 142, No. 105, June 4, 2008).

As discussed in 9.2.3, over time, the government turned against C-484. In an unpublished report, a pro-life government insider critiqued the approach from Minister Nicholson and the party leadership, writing that their "talking points actually *did* make the Conservatives look like they had a hidden agenda with respect to abortion. The Conservative leadership clearly showed fear, and that is why they were so open to attack from the Opposition parties during Question Period

in the House of Commons [their emphasis]" (Confidential report on pro-life politics, 2017). Although the bill had sufficient support to pass 2nd reading, "the Conservative leadership could not withstand the onslaught of criticism generated from the pro-abortion disinformation campaign that ensued," resulting in the retraction of government support (Confidential report, 2017).

9.3.2.2 The Unexpected Defense of the Maternal Health Initiative

As described in section 9.2.4, the government's maternal health initiative was critiqued over the initiative's lack of abortion funding, resulting in ***repoliticising*** abortion. Unlike a government bill, this initiative did not require parliamentary approval, but the ongoing controversy drummed up by repeated questions and even an Opposition Motion on the subject, dragged the initiative into Parliament and made life uncomfortable for the government. These questions were raised in March of 2010 and continued for over a year, with daily – and often repeated – questions.

Government speakers ***spatially politicised*** the program somewhat by emphasizing their own sovereignty over such issues, with Harper noting that "Of course, G8 countries will have different priorities in terms of the specific things they fund. Particularly on the issue of abortion, a number of G8 countries have a different position. Whether it comes to our role in Afghanistan, our sovereignty over our Arctic, or ultimately our foreign aid priorities, it is Canada and Canadians who will make Canadian decisions" (40th Parliament, 3rd Session, Vol. 145, No. 021, Mar. 31, 2010, p. 1207). This is then echoed by other government speakers, like PS Abbott, describing how "the standard practice is that each country makes its own domestic decision on which areas it will focus" (40th Parliament, 3rd Session, Vol. 145, No. 033, Apr. 26, 2010, p. 1966).However, generally the government responded to this instance of ***repoliticisation*** through framing that effected a mix of depoliticising movements, including deferring to the support of

their initiative from other partners and Canadians (***spatial depoliticisation***) and insisting that they have already responded to the issue (***temporal depoliticisation***). Most significantly, perhaps, is ***capacity depoliticisation***, reinforced by frames that insist that the debate is closed, the position of the government "clear", and positioning the government as focusing on what unifies Canadians in this initiative rather than reopening a divisive issue.

For instance, Ms. Nicole Demers, a BQ MP, referred to the lack of abortion and family planning[143] as the government "exporting their hidden agenda to the rest of the world", asking "Can the government set aside its ideology and ensure that all women have access to all the methods that enable them to make an informed choice?" (40th Parliament, 3rd Session, Vol. 145, No. 002, Mar. 4, 2010, p. 62). Initial government responses tried to refocus on the purpose of the initiative, with Minister of International Cooperation Bev Oda responding that, "as Canadians know, our government has adopted a G8 initiative focused on saving the lives of mothers and children. This is not about reproductive rights" (p. 62). Government responses often avoided mentioning the word abortion, and tried to, like Minister Oda, return to the initiative's objective (40th Parliament, 3rd Session, Vol. 145, No. 004, Mar. 8, 2010). Quickly, however, the closed debate story comes into play, with Minister Oda emphasizing that "as we have been saying all along, we are not opening the abortion debate" (40th Parliament, 3rd Session, Vol. 145, No. 012, Mar. 18, 2010, p. 643). Prime Minister Harper also emphasized that, "the government's position is clear. I believe the minister answered this question. The government is looking to work with G8 countries to save lives, to save mothers and children throughout the world. … However, we do not wish to debate abortion in this place or elsewhere" (p. 644). These frames accompanying

[143] There was some confusion about the inclusion of family planning. While Minister Cannon did initially indicate that contraception was not included, this was quickly retracted. Some interviewees indicated that the program was always intended to include family planning and expressed confusion with the Minister's statements (Confidential Interviews).

the assertion of the closed debate ***temporally depoliticised*** the issue by emphasizing that their position has not changed (i.e. "as we have been saying all along") and that the question has already been answered.

Framing the government's position as "clear" also effects ***capacity depoliticisation*** through positioning the government's response as self-evident and the opposition questions and critiques as redundant at best and misleading at worst. For instance, Minister of State of Foreign Affairs (Americas) Peter Kent replied to questions, saying, "I think the answer is quite clear, but I will state again that this government is not reopening the debate on abortion" (40th Parliament, 3rd Session, Vol. 145, No. 013, Mar. 19, 2010, p. 696). Additional excerpts could be provided from Hansard, but the statements from Minister Oda and others throughout the spring of 2010 are very similar from one response to another: emphasizing what the initiative will be doing, emphasizing that all options – including contraception - are on the table, but that they are "very clear" about not "reopening" the abortion debate.

On March 23rd, 2010, the Liberals presented an Opposition Motion that called for Parliament to endorse the inclusion of "the full range of family planning, sexual and reproductive health options" in the G8 initiative, resulting in a debate on the matter, into which abortion figured prominently in opposition members' critiques (40th Parliament, 3rd Session, Vol. 145, No. 015, Mar. 23, 2010, p. 784). Government responses continued to emphasize the goals of the initiative and the importance and urgency of pursuing these goals, but also included a quick rejoinder to the opposition that, "We will be voting against the motion before the House. This motion is a transparent attempt to reopen the abortion debate that we have clearly said we have no intention of getting into. By voting against this motion, we are proving that we will not open the abortion debate" (p. 789). This frames their vote against the motion to include abortion funding in the

initiative as a vote against debating abortion itself. This statement, first offered by Minister Oda, is then repeated nearly verbatim by other parliamentary secretaries (PS), including Rick Dykstra and Andrew Saxton, and other CPC members like Candice Hoeppner.

In this debate, and in Question Period during the days following, government speakers lean into the frame that it is, in fact, the opposition opening the debate on abortion rather than the government, ***depoliticising*** the government's own responsibility ***spatially*** by blaming the opposition for reopening the debate and redirecting attention away from the objective of helping mothers and children. As PS Dykstra stated, "Instead of supporting the Prime Minister in his efforts to make the lives of women and children in third world countries better, the Liberals only see an opportunity to cause controversy where there is none" (40th Parliament, 3rd Session, Vol. 145, No. 015, Mar. 23, 2010, p. 806). He continued, arguing that the Liberals' aim "to turn this issue of trying to help mothers and children in poverty across the world into some political issue that the Liberals feel will drive some sort of message or try to divide the House in dealing with an issue that is completely non-partisan is unacceptable" (p. 808). Likewise, PS Saxton called it "absolutely shameful that the opposition is trying to turn this debate into an issue that will be divisive. We are focused on one issue, and that is saving the lives of mothers and children around the world" (p. 836). Minister Oda juxtaposed how "The Liberals may want to politicize this matter" with how the CPC government wants "to really make a difference, save the lives of some mothers and help children" (p.825). PS to the Minister of International Cooperation Jim Abbott lamented that "it gets a little tiresome having the opposition always trying to score cheap political points on the issue of abortion" (40th Parliament, 3rd Session , Vol. 145, No. 033, Apr. 26, 2010, p. 1966). The Prime Minister, responding to questions from Liberal Leader Michael Ignatieff during Question Period on the same day as the Opposition motion, also accused the Liberals of

"playing petty politics," "behaving opportunistically" and "trying to be too clever by half", arguing that "The fact is Canadian people want to do what they can, cost effectively, to save the lives of mothers and children. They are not interested in reopening abortion" (p. 819). This latter comment, echoing a prominent frame that Canadians are on side with the government, continues to ***spatially depoliticise*** the issue by claiming the support of Canadians.

In late April, PM Harper also began to appeal to their interest in pursuing an issue of unity rather than division, saying, "We can focus on things that unite the people of Canada, not on things that divide them" (40th Parliament, 3rd Session, Vol. 145, No. 033, Apr. 26, 2010, p. 2030). Here, by positioning the issue as divisive, the government positions the pursuit of a unifying goal as the only real way forward, thus effecting ***capacity depoliticisation***. Harper argued that while Liberal Leader Ignatieff "may think a culture war is a good idea but the fact is that Canadians want to see their foreign aid money used for things that will help save the lives of women and children in ways that unite the Canadian people rather than divide them (p. 2030). Other ministers continued to echo this through April, emphasizing that "our government is focused on how we can make a difference in saving the lives of women and children in ways that unite us, not divide us" (40th Parliament, 3rd Session, Vol. 145, No. 036, Apr. 29, 2010, p. 2158; No. 037, Apr. 30). As questions continued, some Ministers in late May and June began not referring to abortion at all in their responses to questions that specifically asked about abortion, instead refocusing on the initiative's evidence-based objectives (40th Parliament, 3rd Session , Vol. 145, No. 052, May 31, 2010). This appeal to the divisiveness of abortion and the need to pursue areas of consensus instead, like saving the lives of women and children through this initiative, is reminiscent of the compromise framing found in the 1960s-1980s.

The government also faced charges from the opposition that the international community was shunning Canada for its approach. The government, instead, appealed to the support they had from their partners, ***spatially depoliticising*** the controversy by emphasizing this support, such as quoting from a press release of an aid organization wanting to focus on their work of saving lives rather than a debate over abortion (40th Parliament, 3rd Session, Vol. 145, No. 035, Apr. 28; No. 037, Apr. 30, 2010). For instance, Minister Oda appealed to experts and G8 partners together in one example, saying, "G8 countries all agree, as do many other experts, that Canada's interventions are good and relate well to the MDGs [Millenium Development Goals]. They say that the Canadian strategy is well-grounded and that it is the right way to go" (40th Parliament, 3rd Session , Vol. 145, No. 044, May 11, 2010, p. 2645). Additionally, after narrowly defeating the Liberal's opposition motion 144 to 138 votes, the government's ***spatially depoliticised*** abortion by framing the vote in parliament as proof of support for the initiative.

9.3.2.3 Responding to PMB: Bill C-510 and Motions 312 and 408

Compounding some of the criticism the government was receiving over abortion and the maternal health initiative was the introduction of C-510 on coerced abortion by CPC MP Rod Bruinooge. Also called Roxanne's Law, the bill was named after Roxanne Fernando, an immigrant woman from Winnipeg whose boyfriend tried to coerce her into having an abortion and then murdered her when she refused. The bill was intended, according to Bruinooge, to empower women facing coercion and would not affect abortion access since it applied only to women who were choosing to continue their pregnancies but facing personal or domestic abuse and coercion (40th Parliament, 3rd Session, Vol. 145, No. 091, Nov. 1, 2010).

This PMB opened another fault line on the abortion issue, however, with questions throughout the spring of 2010 about why the government was "reopening the abortion debate"

through this bill as well as through the maternal health initiative. For instance, BQ MP Meili Faille referred to these efforts as a continuation of the "regressive Conservative agenda by stealth. Just as it did when it wanted to dismantle the gun registry, it is introducing another private member's bill to reopen the abortion debate" (40th Parliament, 3rd Session, Vol. 145, No. 027, Apr. 16, 2010, p. 1607). Here, not bothering to differentiate between government and private members' business as they had with C-484, Daniel Petit, PS to the Minister of Justice, merely said, "our government's position is clear: we will not reopen the abortion debate. (p. 1607).

Even after having achieved a majority government in 2011, the government continued to appear to distance itself from abortion as much as possible. Earlier in the 41st parliament, Leader of the Government in the House of Commons Peter Van Loan responded to questions about whether the government has "lost control of his caucus" over statements being made on abortion (41st Parliament, 1st Session, Vol. 146, No. 023, Sept. 29, 2011, p. 1651). Van Loan, after acknowledging that "many individuals across the country and on all sides of the House have passionate feelings about this issue," affirms that "the government has been clear. We will not reopen this question" (p. 1651). This message is reiterated in much the same way over the next few years, regardless of the question, and often leaving out a direct reference to abortion in their responses: "as I stated before, the Prime Minister's position has been very clear. He has made these statements more than once. Both before this session of Parliament began and during this session of Parliament, he has stood in this place and said that the government will not be reopening this debate" (41st Parliament, 1st Session, Vol. 146, No. 150, Sept. 21, 2012, pp. 10280). As discussed in section 9.3.2.2, these frames of the government's "clear" position on not "reopening" the debate continued to produce ***capacity depoliticisation***, shutting down any contingency on abortion.

When Stephen Woodworth's Motion 312 (M-312) came up for debate, it opened another line of attack on the government regarding abortion.[144] As Liberal MP Hedy Fry retorted during the debate on M-312, her party did not "support any legislative action that would reopen the debate on abortion or might criminalize abortion", accusing not only Woodworth but the entire CPC as reversing their promise on not reopening the debate on abortion (41st Parliament, 1st Session, Vol. 146, No. 111, Apr. 26, 2010, p. 7247). The government's response was issued not by a Parliamentary Secretary, as was often the case for PMB, but by Minister Gordon O'Connor, the Government Whip. Minister O'Connor, while noting that this was PMB and not government sponsored, also expressed the government's strong opposition to the motion, stating that the "ultimate intention of this motion is to restrict abortions in Canada at some development stage," but that the Criminal Code definition is not a 'medical test', and "It has always been part of Canada's criminal law, and it reflects the well-established legal principle that the law does not recognize a fetus or unborn child as a legal person, possessing rights separate from its mother, until it is born alive" (p. 7249). Although some ***spatial depoliticisation*** is found in differentiating PMB from the government's agenda, the government's position expressed by O'Connor also includes ***capacity depoliticisation***, appealing to the established legal principles that do not recognize fetal personhood as well as the futility of trying to reverse the status of abortion. O'Connor characterizes the nature of the issue as an ongoing debated question of "what it is to be human", describing how, "Whether one accepts it or not, abortion is and always will be part of society. … It is part of the human condition" (p. 7249). This ***capacity depoliticisation*** that emphasizes fatalism surrounding the issue of abortion is also found in O'Connor's concluding

[144] Woodworth asserted that this motion was not about abortion, per se, but the broader principles at stake (Confidential Interviews). However, for many it appeared too difficult to separate issues of the humanity of the fetus from the legality of abortion and the media, the government and many MPs addressed the issue with a focus on abortion.

remarks, where he stated, “Trying to amend the legal rules governing abortion, as is intended by this motion, will not improve the situation. It will only lead to increased conflict as the attempt is made to turn back the clock. Society has moved on and I do not believe this proposal should proceed” (p. 7250).

Spatial depoliticisation is also found in O’Connor’s acknowledgment of existing regulation of abortion under provincial and medical purview, as well as ***capacity depoliticisation*** framing the legislature’s role as bounded to making law specifically. Parliament is not, argues O’Connor, set up to address scientific, theological or medical questions, because “The House of Commons… is not a laboratory. It is not a house of faith, an academic setting or a hospital. It is a legislature, and a legislature deals with law, specifically, in this case, subsection 223(1) of the Criminal Code” (41st Parliament, 1st Session, Vol. 146, No. 111, Apr. 26, 2010, p. 7249). ***Temporal depoliticisation*** also appears in O’Connor’s emphasis of the consistency of the government’s position, stating, “As early as 2005 at the Montreal convention and in every federal election platform since, he [Harper] as stated that the Conservative government will not support any legislation to regulate abortion. While the issue may continue to be debated by some, as in the private member's motion here tonight, I state again that the government's position is clear: it will not reopen this debate” (p. 7249).

Questions continued to be posed to the government after the vote, interrogating ministers who voted in favour of the motion as well as demanding that government leadership prevent such measures from coming forward again. In response to the latter complaint, Minister of Justice Nicholson threw the issue back at the NDP questioner, ***spatially depoliticising*** the issue by deferring to the parliamentary committee and arguing that “the New Democrats were part of the subcommittee that allowed this matter to come before Parliament. All I can tell them is if they

disagree with that or if they find this very upsetting, they should take it up with their committee members and pass it on to their House leader" (41st Parliament, 1st Session, Vol. 146, Sept 26, 2012, p. 10461). Meanwhile, in response to calls during Question Period for her resignation after voting in favour of M-312, Minister Rona Ambrose, who held dual portfolios including Status of Women, does not reference either her vote or the issue of abortion in response, but points to the government's "incredible track record of standing up for Canadian women and girls. We have increased the funding to status of women to its highest point in Canadian history", as well as discussing funding for other projects (41st Parliament, 1st Session, Vol. 146, No. 154, Sept. 27, 2012, p. 10542). A similar tact is taken by Minister Ambrose's PS in ongoing questions through the end of 2012 and into 2012, ***spatially depoliticising*** the issue by diverting attention to the government's other projects.

9.4 Synthesis

Overall, as in the Chrétien and Martin eras discussed in chapter 8, the Harper era also points to a tension between continuing to treat abortion in action and in discourse as a conscience issue and treating it as a political weapon. The distinction is that the CPC but are defending themselves *against* the weapon of abortion, having recognized the efficacy that abortion as a weapon can have against them, both during election campaigns and in parliament.

A conscience approach is initially used by the CPC and its predecessors (Reform and the Canadian Alliance) strategically as a means of managing the diversity of views in parliament and their perception of the divisiveness of the issue among their voting base, ***spatially depoliticising*** the issue by deferring responsibility to MPs and to their constituents. However, over time, the party's leadership and government continues to exercise stronger and stronger control over its caucus in parliament and its candidates during elections, shutting down debate and limiting MPs'

ability to distract or disrupt the legislative agenda, which effects ***capacity depoliticisation***. However, as discussed in this chapter, this increasing control was also challenged by the Reform ethos and philosophy that had previously governed moral issues. Furthermore, these depoliticising actions were also met with ***repoliticisation***, including a "backbencher spring" or revolt, as the media had dubbed it.

Discursively, the conscience story becomes increasingly dominated by the story of the abortion debate being closed. This, too, responds to abortion as a political weapon used by the Liberals, but offers a different kind of defense instead of deferring responsibility to individual MPs and control over the situation to the rules governing the House of Commons. Rather, the closed debate story is often stated in brief and terse sentences, and usually preceded by an emphasis that the government's position is "clear". It is supported through ***spatial depoliticisation*** that appeals to the support of experts, partners, and general Canadians, and continues to use ***capacity depoliticisation*** to establish the divisiveness of the abortion issue. ***Temporal depoliticisation*** also emphasizes the redundancy of the questions and critiques they receive, reminding the opposition that they have answered the question, and establishing the continuity of their position through time.

The Conservatives under Harper lost the 2015 election to Justin Trudeau, who was able to restore the Liberal Party from a third-party status to a majority government. Since 2015, the Conservative Party and its leaders have continued to grapple with these issues, with an ongoing tension between a conscience approach and commitments to not legislating on abortion, as seen under Leader Andrew Scheer (2017-2020) (Wherry, 2019), as well as maintaining sufficient space for social conservatives during leadership races while also taking a personally pro-choice stance under Leader Erin O'Toole (2020-2022) (Tasker, 2021). And although this dissertation's scope

of analysis ends in 2019, the Conservative leadership race of 2022 also appears to be manifesting similar tensions (Rana, 2022). The next chapter discusses the Justin Trudeau Liberals winning power in 2015 and their adoption of stronger pro-choice policies.

Chapter 10: The "Charter Party" and Abortion: Justin Trudeau's Liberal Government, 2015-2019

As discussed in Chapters 8 and 9, the Liberals had begun to use abortion as a wedge and weapon against the Reform, Alliance and then Conservative parties, particularly in the federal elections of 2000, 2004, and 2006. In 2006, however, the Liberals were unable to hold onto power under Paul Martin, resulting in Martin's resignation and kicking off a Liberal leadership race that saw Stéphane Dion elected as party leader. Following an unsuccessful 2008 election campaign, Dion resigned from the leadership, prompting another leadership race that culminated in the election of Michael Ignatieff that same year. Likewise, Ignatieff's leadership did not survive the next federal election in 2011, in which the Liberals were reduced to third party status as the NDP "Orange Wave" won them Official Opposition status. After a long leadership race, Justin Trudeau was elected as the new Liberal leader in 2013 and subsequently went on to form government in 2015.

This last analysis chapter focuses on the 2015-2019 period in which the Liberals held a majority government under Prime Minister Justin Trudeau. The brief historical overview first accounts for party's approach to abortion in the years leading up to 2015, supplementing the previous chapter's discussion. It then introduces Trudeau's rise to power in 2015. A visual timeline of the period of this chapter is found in Figure 14.

In this period, a continued interplay between politicising and depoliticising movements can be found, particularly capacity and spatial movements. However, with the Liberals there is more of an overt intention of politicising the issue of abortion. This is unlike the Harper era discussed in chapter 9, where the Conservatives were generally aiming to depoliticise the issue and keep it from reopening divisions in caucus and distracting from their own priorities. The Liberals do not shy away from positioning themselves, both discursively and in concrete actions,

as taking responsibility for and authority over abortion. However, as will be demonstrated, there are depoliticising movements that accompany them and repoliticising effects as well.

This chapter unpacks these movements, first looking at ***procedural (de)politicisation*** dynamics with the requirement that those running as Liberal candidates sign on to a pro-choice position, as well as the Canada Summer Jobs program changes that required organizations to attest to a position in support of abortion and reproductive rights. The Liberal excision of the long defunct abortion provisions within the Criminal Code, as well as international funding of abortion and reproductive rights, is also briefly examined. The analysis of ***discursive (de)politicisation*** examines the main story of abortion as a Charter and woman's right in the government responses' to NDP questions over issues with abortion access in Canada as well as the parliamentary debates and questions arising from the Canada Summer Jobs controversy.

10.1 Historical Overview

During the 2006 delegated convention, Stéphane Dion was – somewhat unexpectedly – elected as Liberal leader (Jeffrey, 2020). Dion's leadership struggled on several fronts, including communicating and performing in the House as well as caucus relations, compounded by the party's own organizational and financial problems (Jeffrey, 2020). The Liberals' unsuccessful 2008 election campaign was, likewise, plagued with problems (Jeffrey, 2020) and Dion resigned, prompting another leadership race that culminated in the election of Michael Ignatieff that same year. Ignatieff also contended with problems in the Liberal organization and within his own leadership, alongside being the recipient of a slew of negative ads coming from the CPCs (on the heels of their success with negative ads against Dion) (Jeffrey, 2020).

Importantly, Ignatieff was leader and took an active role in the Liberal Party's critique of Harper and the Conservatives over the Maternal Health Initiative and abortion-related private

members' business (PMB). As discussed in Chapter 9, the Liberals introduced an Opposition Motion that called upon the government to include a full range of reproductive health care within the initiative but suffered an "embarrassing defeat of the Liberals' own motion by the Liberals themselves" (Jeffrey, 2020, p. 130). This was thanks to a few defiant pro-life MPs who voted against the party, despite a whipped vote, alongside organizational issues that resulted in insufficient MPs present to support it (Jeffrey, 2020, p. 130). Although the motion was defeated, it is a significant moment, representing the party's increasing pro-choice commitments within parliamentary debate.

In the 2011 election, the Liberals suffered a devastating defeat with a new all-time seat low and was "reduced to an urban rump with support in only four or five major centres and the Atlantic region" (Jeffrey, 2020, p. 150). Party Leader Ignatieff lost his own seat and the party was reduced to third party status, with the NDP riding their "Orange Wave" to become the Official Opposition. In reflecting on the campaign challenges, Jeffrey describes the significance that values took on during the election:

> Some observers have argued that the most important challenge the Liberal Party faced in the 2011 election was to explain liberal values and how they differed from those of the Harper Conservatives or Jack Layton's NDP, a task that should have been easy but proved insurmountable. Indeed, for many of those involved in the trenches the idea of Liberal values or, more dramatically, a Liberal "vision" for Canada was not something that was even discussed (Jeffrey, 2020, p. 154).

Figure 14: Timeline for Abortion Related Events, 2008-2022



One of the benefits of the Conservatives having a more stable majority government (2011-2015) was that the Liberal Party had a longer runway – a predictable four years – to work on party reforms and election preparations and a longer runway for a leadership race (Jeffrey, 2020). The leadership vote was scheduled for 2013, with Justin Trudeau, eldest son of former Prime Minister Pierre E. Trudeau, winning the leadership. It is the party and government under his leadership that the remainder of this chapter addresses. Notably, as discussed further in the next section, it is under Trudeau's leadership in 2014 that the party announced it would require candidates to sign on to a pro-choice position in order to run for the party in the next election.

Moving into the 2015 election, the Liberals opted for a more positive campaign style, referring to this as "sunny ways" in Trudeau's victory speech, and emphasizing that they were doing politics differently (Lalancette & Cormack, 2020). And although the Trudeau Liberals did trumpet their pro-choice position and did juxtapose this to the Conservatives (LeBlanc, 2015), it appeared to be much less of a focus than in previous elections. The hot button social issues, instead, involved the niqab,[145] and economic issues were the priority (Clarke, Gravelle, Scotto, Stewart, & Reifler, 2017). CPC attack ads against Trudeau and his inexperience did not sufficiently erode Liberal support, with Trudeau able to establish himself as an effective campaigner and debater (Lalancette & Cormack, 2020).

Upon winning the election, Trudeau reiterated his feminist commitments, including a "feminist foreign policy" and established a gender-balanced cabinet (Dangoisse & Perdomo, 2020). However, the government, and Trudeau in particular, were not immune to scandals and

[145] More specifically, the Conservatives, "Seizing upon a Quebec Supreme Court decision that would allow Muslim women to wear the niqab (veil) during the Canadian citizenship ceremony, they tried to direct the narrative of the campaign away from the economy and towards cultural issues with potent potential to divide the Liberal," which ultimately failed, only driving votes from the NDP to the Liberals, which added support to the Liberals (Clarke et al., 2017, p. 704).

controversy, including the kerfuffle over Canada Summer Jobs described in this chapter, and was reduced to a minority government four years later in the 2019 federal election.

This chapter analyses how the Trudeau government managed the abortion issue during its first mandate (2015-2019), both in their actions and through their discourse. It also, in the next section, backtracks slightly to 2014 to explore the Liberal Party's requirement of all candidates to endorse a pro-choice position during the 2015 election lead-up. It draws on parliamentary and government sources, as well as seven interviews.

10.2 Procedural (De)politicisation: Weeding Out "Undesirables", Summer Jobs and Zombies

This section begins prior to the 2015 election, while the Liberals held third party status, when Trudeau announced that pro-lifers would no longer be welcome to run as Liberal Party candidates, requiring all candidates to sign-on to a pro-choice position in order to be "green-lit" by the party to run. It then addresses the changes made to the Canada Summer Jobs program, requiring organizations to attest to their support of abortion rights in order to apply for funding, which attracted controversy and required the Liberals to walk back some changes. Finally, actions that attracted less debate and attention are discussed, including removing the "zombie laws" involving abortion and increasing international funding for reproductive rights. Overall, as the Liberals revitalized the party under their new Leader Justin Trudeau and subsequently formed government in 2015, they undertook actions and decisions that ***politicised*** abortion, aligning with their pro-choice position and more engaged pro-choice discourse. However, this ***spatial politicisation*** that emphasized the government's responsibility for and authority over abortion was also accompanied by ***depoliticising movements*** and ***repoliticising*** effects. This is summarized in Table 14, below.

Table 14: Procedural (De)politicisation, 2014-2019

Procedural politicisation		
Types of procedural politicisation	*Elements that feed the types of politicisation*	
Capacity	- Controlling candidacy process – requiring pro-choice position for all candidates	
Spatial	- Establishing the leadership's authority to decide abortion policy for the party through pro-choice requirements for candidates - Removing abortion provisions no-longer in effect ("zombie laws") from the Criminal Code	
Temporal	N/A	
Procedural depoliticisation		**➔ Repoliticising/boomerang effect**
Types of procedural depoliticisation	*Elements that feed the types of depoliticisation*	
Capacity	- Shutting down debate on abortion through pro-choice requirements for candidates - Long-term capacity depoliticisation through eliminating dissent in caucus on abortion - Limiting debate on "zombie law" changes	➔Former Liberal MPs issue public letter condemning the decision ➔Media attention to former Liberal cabinet members who can no longer run as candidates ➔General debate over conscience rights of MPs
Spatial	- Changing Canada Summer Jobs program to require organizations to attest to a pro-choice position	➔Issues with organizations not applying for program funding, publicly criticizing the change → media attention ➔CPC Opposition Motion opposing the program changes ➔Liberal MP Scott Simms speaking against the policy and voting for the CPC motion ➔Liberals walk back changes somewhat thereafter
Temporal	N/A	N/A

10.2.1 Weeding out Liberal "undesirables", 2014-2015[146]

In the lead-up to the 2015 election, the Liberal party passed a resolution opposing any restrictions on abortion and Liberal Leader Justin Trudeau announced that "I have made it clear that future candidates need to be completely understanding that they will be expected to vote pro-choice on any bills" (Wingrove, 2014). The paperwork for candidates and the vetting process would now require candidates to sign on to this stipulation. In practice, according to Brooke Jeffrey's (2020) interview with Jack Siegel, chair of the "green-light" committee for candidates in the 2015 election,

> the party required candidates to sign on to the party's position on four issues as a bottom line: support for pro-choice, the Charter, same-sex marriage, and the Clarity Act. At the same time, Siegel was quick to note that "nobody was saying change your values or your views. It was 'not what you think but what you do' that we cared about. We wanted to be sure their public position and comments would be in line with the party's stated position." Or, of course, they could be silent. Yet even with this latitude, Siegel noted that some long-time Liberals felt they could not comply and therefore did not choose to run (p. 194).

Candidate vetting is standard for parties to avoid candidates' past or present words or actions from embarrassing the party and taking the campaign off-message - particularly in the era of social media. However, as evidenced by the presence of pro-life members of the Liberal caucus throughout its history, pro-life views had not traditionally been used as a reason for rejecting a candidate. In analysing this decision, we can observe complex dynamics of ***procedural (de)politicisation*** that play out in this decision and thereafter.

Politicisation is an important component of this decision. By taking the initiative to enact this change, the party ***spatially politicised*** the issue by asserting that it was the executive – and not private members – who would make decisions on abortion policy, as well raising the issue on

[146] Jeffrey (2020) uses the phrase "weed out 'undesirables'" to describe how the candidate review process was broader than simply one issue like abortion (p. 194).

the public stage as a result. ***Capacity politicisation*** is also effected through the party's exertion of further control over the candidacy process. ***Depoliticising*** movements are present as well, however. For one, the decision shut down debate on the issue of abortion and how to approach it within caucus by imposing a singular approach. This ***capacity depoliticisation*** also produced ***repoliticisation***, raising the ire of some Liberals in caucus, as well as former Liberal MPs and other party members. Describing how this impacted their relationship with the party, one interviewee indicated that they stopped donating and stopped renewing their membership, and "if somebody referred to me as a Liberal, I would correct them. Say, 'well, I used to be a Liberal.' And just leave it at that." (Confidential Interview). One interviewee suggested that:

> There's a lot of people that disagree with that or [are] angry about that, think it's close minded, think it drives people who are otherwise Liberals away from being Liberal candidates, all that kind of stuff. I know it's hugely controversial - but among a minority of people. Like it's not a raging fight in the party. There's a core of people, mostly older, mostly male, who resent it (Confidential Interview).

Concerns from sitting and former MPs also generated media attention. For instance, in comments leaked to the media, long-time Liberal MP John McKay was secretly recorded as having referred to Trudeau's decision as "bozo eruption" (MacKinnon, 2014) and other former Liberal MPs co-signed a letter critiquing Trudeau over the new policy (Cullen, 2014; LeBlanc, 2014b). As an interviewee stated, "I had no problem working with pro-choice people, but I thought there should be room for the exercise of individual conscience" (Confidential Interview).

The issue also created a conversation in the media over the broader issue of conscience rights in politics and contrasted somewhat awkwardly with the Liberal leadership's commitment to allow free and open nominations (Chase, 2014; Wingrove, 2014). For instance, the media also featured former Liberal MPs who planned to run again in the upcoming election, such as Gar Knutson, who had served as an MP and a Minister in the Chrétien government before losing his

seat in the 2000 election. Knutson had begun to campaign to secure the candidacy for an Ottawa-area riding but pulled out following Trudeau's announcement due to his expectation that he would be "red-lighted" (Bryden, 2014). Knutson reported that his nomination paperwork had been stalled for weeks, getting called in for a second interview due to "concerns over my pro-life activities in my local Catholic Church as well as petitions I presented while a Member of Parliament" (Campbell, 2014).

The communications around this policy also created confusion and some criticism over whether sitting pro-life MPs like John McKay would be "grandfathered" into the policy or not, with Trudeau initially indicating that would be the case and then backtracking as ongoing media questions and NDP criticisms mounted. Trudeau also had to assuage concerned members of his voting base, writing in a letter to party members that, "Canadians of all views are welcome within the Liberal Party of Canada. But under my leadership, incoming Liberal MPs will always vote in favour of a woman's fundamental rights" (LeBlanc, 2014a).

There was also a longer-term ***capacity depoliticisation*** because the decision eliminated the potential of future inter-party and inter-caucus disputes over the issue of abortion. The impetus behind this was, as Jeffrey (2020) as well as some interviewees (Confidential Interviews) suggest, the party's interest in preventing single-issue interest groups from taking over riding associations. Jeffrey (2020) cites the example of pro-lifers and Tom Wappel's victory over Leader John Turner's preferred candidate in his riding in the lead up to the 1988 election, alongside Wappel's record as "a thorn in the side of successive leaders and the Liberal caucus until his resignation in 2008" (p. 193).[147] But, says Jeffrey (2020), with the party's adoption of an official, formal pro-

[147] The party had already dealt with this somewhat in the 1990s by creating the mechanism by which the leader who veto candidates (Jeffrey, 2020), as discussed in chapter 8.

choice position, it was even more important to avoid similar candidates and caucus members.[148] An interviewee described the "candidacy litmus test" as resolving that split in the Liberal party over issues like abortion, which had contributed to the party being "a little less coherent ideologically and it prevented the party from ever exploiting the values differences between us and the Conservatives in an effective way. Which is why, I think, ultimately Trudeau took the position that he did. He wanted clarity from the Liberal Party on the question" (Confidential Interview). As another interviewee stated, "Trudeau's candidacy said to the Liberals, 'Let's put a lot of internal politicking in the Liberal Party behind us'" (Confidential Interview).

This caucus division had become less of an issue over time, with fewer and fewer Liberals MPs identifying as pro-life compared to previous years, as described by a pro-life CPC interviewee, who noted that the number of pro-life Liberals "diminished over the course of the years I was there" (Confidential Interview). However, as had been seen in 2010 with the Liberal Opposition Motion on the Maternal Health Initiative, it still could pose challenges.

However, for another interviewee, abortion was a non-issue in the party: "I don't think we should have this debate [on abortion]. … Are we not over this already? . … [W]hy do we even have to ask this question as a question? Like, the fact that we're asking it means that there's still even the proposal that we could be reopening this debate, and…as Liberals it should be unnecessary" (Confidential Interview). That said, the vetting process was such that the interviewee "felt when they asked it [about abortion] that I better answer this right" (Confidential Interview).

[148] Although other interviewees serving in senior Liberal roles through the 1990s and 2000s indicated that the party was firmly pro-choice, though maybe not in a very formal sense (Confidential Interviews).

10.2.2 Canada Summer Jobs, Backfires and Backing Down

While in government, the Liberal government faced questions over the allocation of funding within the Canada Summer Jobs (CSJ) program. CSJ is a government program that "provides wage subsidies to employers from not-for-profit organizations, the public sector, and private sector organizations with 50 or fewer full-time employees, to create quality summer work experiences for young people aged 15 to 30 years" (Government of Canada, 2022, "Canada Summer Jobs"). Funding for this program is allocated by Members of Parliament according to national and local priorities and availability of funding (Government of Canada, 2022, "Canada Summer Jobs"). In 2017, the Abortion Rights Coalition of Canada (ARCC) publicized concerns over CSJ funding going towards pro-life activist organizations (Arthur, 2017). Adding to Liberal embarrassment was that a significant portion of this funding had been allocated by office of Liberal MP Iqra Khalid, including $56,000 in funding for the Canadian Centre for Bio-Ethical Reform (CCBR), a pro-life organization whose summer interns participate in projects that involve "abortion victim photography"[149] (Connolly, 2017a). The government described this as an "oversight" and indicated that changes would be made to the program to prevent similar issues, not only for funding occurring through Liberal MPs' offices, but within the CSJ program in general (Connolly, 2017b). Employment Minister Patty Hadju's office informed the media, "'The minister is currently looking into this matter and we will have a resolution shortly. We will continue advancing gender equality and standing up for a woman's right to choose'" (Connolly, 2017a).

[149] Abortion victim photography is more commonly referred to as graphic abortion imagery. According to CCBR's website, their organization's strategy "centred on abortion victim photography as an educational tool that exposes the injustice of abortion in a uniquely powerful way, and making a case for human rights for all human beings through conversation" (CCBR, n.d.)

As a result, a number of pro-life groups had their 2017 CSJ applications rejected, resulting in legal action discussed below. Subsequently, the next year's 2018 CSJ application contained important additions that *did* establish criteria that could be used to deny funding to pro-life groups. The program changes were announced in December 2017, but the scope of the changes prompted considerable criticism from many not-for-profit organizations and community members. The changes for the 2018 application included the requirement that applicants attest that their organization respects Charter rights, including reproductive rights (Government of Canada, 2017).[150] This was spelled out further in the accompanying Applicant Guide, which stated that, "The government recognizes that women's rights are human rights. This includes sexual and reproductive rights — and the right to access safe and legal abortions" (Government of Canada, 2018, p. 4). The guide specifically indicated that this change was intended to ensure funding would not go to organizations at odds with this mandate:

> The objective of the change is to prevent Government of Canada funding from flowing to organization whose mandates or projects may not respect individual human rights, the values underlying the *Charter of Rights and Freedoms* and associated case law. This helps prevent youth (as young as 15 years of age) from being exposed to employment within organizations that may promote positions that are contrary to the values enshrined in the *Charter of Rights and Freedoms* and associated case law (Government of Canada, 2018).

Analysing these changes points to a continued complexity in the dynamic between politicisation and depoliticisation. By acting to change the program and asserting governmental control over the funding allocation – adding stipulations beyond what was already being used to allocate funding, the government ***spatially politicised*** the issue. However, ***depoliticisation*** is also found, most especially ***capacity depoliticisation****,* because the program changes also decreased the

[150] The full statement in the form read: "Both the job and my organization's core mandate respect individual human rights in Canada, including the values underlying the *Canadian Charter of Rights and Freedoms* as well as other rights. These include reproductive rights and the right to be free from discrimination on the basis of sex, religion, race, national or ethnic origin, colour, mental or physical disability or sexual orientation, or gender identity or expression" (Government of Canada, 2017, p. 5).

scope of contingency within the funding, creating barriers to limit the participation of pro-life groups. Significant ***repoliticisation*** also resulted. For instance, the initial rejection of funding for pro-life groups (prior to the official program changes) resulted in a lawsuits described by Bussey (2019) as "legally suspect as evidenced by the government's admission and concessions to settle" (p. 261). The government wound up paying the three organizations that had filed suit "the funds they would have received had their applications been accepted" as well as legal costs, acknowledging in correspondence to the applicants' lawyer:

> The Canada Summer Jobs Program is providing this settlement because the publicly available Applicant's Guide indicated that applications would be assessed against seven criteria (including local priorities) using a scoring guide. However, your clients were denied funding on the basis of a criteria neither set out in the Applicant's Guide nor included in the MP's list of local priorities for 2017 (Bussey, 2019, p. 262, quoting Email Correspondence with Carol Crosson, lawyer for the applicants, Feb. 5, 2019).

The CSJ changes generated controversy over religious beliefs and the right to hold these beliefs with other organizations, including a court case ongoing until late 2021 (Bussey, 2019; Canadian Press, 2021). Overall, these changes created controversy that seemed to go beyond what the Liberal government had expected, with many charitable and often religious organizations. whose work had nothing to do with abortion. expressing concern and an unwillingness to sign on to such a stipulation due to their beliefs (Burgess, 2018).

The government also faced criticism from the opposition in Parliament, including criticism from one of their own MPs, Scott Simms, who represented a rural Newfoundland riding. Despite being pro-choice, Simms opposed the program changes, reported by the media as "petitioning his own government" to reverse the changes (Barry, 2018). Simms was quoted as saying that the amended "application is asking them [organizations] to do something that they shouldn't be asked to do," referencing the use of funding for community-based projects that had

nothing to do with abortion but whose organizations felt unable to just "tick the box" on issues like abortion, which went against a "core fundamental belief" (Barry, 2018).

For some Liberals that were pro-choice, the CSJ change was deeply unsettling, with one interviewee describing it as "insulting, … it was disrespectful of other people" in communities who rely on these summer jobs and who hold religious or moral beliefs, even if they were applying for grants that had nothing to do with abortion (Confidential Interview). There were also concerns about the process, as the decision was announced without any caucus discussion, and, because, as one interviewee described it, it was "meant to be a wedge issue. What made me very angry was the fact we had used this [wedge] within a program that was highly successful and dependent for many students, especially if they're rural, to be able to get a job during the summer in their hometown" (Confidential Interview). It also felt incongruous because the Liberals had previously "raged" against the Harper Conservatives for its use of "wedge" issues as political weapons (Confidential Interview). Instead, argued the interviewee, "if they had wanted to make a statement about abortion rights, then the appropriate way to do that was to have that as a standalone motion or bill, rather than playing politics within such an important funding vehicle for communities" (Confidential Interview). As another interviewee added, "if people don't want that choice, we shouldn't say that they can't not want that choice. Otherwise, we're not pro-choice. … So I think that the discussion was around, do we do we penalize people for their choices, because they're against our choice, which is an interesting conversation to have" (Confidential Interview).

The Conservatives also challenged the govenrment on the program changes, including introducing an opposition motion, the discourse of which is discussed further in section 10.3. Liberal MP Simms even defied the party whip to vote in favour of the Conservative opposition motion and, as a result, lost his position as chair of a House committee. Simms' break with the

party was also publicized by the media, as was his discipline of losing his committee chair position (Smith, 2018). A Liberal interviewee described feeling "uneasy" about the discipline Simms received, "I just didn't think that that was fair. And again, it was an issue that his constituents felt strongly about" (Confidential Interview).

The government eventually backed down, amending the CSJ forms and guide to require only the attestation that: "Any funding under the Canada Summer Jobs program will not be used to undermine or restrict the exercise of rights legally protected in Canada" (Government of Canada, 2019, p. 40). The document also provided a list of ineligible projects or job activities, which included, among others, those that "actively work to undermine or restrict a woman's access to sexual and reproductive health services" (Government of Canada, 2019, p. 19). The current 2022 application and applicant guide utilizes the same wording (Government of Canada, 2021a, 2021b).

10.2.3 Symbolic or Substantial? Zombie Laws and International Funding

Two other abortion-related actions were taken by the Liberal government during their first mandate, attracting minimal controversy and media coverage. For one, the Liberals adopted a "Feminist International Assistance Policy" and, in 2017, committed to sexual and reproductive health rights as part of their policy. In March 2017, Minister of International Development Marie-Claude Bibeau announced an investment of "$650 million over three years in sexual and reproductive health in developing countries and fragile states," including "access to legal abortion, and the defence of women's rights because women's rights are human rights" (42nd Parliament, 1st Session, Vol. 148, No. 150, Mar. 8, 2017, p. 9522). These announcements connect the funding decisions with the Liberals' support of women's rights, as well as providing a contrast to Harper's Maternal Health Initiative that had notably excluded abortion. This also provided a

contrast to U.S. President Donald Trump, who had pulled out international funding for abortion in 2016, which was, as described by an interviewee, "when we really stepped up and started putting money in. So the abortion issue during the 42nd Parliament was not a domestic issue as much as it was an international issue" (Confidential Interview). Without a more comprehensive evaluation of funding of reproductive health and abortion by the Canadian International Development Agency (CIDA) before and after the Liberal government, it is difficult to ascertain the extent of the change, but a shift is certainly present in terms of moving away from maternal and child health towards sexual and reproductive health rights (Johnson, 2021).

Also in 2017, Minister of Justice Jody Wilson-Raybould announced an overhaul of the Criminal Code (CC) to remove outdated and redundant provisions. These so-called "zombie laws" included the provisions banning abortion, which have not been in effect since the SCC Morgentaler decision in 1988 but still appeared in the CC text. (Harris, 2017a). The government did not engage with the abortion issue during the parliamentary debates on this issue, which could be seen as ***capacity depoliticisation*** by limiting the amount of debate had on the subject and preventing sound bites on abortion from being produced. However, they first made the formal announcement of these changes regarding the abortion provisions on International Women's Day, which certainly had a symbolic effect, with reporting indicating that:

> While Justice Minister Jody Wilson-Raybould pointed out that the move to formally erase the abortion ban came on International Women's Day, she said the government was not deliberately trying to reopen the contentious debate. "If we are going to make a link to the abortion discussion or removing the abortion provision from the Criminal Code, our government without equivocation recognizes and acknowledges the constitutional rights of women and is taking the courageous step to ensure that we remove this section from the Criminal Code," she said. (Harris, 2017b)

Heritage Minister Mélanie Joly appears to confirm the intent of sending a message with the announcement, being cited in media coverage as being "proud… to be part of a government

that recognizes the importance of the decision and women's rights. 'We're extremely proud and that's exactly the message we want to send to Canadians today,' she said" (Harris, 2017b)

10.3 Discursive (De)politicisation: Women's Rights, Charter Rights

Turning from procedural (de)politicisation, we now examine the government's discourse during this period. Overall, the discourse in Parliament on abortion is at a reduced quantity compared to during the Harper era. The main story that does appear from the Liberal government is that *abortion is a woman's right and a Charter right and the Liberal Party is the defender of such rights*. The story builds on a "problem" that the Liberals have been articulating since 2000, which is that the Conservative Party (and its Reform and Alliance predecessors) threatens these rights due to the presence of pro-life MPs within their party and the leaderships' alleged "hidden agenda" of social conservatism. The Liberals position themselves as the solution to this problem, emphasizing their role as the defender of such rights against the Conservatives. This continues to use abortion as a political weapon but brings this discourse into Parliament much more than it had been under Chrétien or Martin, even though they, too, had begun using abortion as a political weapon during election campaigns. This story and its supporting frames are summarized in Table 15 below.

This story, as a strong affirmation of a pro-choice position, is undergirded by frames that strongly ***spatially politicise*** the issue, pulling abortion into the government's sphere of responsibility and positioning the government as an active defender of these rights. However, other frames supporting the story have ***depoliticising*** effects, most significantly ***capacity depoliticisation***. This section examines this discourse, demonstrating that even when the story is much more engaged with abortion, with the Liberals having committed themselves to being pro-choice, there are still politicising and depoliticising movements back and forth at play.

Table 15: Discursive (De)politicisation, 2015-2019

Problem	Conservatives threaten to roll back women's rights on abortion
Solution	Abortion as a woman's right and a Charter right and the Liberal Party is the defender of such rights
Capacity Politicisation	N/A
Spatial Politicisation	- Liberal party as the party of rights and freedoms, party of Charter - Government will stand up for women's rights - Government standing up for rights – will not fund programs undermining those rights - Importance of access to abortion and expanding medical abortion
Temporal Politicisation	N/A
Capacity Depoliticisation	- Issue already decided by SCC Morgentaler ruling - Rights to abortion protected by the Charter - Similar bills in previous parliament, including one that was not Charter compliant - Proposed PMB would be counterproductive to its objective, would not meet objective - PMB inappropriate vehicle for proposed change - Changes to Canada Summer Jobs not a "values test" but adherence to the Charter – government must ensure programs respect human rights
Spatial Depoliticisation	- Collaborating with provinces on access to services - Consultation, consensus undertaken to address reproductive rights - Accuses Conservatives of connections with the organization distributing imagery of aborted fetuses
Temporal Depoliticisation	- Government already addressing the core issue - Government has already provided affected groups with clarification on Canada Summer Jobs changes

Additionally, proclaiming themselves as strongly pro-choice also opened the Liberal government up to criticism about how the government was putting their pro-choice beliefs into action, with the NDP raising issues of abortion access barriers, especially in the Maritimes. In response, early in the Liberal mandate, Minister of Health Jane Philpott reaffirmed that "our government fully supports a woman's right to choose. Our government also recognizes that there

are inequities in access to a number of health services across the country, including abortion" (42nd Parliament, 1st Session, Vol. 148, No. 028, Mar. 8, 2016, p. 1582). Here, she emphasizes the government's support of abortion and recognition of existing barriers with abortion, but subsequently depoliticises it in the second half of her remarks. ***Temporal depoliticisation***, for instance, is generated by her framing the matter as one she has already been active on and will continue being active on, stating, "I have been discussing with my provincial and territorial colleagues the fundamentals of the Canada Health Act and the fact that there should be access to all medically necessary services on the basis of need and not on the basis of ability to pay. I will continue to work with my colleagues to ensure access is available to all Canadians" (p. 1582). This inclusion of the provinces also serves to ***spatially depoliticise*** abortion, although to a lesser degree and in a softer tone compared to discussions of previous governments who referred to abortion as a provincial responsibility and divested themselves of responsibility in ensuring access.

This ***spatial depoliticisation*** through framing that emphasizes provincial roles is also found in the response to similar concerns on access to health care, including mentioning abortion access issues in the Maritimes when raised by the NDP a few months later. In this case, Parliamentary Secretary (PS) to the Minister of Health Kamal Khera does not mention abortion in her response, instead emphasizing their government's support of "core Canadian values of equality and solidarity", which is "why we will continue to work collaboratively with our provincial and territorial colleagues" on the healthcare system (Vol. 148, No. 103, Nov. 2, 2016, p. 6505). A similar dynamic is also found in the response of Minister of Health Ginette Petitpas in 2018, affirming that "our government believes that every woman has the right to choose, regardless of where she lives" (Vol. 148, No. 296, May 10, 2018, p. 19338). Indeed, she goes on

to say that, "Our government has eased restrictions on Mifegymiso[151] and made it more available to Canadians in provinces and territories, and we are truly hoping that the provinces and territories will be reimbursing for it" (p. 19338). Here, Minister Petipas continues to ***spatially politicise*** abortion by emphasizing the steps their government is taking to address access, while also continuing some ***spatial depoliticisation*** through frames that defer responsibility for funding medical abortions to the provinces.[152] These responses are repeated by Pettipas several additional times through the 42nd Parliament.

Prime Minister Trudeau's response to a 2018 question concerning access issues offers a slightly different dynamic between the federal and provincial governments on the issue. His statements affirm a right to abortion in no uncertain terms, while casting aspersions on the opposition, saying, "We on this side of the House, along with the NDP, understand that women unequivocally have the right to decide what to do with their bodies, and we are always going to stand up for that right, regardless of what the Conservatives think or say" (Vol. 148, No. 295, May 9, 2018, p. 19294). He also emphasizes the urgency they have placed on the abortion issue ***temporally***, replying that, "from the day we took office, we have been working with provinces where access to these services was inconsistent or nonexistent and making sure they started offering women reproductive health services and protection and respecting women's choices" (p. 19294). This reference to provinces, unlike some of the other ministerial responses, ***spatially politicises*** abortion, framing the federal government as pressuring provinces to address these issues, and emphasizing their own federal action and responsibility over the issue.

[151] Mifegymiso is the brand name for the mifepristone/misoprostol drug combination that was approved for use in Canada in 2015 and used to induce medical abortions for early pregnancies (Wagner et al., 2020). It is also often referred to as RU-486.

[152] Minister Blair echoes this response, almost word-for-word, the next day, except that he indicates that "many provinces and territories are now, in fact, reimbursing for that drug" (Vol. 148, No. 297, May 11, 2018, p. 19379).

The Prime Minister also used abortion against the Conservatives on unrelated questions, such as questions on the SNC Lavalin controversy and the cabinet changes involving two prominent female ministers which followed.[153] PM Trudeau responded, repeatedly, by stressing that "we have nothing to learn from the Conservatives about standing up for women's rights in this country. … The Conservatives are still against abortion, whereas we will always defend women's rights" (Vol. 148, No. 393, Mar. 20, 2019, p. 26177).

In this parliament, discourse on abortion also involved a pro-life private members' business (PMB): C-225 or Cassie and Molly's Law, which, like bills discussed in chapter 9, was an unborn victims of crime bill. C-225, sponsored by CPC MP Cathay Wagantall, proposed codifying pregnancy as an aggravating factor for sentencing as well as creating an additional offense for those knowingly committing violence against a pregnant woman that results in the death or injury of a "preborn child"[154] (42nd Parliament, 1st Session, Vol. 148, No. 046, May 2, 2016). The PMB was named after Cassie Kaake, who had been seven months pregnant with daughter Molly when she was murdered in 2014 in Windsor, Ontario. PS Bill Blair responded to the bill during its 2nd reading debate in more measured terms than some other MPs, who referred to the bill as yet another Conservative attempt to "reopen" the abortion debate. Blair acknowledged that the bill "would not directly impact a woman's right to chose" but argued that "because its proposed offences apply to a fetus at any stage of its development before birth, which means they could apply from the moment of conception, they give the fetus a status that is not currently recognized in law" (p. 2625). Blair's framing of C-225 first emphasized that the SCC

[153] This scandal raised issues of ethics and corruption for the government and the Trudeau PMO. For more information, see Gollum (2019).

[154] "Preborn" appears to be preferred by some pro-lifers now, replacing the use of "unborn child". It appears to be standard usage for organizations including CCBR, among others. See for instance this CCBR blog post: https://www.endthekilling.ca/blog/2015/05/19/the-right-words-un-born-or-pre-born/

Morgentaler decision and the Charter had established these rights: "The possibility of restricting a woman's right to choose was decided by the Supreme Court of Canada in 1988 in the Morgentaler decision, and we have known for quite some time that any kind of limit on access to abortion implicates women's section 7 charter rights" (p. 2625). Highlighting the constraints surrounding abortion is a form of ***capacity depoliticisation***. Another means of ***capacity depoliticisation*** was framing this PMB as not "the right legislative vehicle" to reach the aim of addressing this violence against women, which, moreover, was already addressed by the law as well as being an issue the government was already active on (p. 2625).

Later that fall, when 2nd reading debate continued, the PS to the Leader of the Government in the House of Commons also addressed his concerns with the bill. Kevin Lamoureux similarly emphasized the importance of the Charter and stated, "The Liberal Party is a party of rights and freedoms" (Vol. 148, No. 091, Oct. 17, 2016, p. 5737), continuing to frame abortion as established as a Charter right that is firm and permanent, continuing ***capacity depoliticisation***. Like Blair, he found the PMB to not be the right vehicle for change but did press for the need to address violence against women in a broader way, including starting "working more with our different stakeholders, in particular our provinces and municipalities", continuing to ***spatial depoliticise the*** issue by sharing responsibility with more than just the federal government (p. 5738).

The changes in the Canada Summer Jobs funding application also contributes to shaping the story. The Liberals used abortion to help defend themselves against the Conservatives' criticism. The Conservatives often avoided referring to abortion in their questions, instead questioning the government on imposing a "values test" on Canadians and discriminating against people with religious beliefs. Meanwhile, the Liberals would bring up abortion, using it to fire back at the Conservatives and their "Harper Conservative ideology" (42nd Parliament, 1st Session,

Vol. 148, No. 252, Jan. 29, 2018, p. 16438). Minister of Employment[155] Patty Hajdu, for instance, responded to questions in early January 2018 stating,

> our government knows that funding should never go to pay for work that seeks to actively undermine Canadians' rights. Unlike the Harper Conservatives who had no problem funding groups like the Centre for Bio-Ethical Reform, who put kids to work distributing flyers featuring graphic images of aborted fetuses, we are committed to protecting Canadians' rights. What is relevant is ensuring that taxpayers' dollars do not go to these activities. Is the member opposite saying that she is opposed to reproductive freedom? (42nd Parliament, 1st Session, Vol. 148, No. 252, Jan. 29, 2018, p. 16437).

When the Conservatives put forward an opposition motion on the subject, a number of Liberal parliamentary secretaries responded in a similar vein: the Liberal government is "standing up for rights", Canadians have "an expectation of the government of the day to stand by those citizens and defend those rights", and the Conservatives and their leader Andrew Scheer support organizations that are working to "undermine the rights of some Canadians" (p. 17511). This continues to involve a dynamic between ***spatial politicisation***, with the government's responsibility for this issue being affirmed, alongside ***spatial depoliticisation***, with the appeal to the expectations that Canadians have. This appeal to Canadians' support is also found in the framing of Canadians' "expectations" around the CSJ program specifically, with PS for Small Business and Tourism Alaina Lockhart stating, "Simply put, Canadians expect us to make sure that Canada summer jobs funding respects the hard-earned rights of all Canadians (p. 17532).

The government also insisted that it had already clarified the program changes to affected community groups. This framing continued ***temporal depoliticisation*** by positioning the CPC Opposition concerns as outdated and therefore redundant. For instance, PS to the Minister of Employment Rodger Cuzner explained that,

> I have a number of faith-based communities that have all reapplied. They received those types of grants in the past and have delivered tremendous programs to our community.

[155] The full title is Minister of Employment, Workforce Development and Labour.

> Once the clarification was made, they were very comfortable with it. It is part of our responsibility as elected officials, as members of Parliament, to serve our constituents. I think the clarification would certainly have gone a long way in easing the concerns of that applicant. (p. 17514)

Cuzner's remarks illustrates how the matter is ***spatially depoliticised*** by appealing to the support from these community organizations as well as by listing off the names of several other organizations that support their project. Following the list he commented, "Strong voices across the country are raising in support of this year's eligibility requirements for CSJ applicants. Who is in a better position than these organizations to speak out on the issue that concerns us today?" (p. 17512)

10.4 Synthesis

This chapter completes the chronological analysis conducted on abortion policy and politics, covering the Liberal's first mandate in government under Justin Trudeau as well as the lead up to that election. The Liberals, with their pro-life contingent progressively diminishing over the past few decades and with an increasingly pro-choice view articulated by party leaders both in elections and in parliament, culminates in the adamantly feminist and pro-choice position of Trudeau's government. This was described by an interview as "building" over time, representing continuity for the party (Confidential Interview). This was more than a personal position for the party leader, with the Liberals taking steps to ensure that only pro-choice candidates would be allowed to run for the party and also adjusting the Canada Summer Jobs program so that pro-life organizations could not qualify. As an interviewee put it, "Justin was just of the position that we were the party of the Charter of Rights. And so therefore, we couldn't have people in our caucus that were advocating for abrogation of Charter rights" (Confidential Interview). Abortion also served as a "marker of values for the party", with the issue still having "a lot of power at the time to define what a party is" (Confidential Interview).

Yet the ***politicisation*** of abortion under Trudeau, with discourse and actions asserting the government's agency and responsibility over the issue, is also accompanied with ***depoliticising*** movements, as well as subsequent ***repoliticising*** effects. This continues to emphasize the dynamic movements involved in governments' management of the abortion issue, both in action and in discourse. In this way, we can better understand the Liberals' ban of pro-life candidates from running for the party and the CSJ program changes, as well as the discourse that accompanies these changes and other parliamentary business such as a pro-life PMB.

The Liberals' use of abortion discursively also continues to treat it as a political weapon and wedge that can continue to be exploited against the Conservatives. Whether in responses to questions in parliament or on the election campaign, the Liberals turned to abortion to juxtapose themselves and their values against the "threat" that the Conservatives represent to reproductive rights.

Although this dissertation's scope ends with 2019, abortion remained an issue that arose in the 2019 and 2021 federal elections, and in the meantime, the 43rd and 44th parliaments continued to feature some pro-life PMB. This post-2019 period merits further research and analysis but even a cursory look indicates the continuation of similar dynamics identified in this dissertation. For instance, in the summer of 2021, Robyn Urback began her *Globe and Mail* opinion column with the words, "Just as white smoke billowing from the Sistine Chapel signals to the world that the announcement of a new Pope is forthcoming, so too does the word 'abortion,' uttered from Liberal lips, tell Canadians that an election will soon be called" (2021). And, indeed, a fall federal election was called, and abortion was an issue that political parties used against each other – or tried to defend themselves against – throughout the campaign. The Conservatives continued to permit pro-life views within their party, while also trumpeting leader Erin O'Toole's

pro-choice views and their platform pledge that, “A Conservative government will not support any legislation to regulate abortion” (Conservative Party of Canada, 2021, p. 134). Meanwhile the Liberals pulled out an arsenal of wedges – including abortion – to use against the Conservatives, even promising some regulations to penalize provinces failing to provide adequate abortion access, despite having expressed concerns about these issues for years – before and while in government – without actually enacting such regulations (Curry & Clark, 2021).

The evolution of how governments in Canada have handled abortion both in practice and discourse is ongoing and warrants ongoing academic attention. The next and final chapter revisits the overall arguments from this dissertation, as well as reflecting on its contributions to our understanding of abortion and morality policies with the literature. Further avenues for academic study are also suggested.

Chapter 11: From Policy Problem to Political Weapon: Discussion and Conclusion

This dissertation has explored how successive federal governments in Canada have managed the abortion issue from the 1960s up to 2019. It began with the observation that the government has never simply "avoided" abortion and that Liberal governments have become increasingly engaged with the abortion issue, particularly in their discourse. This project has analysed more than 50 years of Hansard transcripts, cabinet documents, other committee documents and reports, media articles, as well as 28 interviews, and has painted a more complex – and more interesting – story of abortion policy and politics in Canada. The Canadian government has shifted broadly in their narratives about abortion, from treating it as a policy problem to be solved with legislation and managed by approaching it as a conscience issue, to treating it as a political weapon and wedge that serves as a symbolic purveyor of values. The government's management of the issue has also been a much more dynamic process that defies a simple "avoidance" or "engagement" posture, but moves back and forth – sometimes simultaneously – to manage the government's relationships with caucus, with its voting base, and with Canadians in general.

Having reviewed the parliamentary discourse and actions of successive federal governments from 1966-2019 chronologically and in detail in chapter 5-10, this chapter discusses the overall picture of abortion policy and politics and the main arguments developed within this thesis. The first main argument is that the government's management of abortion is dynamic, involving both depoliticising and politicising actions and discourse, which contrast with the traditional portrait in the literature where governments avoid the abortion issue in a more static way, as discussed in chapters 1 and 2. Through the data capture and analysis process, this project built on the concepts of (de)politicisation in order to craft a typology of the movements involved,

both in terms of discourse (what governments say) and in their procedural actions (what governments do). This typology, differentiating between ***temporal***, ***spatial*** and ***capacity (de)politicisation***, enables us to better understand how governments manage controversial morality policy issues like abortion, pointing to a dynamic back-and-forth, vacillating approach to the issue, rather than a static or linear one. Additionally, this more dynamic approach allows us to identify the overall shifts in both behaviour and discourse and the contradictions and tensions that exist within them, as well as the blowback or boomerang effects they can engender, referred to here as ***repoliticisation***. Tracing the evolution of approaches and stories offers us the ability to unpack the evolving differences between the Liberals and Conservatives in government, as well as the ability to trace a less linear and more oscillating evolution of discourse and action over time.

The second argument is that both the actions and discourses of the governments over time have evolved from treating abortion primarily as a policy issue or policy problem to be solved through legislative to treating abortion as a political weapon that can either be used against political opponents (as by the Liberals) or must be defended against (as with the Conservatives). This chapter explores this evolution by zooming out from the more detailed, episodic analysis within chapters 5-10. Tracing the development of both government approaches and over time points to an increasing separation between Liberal and Conservative governments and emphasizes that the traditional avoidance presentation fails to capture these significant changes.

Subsequently this chapter addresses contributions that this dissertation offers to the literature, including theoretical and empirical contributions, methodological contributions and social contributions. Within this discussion, the limitations of this study are noted, as are

recommendations for future study that could compensate for such limitations and further advance our understanding of abortion policy in Canada.

11.1 Managing Morality is Dynamic: A Typology of (De)Politicising Movements

Throughout the more detailed discussions of abortion policy and politics in chapters 5-10, the dynamism of how governments have managed the issue is evident. More specifically, governments and government speakers have used – often simultaneously – both politicising and depoliticising procedures and discourses in attempts to manage the abortion issue when legislation, other parliamentary business, or current events thrusts it onto the agenda or into the spotlight. This management, which sometimes assists in assuaging caucus and public feelings on the issue, also results in uneasy or even contradictory discourses (stories) and actions that may generate new sources of controversy and conflict. Indeed, although depoliticising procedures and discourses are predominant in the government's management of abortion (compared to politicisation), depoliticising efforts can, themselves, generate re-politicising effects, creating conflict centred on the depoliticising efforts themselves.

The preceding chapters, in exploring how (de)politicising movements are present through the federal governments' parliamentary actions and discourses from the late 1960s to 2019, provides a more nuanced conceptualization of how governments handle the abortion issue in contrast with the more traditional portrait of abortion policy in parliamentary systems described in Chapters 1 and 2, which emphasized that the Canadian government has avoided the abortion issue. And while avoidance certainly has been a part of the government's handling of the issue, this fails to account for the government's passing of legislation in the 1960s and 1989-1991, as well as an increasingly prominent pro-choice stance from the Liberal party, developing from the 2000s to present.

As introduced in Chapter 3 (see Table 2) this dissertation proposes a typology of (de)politicising movements to further capture the dynamism of (de)politicisation, and thus to better unpack the dynamics of managing the abortion issue. The first axis of the typology draws on the distinction made by other scholars of (de)politicisation concerning more material or formal forms of (de)politicisation, often referred to as governmental (de)politicisation, in contrast to those related to language or discourse, or discursive (de)politicisation (Wood & Flinders, 2014). Here, this differentiation is referred to as procedural vs. discursive (de)politicisation. ***Procedural (de)politicisation*** relates to the government's use of particular tools or procedures within Parliament in their management of the issue, whereas ***discursive (de)politicisation*** is concerned with the mechanisms of language.

The second axis of the typology contributes a new dimension. By considering how actors use the dimensions of time - ***temporal (de)politicisation***, space - ***spatial (de)politicisation*** and capacity – ***capacity (de)politicisation***, we are better able to tease out how procedural tools and actions as well as discourses operate to create or minimize the proximity or position of the government vis-à-vis the abortion issue. Capturing this dynamism emphasizes that government do not simply address the issue of abortion in either a static or linear manner. As such, government do not simply "avoid' or "engage" with abortion politically or in policy, but their positions are unsteady and often contradictory, moving back-and-forth – often simultaneously, in their efforts to manage the issue.

The use of this typology and the analysis of abortion policy and politics over sixty years enables us to identify and categorize the mechanisms by which (de)politicisation operates in this case. This allows us to better understand the processes and mechanisms – both procedural and discursive – by which depoliticisation moves issues towards fatalism and out of the realm of

human action and politics, and by which politicisation draws issues into the realm of contingency and sphere of human agency. This is summarized in the tables below, Table 16 on procedural (de)politicisation and Table 17 addressing discursive (de)politicisation and discussed in more detail below.

Table 16: Mechanisms of Procedural (De)Politicisation

	Procedural Depoliticisation	*Procedural Politicisation*
Temporal	Delay & Divert i.e. Introduce legislation right before Christmas break.	Emphasize & Agenda-Set i.e. Push an issue through the legislative process.
Spatial	Defer & Blame i.e. Establishing the Badgley Committee.	Jurisdiction & Responsibility Claiming i.e. Introduce legislation to update the Criminal Code.
Capacity	Limits & Discounting i.e. Crafting policies or resolutions that commit to not legislating on abortion.	Authority & Capability Claiming i.e. Changing program criteria to enable the government to exercise discretion to retrict pro-life participation.

Table 17: Mechanisms of Discursive (De)Politicisation

	Discursive Depoliticisation	*Discursive Politicisation*
Temporal	Delay & Divert i.e. "We have to wait until…" "Let's talk about literally anything else!"	Emphasize & Agenda-Set i.e. "Forget about that and let's talk about abortion."
Spatial	Defer & Blame i.e. "It's their problem and/or their fault – not ours."	Jurisdiction & Responsibility Claiming i.e. "It is our domain and we're taking leadership."
Capacity	Limits & Discounting i.e. "It's out of our hands and/or beyond our capabilities."	Authority & Capability Claiming i.e. "We can and should be leaders on this."

Temporal depoliticisation creates delay and diversion effects, putting off items until later or pushing the focus onto something else (or anything else). Such efforts appeared prominently when the Mulroney government was dealing with questions on how to respond to the Supreme Court of Canada's (SCC) Morgentaler decision that had struck down the existing law. Ministers appealed to a need for further study and reflection before announcing any decisions, as well as a need for consultation with other actors. The Harper government tried – often unsuccessfully – to divert attention away from abortion when questioned on it, particularly during the Maternal Health Initiative debacle, initially ignoring questions on abortion to restate the purpose of the program. Interestingly, the J. Trudeau Liberals took the opposite tact at times, ***temporally politicising*** abortion by introducing it into answers to questions that had not included it, reinforcing the distinction between their values and those of the Conservatives.

Spatial depoliticisation effects defer responsibility and/or place the blame elsewhere. This was, for instance, seen in the narratives that emerged following the adoption of the omnibus bill into law, both by the Liberals through the 1970s and even by the PCs in the mid-1980s, prior to the SCC Morgentaler decision (see chapters 6 and 7). In response to concerns from both sides of the abortion issue about the operation of the law, the government denied that the problem was the law, pointing to medical and provincial actors as the responsible bodies. The law, in other words, was not the problem; the problem lay with those administering and operating the law, whether that be by being too restrictive or too lax in their approaches.

Less prominent is ***spatial politicisation***, where the mechanism involves claiming responsibility and jurisdiction over an issue. This can be seen when the Mulroney government was defending C-43, the bill they created to regulate abortion following the SCC decision. Although the government used substantial depoliticising movement in framing and developing

the bill, they also asserted their authority in crafting a criminal law bill to provide a national framework and provide national leadership (see chapter 7).

Capacity depoliticisation, can experience significant cross-over with ***spatial depoliticisation***, as discussed in chapter 3. As a category, it emphasizes the bounds of what is even possible for actors to do. In this way, its mechanism involves emphasizing the structural bounds that limit actors' options and, thus, limits their capacity or capability to act. Following the adoption of the Charter of Rights and Values in 1982, this became seen as a major limit to government action on abortion, with governments invoking these constitutional limits when defending C-43 or when critiquing pro-life PMB. As discussed in chapters 8-10, the Liberal framing of abortion as a Charter right frame simultaneously depoliticises it by emphasizing that this is what is constitutional and what must be followed, but also serves as a means of ***capacity politicisation*** by asserting their authority and leadership on this in terms of progressive values. ***Capacity depoliticisation*** also operates by discounting other options, whether because they are deemed impossible, inappropriate, redundant, etc. Limiting the bounds of possibility thus limits what the actors can be required to do and discounts proposals from other actors.

In sum, capturing this dynamic more precisely, with its often-vacillating movements, we can identify the modern roots in Canada of how governments and parties manage abortion as well as identifying where they start to diverge (between Liberals and CPC) into more current trends. This analysis also enables us to better understand and explain how such contradictory narratives can emerge within the government's discourse, and thus can point to some sources of additional conflict and both policy and political challenges.

11.2 Evolving Abortion Approaches and Discourses within Government: From Policy Problem to a Political Weapon

11.2.1 Evolution of Procedural Approaches to Abortion

Before examining the evolving stories of abortion in government discourse (see 11.2.2), we can consider how governments' procedural approaches to abortion have shifted over time. As seen throughout chapters 5-10, while a conscience approach has been prominent for much of abortion's modern history in Canada, this has largely shifted towards the Liberals strategically deploying abortion as a wedge and weapon to demarcate their own values against those of the Conservatives. This section also analyzes the data collected during this dissertation in consideration of how parliamentary resources were delegated to address abortion when it arose in the House of Commons. This investigates, more specifically, the role of parliamentary secretaries (PS) within the management of abortion in parliament.

As noted by interviewees, the Liberals had an increasingly pro-choice caucus and voter base on abortion in the 1990s. This enabled them to further homogenize the party and caucus on abortion through centralizing control over candidate nominations, requiring candidates to attest to values including a right to abortion, and using abortion strategically in attack ads and messaging during election campaigns. This homogenization generated a positive feedback loop, making it increasingly easier to weaponize abortion against the Conservatives.

The Conservatives, meanwhile, are still trying to balance a conscience approach that allows for a big enough tent to accommodate social conservatives within their party base and caucus, while also being electorally attractive to voting Canadians. This balance was further complicated by the fact that the CPC party was the result of a merger between the PCs and the Canadian Alliance (formerly Reform Party), with the Alliance bringing in policies that tied abortion to democratic reform and, consequently, to the rights of individual MPs. As seen in

chapter 9, the CPC party and government eventually adopted a firmer position – and enforced it in parliament – of not legislating on abortion or allowing any such legislation to pass.

Procedurally we can also see how parliamentary resources are dispatched by the executive to manage abortion in the House of Commons, specifically looking at the contrast in the participation of the prime minister, ministers and parliamentary secretaries in addressing abortion. To consider who is speaking to the government's position during debates and discussions on abortion, we can turn to the coding data and examine trends in how government representatives are addressing the issue. Figure 15 and Figure 16 (below) contrast the quantity of government speech on abortion over the years, differentiating between roles.

Unsurprisingly, with abortion rarely a prominent government agenda item, the participation of prime ministers is relatively low. Interestingly, the role of parliamentary secretaries has *increased* significantly from the 1960s to present. In examining Figure 15, it can be noted that from the late 1970s to 2010, parliamentary secretaries were speaking to the abortion issue in the House more frequently than ministers or the prime minister – even during the C-43 debates. This shifts in 2010, where coding references for ministers surpass that of secretaries. It is in 2010 that the Harper CPC government faced significant criticism over their Maternal Health Initiative, which, as a government initiative, likely merited direct responses from the responsible ministers.

The contrast between ministers and parliamentary secretaries merits further discussion, which requires us to break down their participation according to different types of parliamentary business. As could be noted throughout chapter 5-10, parliamentary secretaries often served to represent the government's position when abortion rose within PMB, for instance, and responded to questions during Question Period as well as during Adjournment Proceedings.

Figure 15: Coding References Differentiated by Speakers' Role Over Time

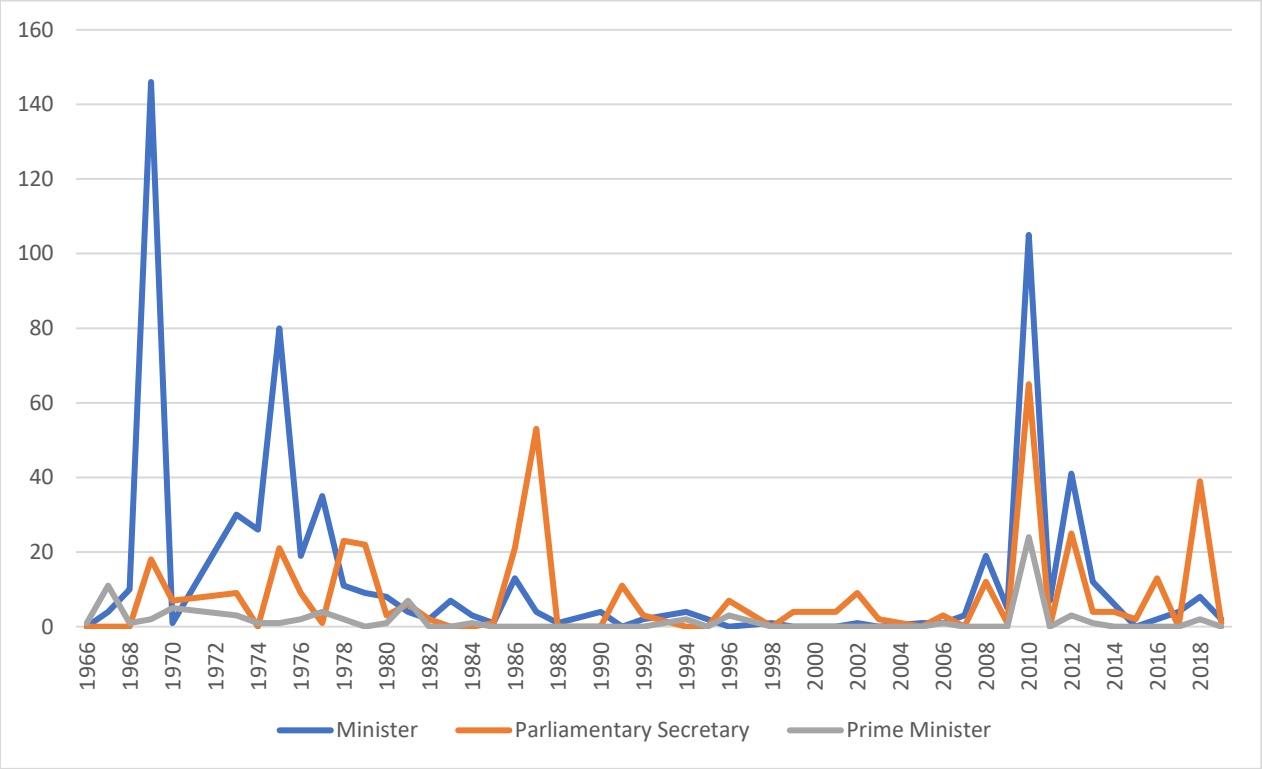


Figure 16: Coding References by Government Position as % of Total Government References

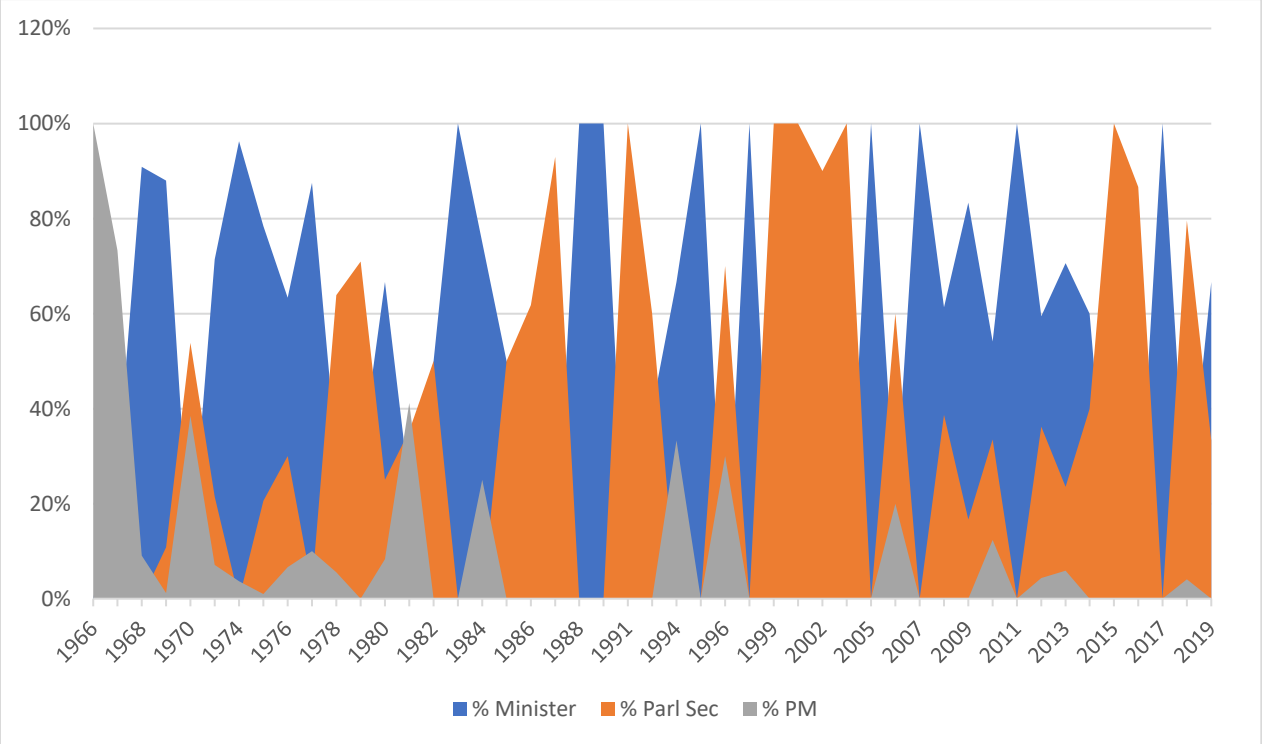


Figure 17 (below) presents responses to questions during Question Period, differentiating between the government positions. It is expected that ministers are the primary respondents during Question Period since they are accountable and responsible for the workings of their department. However, the use of parliamentary secretaries is of interest because, although they can speak for the government, they are also perceived as being a bit more removed from the government than the ministers. As such, there is a small procedural ***depoliticisation*** movement that can be observed with an increasing delegation of responsibility to these actors over time. Figure 18 also compares ministerial vs parliamentary secretarial responses, but this time in Adjournment Proceedings. Here, parliamentary secretaries entirely dominate adjournment proceedings, which are lengthier exchanges that generally continue from questions posed in question period. Starting in the 2000s, it is *only* parliamentary secretaries responding during adjournment proceedings related to abortion.

Overall, however, it is unclear whether these trends with increased delegation to parliamentary secretaries is related to the abortion issue or to parliamentary practice more generally. It is not possible to answer that using this project's data nor are there other data sources that could be used for a direct comparison. As such, trends with parliamentary secretary roles would need to be studied more generally to answer this question.

Figure 17: Question Period Abortion References by Year and Government Position

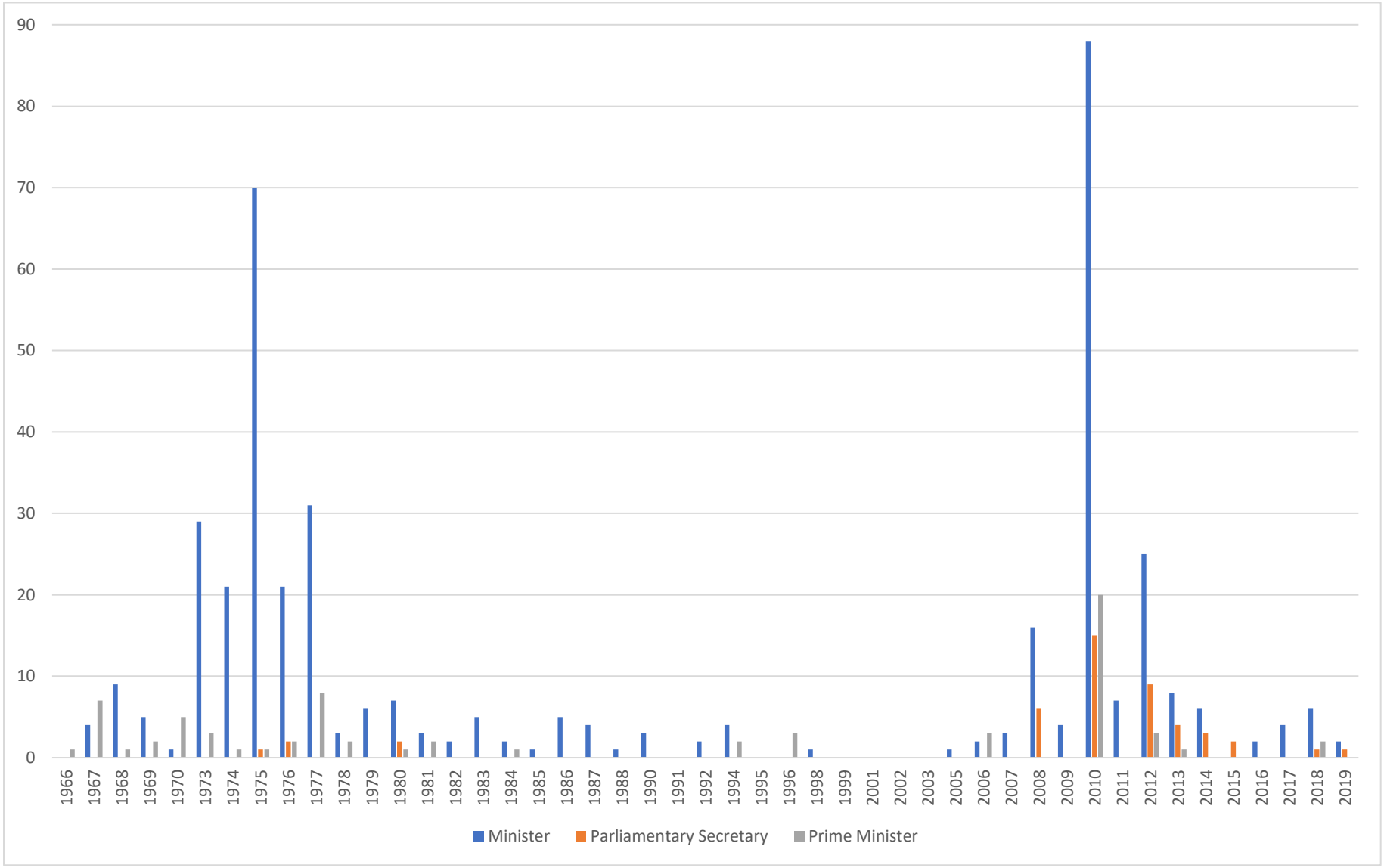
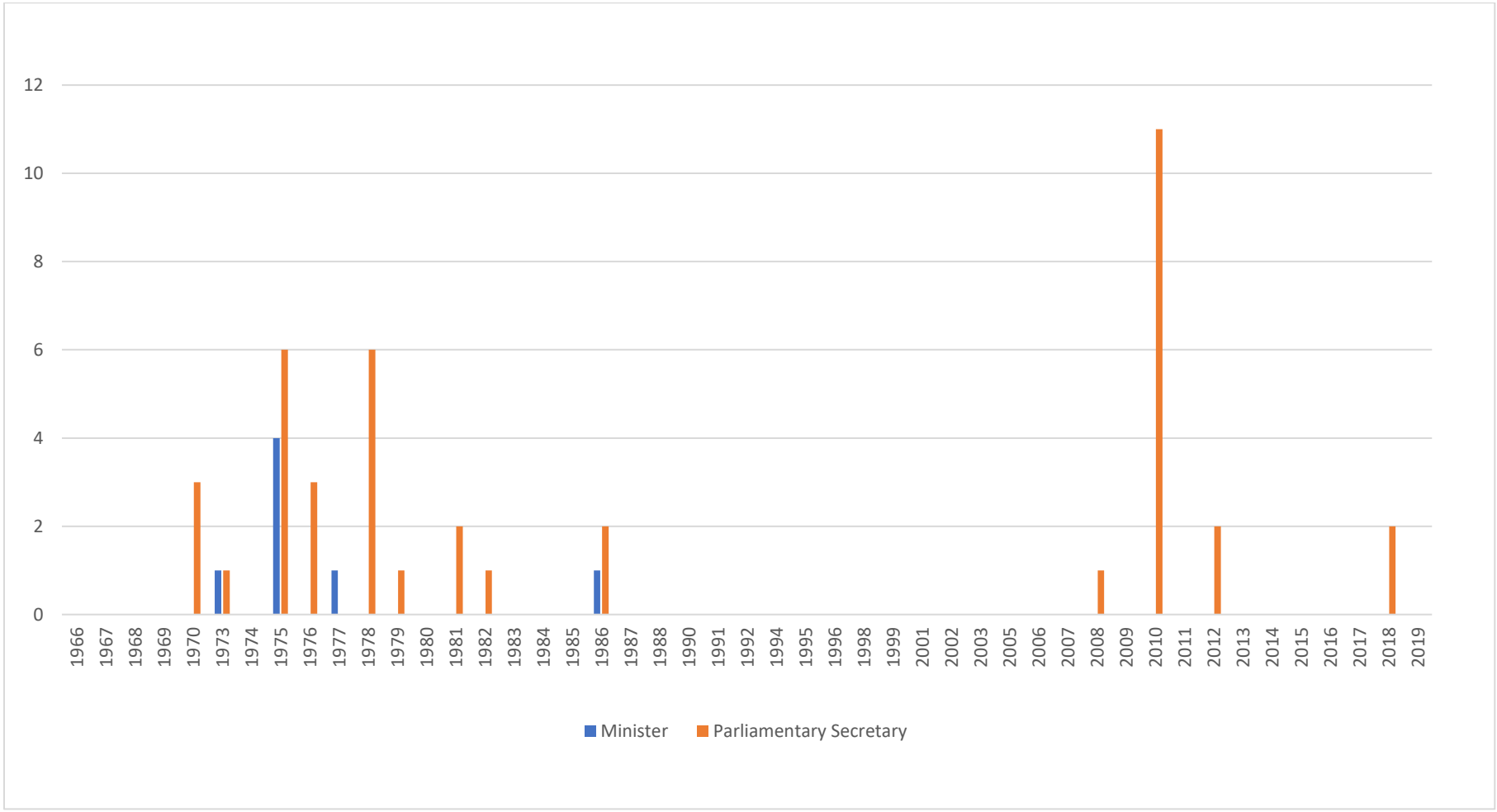


Figure 18: Adjournment Proceedings Responded to by Ministers vs. Parliamentary Secretaries



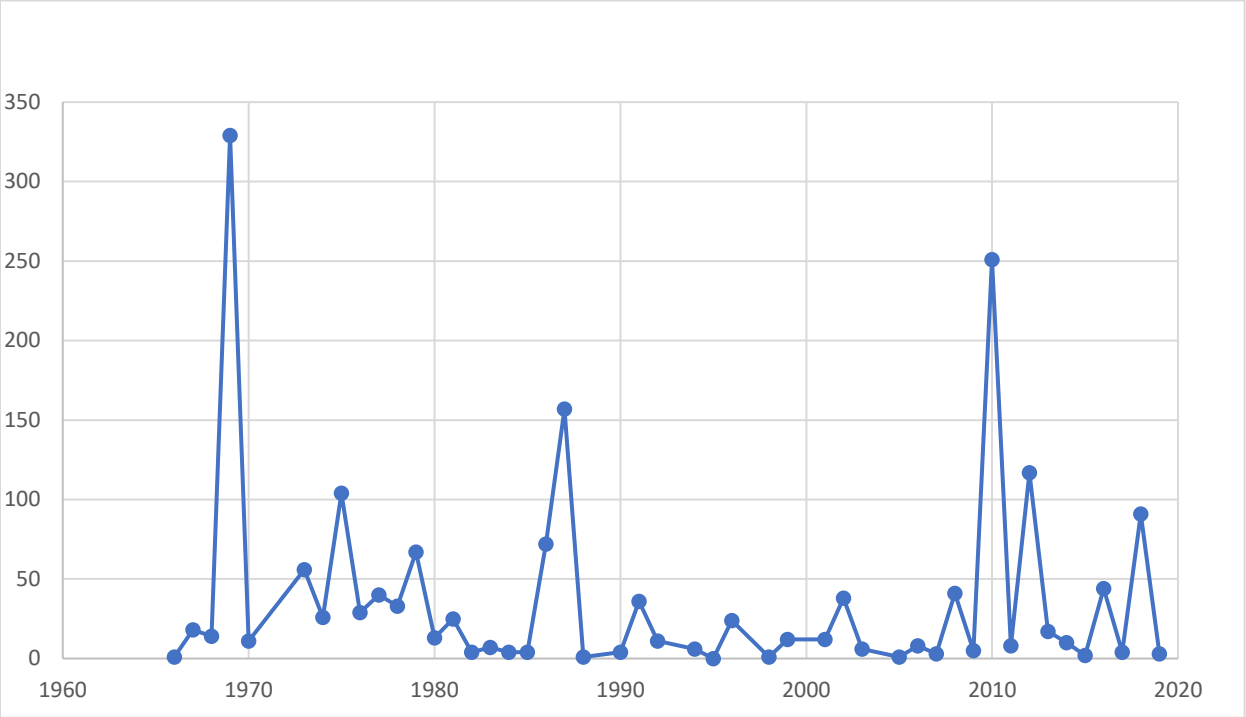
11.2.2 Evolution of Abortion Discourse

Turning now to abortion discourse over the last 54 years, we can observe changes in the substance of the discourse, discussed later in this section, as well as observe how the quantity of discourse has shifted over time, as depicted in Figure 19. Unsurprisingly, the highest spikes in Parliamentary discussions of abortion correspond with major abortion-related legislation, specifically the 1969 omnibus bill and the 1988 C-43 legislation.[156] The smaller spike in the mid-1970s corresponds with a number of non-legislative events, including discussion of Dr. Morgentaler's arrests and court cases, the controversy surrounding Minister Otto Lang's letter to hospitals, and the Badgley Commission (described in more detail in Chapter 7), which generated questions posed to the government during Question Period (QP).

After the spike in 1988, the references remain relatively low year-to-year but see a significant jump in 2010 and are generally higher in the decade following. Although 2010 did involve government business, specifically the G8 Maternal Health Initiative, this was not a piece of legislation but an international aid project that did not need parliamentary approval, nor did the initiative involve or mention abortion. However, as discussed in Chapter 9, opposition members and media were highly critical of the initiative specifically *because* it did not include abortion funding, resulting in numerous QP questions as well as an Opposition Day motion specifically on that topic.

[156] The data collected in this dissertation in the coding was compared to Open Parliament's data. Open Parliament is a volunteer-based website that allows Canadians to more easily access and search information on Parliament, including Hansard. As such, searching for terms associated with abortion allows for a comparison between the data, to confirm the accuracy of the data collection process conducted for this research. The data covering 1994-2019 aligns with the overall reference data presented in Figure 19, with the striking peak around 2010.

Figure 19: Total References to Abortion in Hansard based on Coding Results



We can also examine *where* abortion discourse is primarily occurring, which speaks to the role of backbenchers, the government and the opposition in putting abortion on the agenda. As depicted in Figure 20, parliamentary debates over abortion are – unsurprisingly – most plentiful when the *government* is taking action on the issue (government bills, Maternal Health Initiative, etc.). Private Members' Business (PMB), by contrast, has had relatively consistent rates over time, which have been relatively low. As such, although pro-life Private Members' Business (PMB) was often a point of contention in the 2010-2020 decade, the increase in PMB only contributes minorly to higher rates of discussion overall in the 2010-2020 period. Instead, as evidenced by Figure 20 below, PMB is only somewhat higher in 2010 as compared to the previous years, despite an overall upwards trend from 2008 to 2016. As such, references for PMB do not explain the high rates. Instead, Question Period matches the spikes in both the 1970s and 2010, indicating the role of the opposition in spurring on debate on the issue during these times. As such, this increase in 2010

and the overall higher rate following is notable, alongside the 1970s increase in references, because they are primarily *opposition and event-generated*, rather than due to any legislative or government action.

Turning from the quantity of discourse on abortion to its substance, in examining the stories that emerge from the discourse overall from 1966-2019, a division is found between how abortion is spoken about from the 1960s to approximately 1991, and then from the mid-90s to present day. Although the shift from one to the other is not as stark as depicted in Figure 21, below, it is significant. In this first period, covering the Liberals first under Pearson and then P. E. Trudeau up until Mulroney, abortion is treated primarily as a policy problem to be solved with legislation and managed through a conscience approach. In the second period, beginning gradually under Chrétien, Martin and then J. Trudeau, abortion becomes seen as a political weapon that can be used against their Conservative opponents. Conservatives under Harper, during their time in government, also treated abortion as a weapon, but one that was aimed at them and against which they had to defend themselves.

Regarding the evolution of the discourse specifically, these stories point to a much more interesting and varied development of how the federal government has managed the abortion issue. The situation is much more complex than a simple "governments avoid abortion" characterization, and it is also more nuanced than the original observation that had inspired this dissertation, which was that governments has moved from "conscience-rights" to "Charter-rights". Instead, this fundamental transformation from policy problem to political weapon invites more consideration into how the major centrist parties have *diverged* in their approaches to abortion over time as well as how, perhaps more significantly, abortion has acted as a highly symbolic arena within which political parties differentiate themselves from each other

Figure 20: Coding References by Year and Business Type

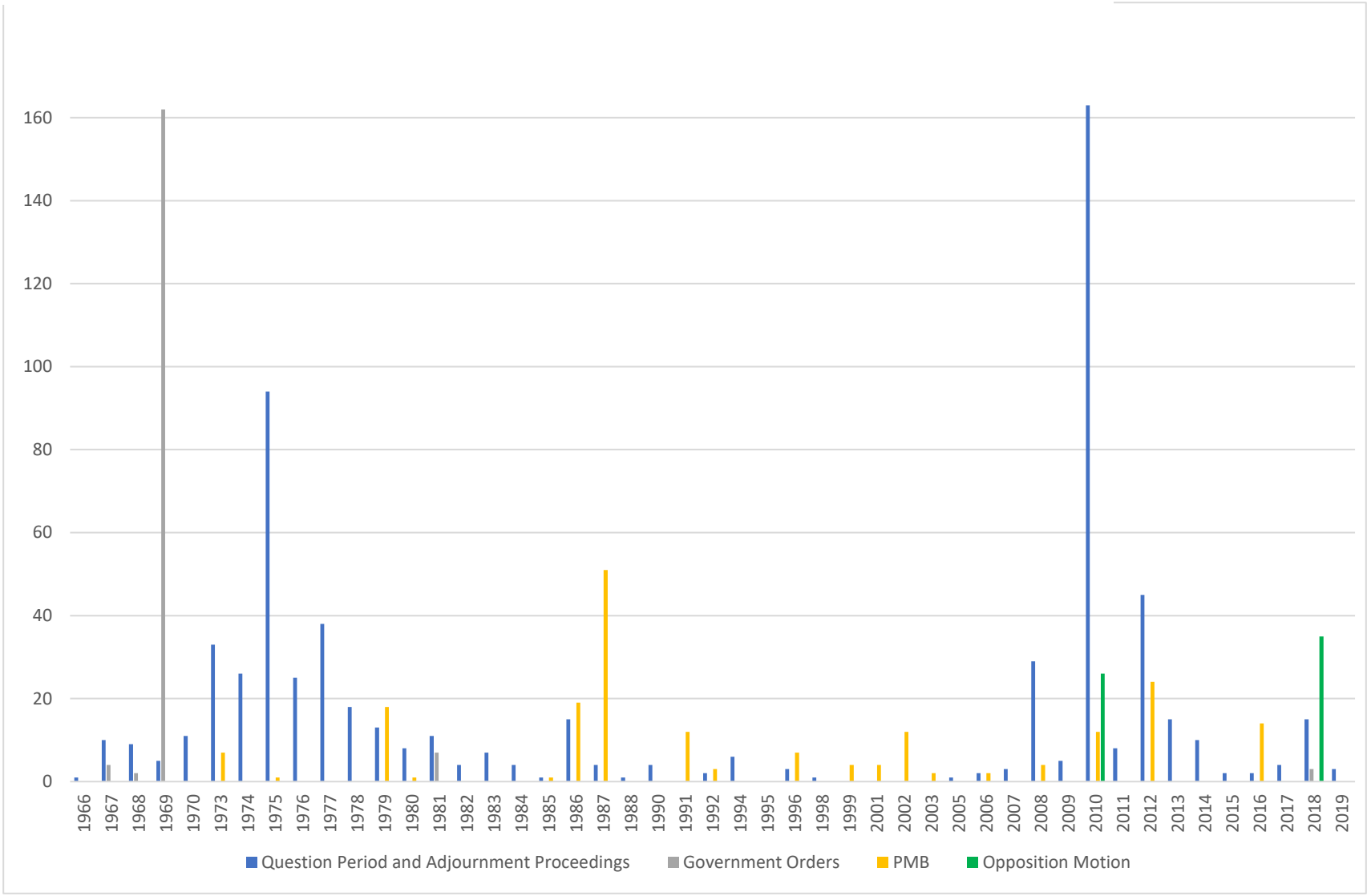
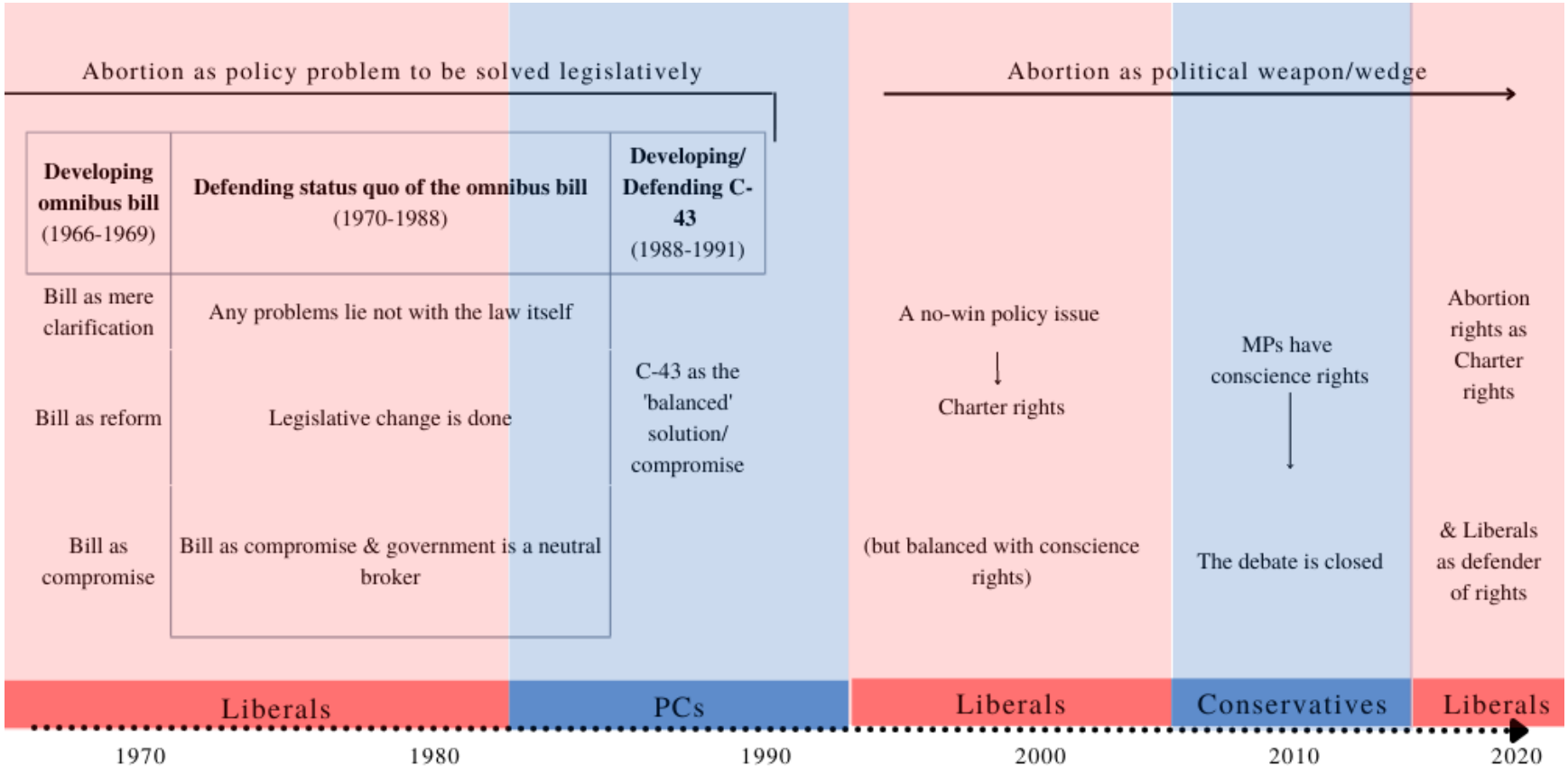


Figure 21: Evolution of Government Discourse & Stories on Abortion Over Time



11.3 Contributions of this Research

The main contributions of this research project are outlined below. First discussed are the theoretical and empirical contributions. Theoretically, this research has expanded the concepts of politicisation and depoliticisation, particularly in the field of morality policy, thus offering a new approach to morality policy literature as well as abortion policy. Another theoretical contribution is the proposition of a new typology of (de)politicisation, which provides a more precise tool with which to explore the management of controversial morality issues like abortion. Empirically, it fills a gap in the literature on abortion in Canada, offering an analysis of the evolving political discourse on abortion and a new conceptualization of how governments manage the abortion issue. The substantial coverage and account provided of abortion policy and politics over more than 50 years is also a significant empirical contribution to our understanding of abortion in Canada at the federal level, particularly in terms of connecting more recent policy and politics with that of the 1960s-1990s. As with all research, this dissertation made choices in terms of circumscribing the selection of documents and the scope of the project. And while these choices were explained and accounted for in chapter 4, some inherent limitations that accompany them. These will be discussed as well. Second, as a methodological contribution, this dissertation's approach demonstrates the benefit of combining multiple types of sources, both documents and interviews, which yield a richer and more comprehensive body of data. Finally, the social contribution of the thesis is noted, offering public officials, public servants and the public a detailed history of federal abortion policy and politics as well as emphasizing the import of how language shapes and constructs our political realities and our understandings of those realities.

11.3.1 Theoretical and Empirical Contributions:

11.3.1.1 Expanding the application of (de)politicisation as managing controversy and conflict in morality policies and expanding the application of morality policy literature.

This research has expanded the concepts of (de)politicisation into morality policy and this case study of abortion policy and politics in Canada. As noted in chapter 3, the literature on (de)politicisation has been primarily focused on governance, economic, development and democracy studies, most often focused on Europe and the UK in particular (Burnham, 2001; Darling, 2016; Fawcett, Flinders, Hay, & Wood, 2017; Hay, 2007; Kettell, 2008; Kuzemko, 2016; Raunio, 2018; Wilson & Rogers, 1974; Wood, 2015). While some application to moral issues has occurred, it has been minimal with only a few examples (Amery, 2014; Amery, 2019; Bates, Jenkins and Amery, 2014; Darling, 2014, 2016; Numerato, Honová, & Sedláčková, 2021; Tilli, 2009). This dissertation, therefore, continues to push applications of these concepts into these spaces.

Additionally, morality policy literature has typically been focused on either the United States, individual or multiple European states, or larger scale comparative projects across numerous countries (Engeli, Green-Pedersen, & Larsen, 2012a). Canada has had very limited coverage in this literature, with the exception of Snow's (2009, 2015) work on artificial reproductive technology policy. And while a single case study cannot offer as broad a scope as other comparative work, this thesis provides a notable contribution as a Canadian case, particularly in consideration of its analysis of 50+ years. It also incorporates the dimension of looking at differences between political parties, contributing to other morality policy literature that has addressed left-right differences on morality policy in other jurisdictions (Budde, Heichel, Hurka, & Knill, 2018; Fink, 2008; Plumb, 2013; Plumb & Marsh, 2011, 2013). And while attention is often drawn to the "abnormal" policy processes and conscience votes involved in these morality

policy issues within Westminster systems (Cowley, 2001; Studlar, 2001), studies looking to uncover such "abnormal" elements look generally at overall trends as well as structural/institutional factors that influence the selection/adoption of such processes. This project, instead, by using (de)politicisation as concepts to explore both more concrete procedural actions in parliament as well as the language and discourse of the government and by developing the typology of types of (de)politicisation movement, offers a tool with which the understandings and justifications of these actors themselves (both through discourse analysis and through interviews with the personnel involved) can be probed with much more nuance. In so doing, it proposes a more intricate understanding of how political actors manage morality policy issues.

This dissertation also contributes to our knowledge of conscience issues in general. Rather than being a static state that has always and will always exist, it contextualizes a conceptualization of abortion as a "conscience issue" as existing in a particular time and space. In other words, the evolution of approaches and language surrounding abortion, particularly within the Liberal party, demonstrates and traces the decline of a conscience approach in Canada. This supports other authors describing conscience approaches to issues more as a strategy than a fixed state, such as in cases where parties might lack - or have avoided - having an official position, as well as being used to prevent party division if party members might leave caucus or publicly defy the leadership were they not granted freedom to respect their personal beliefs (Ross, Dodds, & Ankeny, 2009).

It also broadens our understanding of avoidance behaviour. As described by institutional authors primarily, the structural configurations of government and society contribute to limiting the involvement of social movements/interests groups and incentivizing brokerage-style parties. Under a brokerage model, politicians looked to "cut deals" and "Usually political brokers were not enthralled with the zero-sum, non-negotiable aspects of policymaking associated with the abortion

conflict" (Tatalovich, 1997, p. 196). Halfmann (2011), for instance, described the Canadian system as set up in a way where "[p]arty polarization is moderate, and parties are more oriented to winning elections than to ideological programs. In this type of politics, parties tried to keep abortion off the policy agenda and were reluctant to take strong positions on the issue" (pp. 14–15). Both main parties had supporters and opponents within their caucuses, as well as contending with most voters being uninterested in the issue but with vocal minorities mobilizing on it, rendering the issue politically unattractive (p. 15). This also produces avoidance, with Halfmann (2011) noting that "If governments did act on abortion, they often used policy mechanisms that helped them avoid blame; where possible, they pawned off the abortion issue on the medical profession. As national parties avoided the issue, the policy vacuum was often filled by courts, states, or provinces" (p. 15). When legislation was taken up by parties later, much of this was "merely legal acknowledgments that gatekeeping had become pro forma" (p. 15).

This dissertation, by contrast, conceptualizes government behaviour as a back-and-forth movement with government both engaging with abortion and avoiding abortion in a dynamic manner, which can produce unanticipated effects such as increasing conflict. It contributes to the understanding of (de)politicisation as management of controversy and conflict that can render policy "easier to manage and less controversial" (Beveridge & Naumann, 2014, p. 53). As noted by Baker (2022), depoliticisation can serve as "a way of examining the practice of governance around complex and controversial issues" (p. 308). Other authors have pointed to this as well, referring to depoliticisation as a means of "maximizing control" over an issue (Pope, 2021), "defusing" tense issues (Desportes & Moyo-Nyoni, 2021), maintaining "stability" (Schiek, 2022), reducing conflict (Wolf & Van Dooren, 2018), and avoiding blame or "insulating" politicians from the consequences of potentially unpopular decisions on such issues (Buller & Flinders, 2005; Scott,

2021; Wood, 2016a). This dissertation examines this management of controversy head on, thus enabling these concepts to be explore more fulsomely.

11.3.1.2 Developing a Typology of (De)Politicising Movements and Dynamics between Politicisation, Depoliticisation and Repoliticisation

Additionally, the majority of (de)politicisation literature focuses primarily on more formal movements of responsibility from government to non-governmental or arms-length bodies, such as the appointment of commissions to make decisions or offer advice. This dissertation draws on the concept of discursive depoliticisation, as presented by Wood and Flinders (2014) and as discussed in more detail in Chapter 3. The authors mentioned who have applied depoliticisation to moral topics likewise have focused on how framing and language can (de)politicise issues. This project continues the development of this concept, as well as further differentiating both more formal, governmental forms of (de)politicisation (referred to in this thesis as procedural (de)politicisation) and discursive (de)politicisation into types of movements: temporal (time-based), spatial (moving, deferring responsibility), and capacity (emphasizing limits to action and capability). This original typology proposed by this dissertation assists us in teasing out the mechanisms of (de)politicisation, thus providing a more detailed view of how actors use a multiplicity of (de)politicising actions (procedural) and language (discursive) when managing contentious policy and political issues.

As such, this typology and the results of this project contribute further to the thinking of depoliticisation scholars who emphasize how politicisation and depoliticisation have a highly interactive relationship, existing often together and generating paradoxes as well as conflicts (Bates et al., 2014; Beveridge & Naumann, 2014; Diamond, 2015; Dönmez, 2019; Fawcett & Flinders, 2017; Kettell & Kerr, 2022; Numerato et al., 2021; Reardon & Marsden, 2020). Fawcett and Flinders (2017), in particular, describe how "storytelling" involving both (de)politicising

effects facilitates the "hopping" of political actors between stories, which, in their case study of coal seam gas (CSG) regulation, "allowed policy actors to use the same story to both deny and depoliticize the concerns of protestors against CSG extraction and at the same time to politicize questions of energy security, economic growth, and credible science" (p. 218). Kettell and Kerr (2022), who build on Fawcett and Flinders's (2017) work, also argue in favour of (de)politicisation "as an ongoing discursive process rather than a single governing act" and reject a "binary" or "mutually exclusive" conceptualization (p. 12). Accordingly, "the discursive strategies that policymakers deploy can have interlocking and simultaneous politicising and depoliticising effects" (Kettell & Kerr, 2022, p. 28).

This aligns with other scholars of (de)politicisation, such as Diamond (2015), Bates et al. (2014), and Wolf and Van Dooren (2018), who emphasize the parallel, complementary, and conflictual relationship between depoliticisation and politicisation, arguing that they cannot be seen as mere independent or "opposing forces" (Bates et al., 2014, p. 257). More specifically, Wolf and Van Dooren (2018) describe a "boomerang" effect where depoliticisation can heighten, rather than lessen, conflict, with the depoliticising efforts becoming a source of conflict itself.

This dissertation supports the aforementioned authors' findings about these simultaneous, intersecting, interacting and sometimes "boomeranging" effects of politicising and depoliticising (and repoliticising) movements, but also goes further. The typology developed in this dissertation offers a theoretical contribution through a new conceptual tool to track complex dynamics. In so doing, this dissertation offers conceptual depth and development. In addition, the use of such a long timeline, which allows these complex movements to emerge, offers a more comprehensive perspective on them, rather than a snapshot of a moment in time. Reardon and Marsdon (2020) affirm the value of working with long time periods by arguing that using "an extended period of

time has enabled identification of the interweaving depoliticising and repoliticising processes and logic" involved in UK transport policy (p. 233). They go on to assert that their "temporally"-based approach allows for the recognition that "issues have a history and so depoliticisation at any point in time is likely to be related to the previous positions and arguments adopted" (Reardon & Marsden, 2020, p. 238).

11.3.1.3 Addressing Gaps in Canadian Abortion Policy and Politics Literature

Empirically, this project provides an updated, comprehensive analysis of abortion policy and politics in Canada. As noted in chapter 2, much of the literature on the politics and policy of abortion was written in the 1990s (Brodie, Gavigan, & Jenson, 1992; Tatalovich, 1997). Even the more recent study by Halfmann (2011), although it does address abortion history in Canada more generally, is much more focused on the reforms on the 1960s and has little to say about the more contemporary changes in discourse from the 1990s to present.

Also, as noted in chapter 2, when additional literature has been produced on abortion more recently, it has focused on aspects other than federal politics. These include social movements (Gordon & Saurette, 2017; Lima, 2010; Saurette & Gordon, 2013, 2015), provincial politics (Johnstone, 2012, 2017b, 2017a, 2020; Johnstone & Macfarlane, 2015), histories of the women's movement as it dealt with abortion and women's experiences with abortions more broadly (Palmer, 2012; Stettner, 2012; Stettner, Burnett, & Hay, 2017), and ongoing access issues (Dummitt & Sethna, 2020; Foster, LaRoche, El-Haddad, DeGroot, & El-Mowafi, 2017; Sethna & Doull, 2013; Vogel, LaRoche, El-Haddad, Chaumont, & Foster, 2016). As such, this study complements this recent body of recent literature by adding to and updating our understanding of abortion in federal policy and politics.

This dissertation also contributes to understanding politicians representing the government as agents of framing. As discussed by Slothuss and de Vreese (2010), despite parties playing a key role "as sponsors of issue frames in policy debates and political news reporting", they have received little attention and that which exists is focused on their role in shaping public opinion rather than policy development (Slothuus & de Vreese, 2010, p. 631). Furthermore, as noted by Wolfe, Jones and Baumgartner (2013), the role of elites overall is not well understood. Studies generally treat elites "as sources of information on public affairs whose messages are mediated by the media", which "tell us a great deal about how the interaction between media and policymaking elites influences political strategy and public opinion. … However, they tell us little about the evolution of policies or agendas" (Wolfe et al., 2013, p. 177). Accordingly, this dissertation's specific focus on the discourse of governments helps to fill this gap. Additionally, the contribution of insights from interviewees in this dissertation provides an additional dimension to our understanding of this policy area, particularly of the more recent decades. This provides us with a sense of how the actors – both in the executive as well as in the backbench – understand the issue and its management

Although this research does make theoretical and empirical contributions, some limitations inherent to the data used must be discussed. First, due to a dependence on the availability and willingness of participants and limited access to some documents, the coverage of the time periods under study was uneven. For example, as discussed in chapter 4, no interviewees were available for the 1960s period and only one for the 1970s. The increasing distance between the early time periods contributed not only to less access to potential interviewees but also to asking interviewees to recall events that occurred much earlier in their lives. As a result, some time periods relied more on some data types than others. Other forms of access issues were institutional, such as the fact

that cabinet documents are not available due to cabinet confidentiality for a period of 20 years. Accessing cabinet documents that are older than 20 years also poses challenges, such as redaction of documents and difficulty gaining archival access to some supporting reports and documents referenced in cabinet minutes from the 1960s and 1970s. Some ATIP requests for such documents were filed in fall of 2020 but are still part of an ongoing communication process with Library and Archives (LAC) ATIP personnel. This was also compounded by LAC being closed for a considerable amount of time due to the COVID-19 pandemic.

Second, in focusing specifically on the discourse of the House of Commons and of government speakers, other data sources were not used, or were only used to a certain extent. As such, Hansard from the Senate or transcripts from Senate committees were not reviewed or analysed, which would have permitted a deeper understanding of the role of the Senate within abortion policy and a comparison of Senate discourse with that of the House. In the same manner, while relevant House of Commons committee transcripts (referred to as "evidence") were reviewed, they were not coded in the same procedure as the House of Commons Hansard. Again, a more detailed coding analysis of committee evidence would enable us to better compare discourse in committees and the House, thus gaining a better understanding of how discourse flows throughout different chambers and bodies of parliament. Additionally, the data collection and review process stopped at the end of the 42nd Parliament, ending in 2019. Although the previous chapter did briefly discuss some observations of how the elections of 2019 and 2021 and the intervening parliamentary sessions have addressed abortion, a more substantial analysis would be needed to fully corroborate this discussion.

Third, the focus on coding government speakers (although notes on other non-government speakers were still taken to provide context) meant that the roles of backbenchers and – importantly

– other political parties besides the Liberal and Conservatives parties were not fully investigated. Beyond the federal government and parliament, there are many other important components of abortion policy in Canada, namely at the provincial level as well as the roles of civil society actors, including social movements and lobbyists as well as the media. These actors and their interactions warrant exploration. Other sources could provide opportunities to expand our understanding of abortion policy and politics beyond the federal government. These expansions include studying other political parties, analysing discourse within the Senate, studying the role of public servants, and investigating connections with civil society and parliament on this issue. Additionally, a media analysis would provide a means of comparing discourses within media sources and parliament. Comparing this Canadian case to other international examples would also enable a view of how management of abortion here compares to other contexts. These proposed expansions are discussed further below.

Studying members of other political parties would help better capture and explore the interactions between actors within parliament and between parties. Additionally, expanding the Hansard analysis to **include Senate Hansard** would also enable a better understanding of how the Senate has addressed this topic, with its deliberations and tie vote that resulted in C-43 being killed in 1990 of particular interest. Conducting additional interviews or identifying other documentary sources in order to **consider the role of public servants** would also provide another means of understanding the relationships and processes involved in the development and management of policy. Likewise, expanding this research to study the connections between activists and advocates in social movements and those involved in non-profit organizations would also expand our understanding of the **connections between parliamentary and civil society actors** in this policy. Others have done work on the discourse of social movements, such as Saurette and Gordon (2013,

2015), and while connections to some backbenchers were present in terms of the discourse, their analysis was more focused on recent history rather than tracing these connections more extensively into the 1960s-1990s.

In addition, this dissertation did draw on media sources at points to assist in the understanding of election campaigns, but this was done in a limited fashion. The role of the media has been studied often in morality policy, examining how media coverage frames and mediates discourse between governments and populations. For instance, Burlone & Richmond's (2018) analysis of letters to the editor regarding Quebec medical aid in dying helps to explore the narratives emanating from those on both sides of the issue. Conducting a frame analysis of multiple media sources across Canada, including French media in Québec, would enable us to better connect the **discourses present in the media** and investigate how these may relate or not to parliamentary discourses. Additionally, although attention is given to abortion within federal election campaigns in this dissertation, this relied primarily on interviewees and some media sources, but a more fulsome analysis of the media coverage of elections alongside accessing additional party documents and public statements would help to better understand the relationship between **parliamentary discourse and the discourse of election campaigns**, again enabling a better understanding of the evolution of discourse in this policy area.

Finally, **connecting the Canadian case to other countries** is another vein of research that could be pursued. While abortion in Canada has been compared to other countries through institutionalist approaches, being able to explore how individual international governments have managed the abortion issue would enable a better understanding of whether Canada's situation is novel or ordinary, and whether there are connections to the governance structures underpinning

different countries, such as parliamentary systems versus republican systems, or federal systems versus more unitary ones.

Despite these limitations, from an empirical standpoint, the breadth and depth of documents that were reviewed for this project was substantial, spanning 50 + years of Hansard transcripts among other parliamentary sources, conducting 28 interviews, and including cabinet documents that were not available during earlier studies.

11.3.2 Methodological Contributions

The methodological contributions of this thesis reside primarily on the benefit of drawing on multiple sources, including the voices of those involved in policy decisions through interviews. As described in chapter 4, 54 years of Hansard transcripts were reviewed and coded to reconstruct the frames and the stories that governments used to justify and explain their actions (and inaction). This methodological approach, which put emphasis on Hansard, also affirms the importance of this source for examining frames and framing processes as they evolve over time. As described by Ilie (2017), "The discourse and rhetorical patterns of parliamentary debates display ideological visions, party affiliations, institutional position-takings and political agendas of the members of parliament as representatives of citizens in terms of their social, professional, gender and ethnic backgrounds" (p. 310).

The frame analysis was also complemented with content analysis of committee transcripts and reports, cabinet documents, media articles and interviews. The number and variety of sources provide multiple opportunities to understand different views and perspectives on how abortion policy was acted on and spoken about, both contemporaneously through documents and transcripts, and retrospectively through interviewees' reflections on these past events and their overall perception of the policy area at those moments and well as over time. This multi-source

approach also provided the opportunity to hear voices from both the executive level and backbenchers, again both in transcripts and in interviews. As discussed in the findings, this sometimes led to differences in terms of how advisors or members of the executive understood their approach to a policy, as opposed to how backbench MPs – such as pro-life MPs – perceived the policy and approach.

For instance, interviewees were able to reflect on the evolution of the issue in parliament. As one interviewee recalled, the abortion issue has "evolved over time, and of course, the ones who still wanted to propose bills of that nature were basically more and more marginalized, because there were fewer and fewer of them. And in society, it changed, new MPs were elected, and the number of pro-life MPs [in the Liberal party] basically went down to – well, I don't want to say zero, but close. Time . … changes things" (Confidential Interview). As an example of the effects of time, the interviewee noted that, "the same argument, presented in the name of Jean Chrétien twenty-five years earlier would have been seen as very middle of the road kind of proposition. By the time you got to Andrew Scheer [in the 2019 election], it was seen as right-wing extremism. It's the same thing. It just has…society has evolved over time and it's no longer thought [of] that way" (Confidential Interview). Another interviewee concurred, describing how, in his experience, "people tend to, when this is a discussion and a debate that goes on for an extended period of time, I find by and large, will tend to mellow, because they've had so many things that's been put to them as to different solutions and everything. That what was black and white, now, all of a sudden, there's a bit of gray that they're standing in, which is basically politics" (Confidential Interview).

11.3.3 Social Contributions

Finally, this dissertation offers social contributions to elected officials and public servants, as well as the public. For one, by tracing the evolution of approaches and discourses, this thesis emphasizes the importance of our language and the impact that has on how we understand the "problems" and "solutions" of issues like abortion. This draws attention to the constructed nature of abortion policy and politics which have evolved and are evolving, rather than being seen as a static or necessarily "natural" state. Tied to this, this dissertation highlights how the management of conflict and controversy can restrict, naturalize and minimize debate, which can have consequences on democratic participation. Finally, this detailed and comprehensive account of governments' management of abortion offers another way to understand the history and evolution of federal abortion policy and politics in Canada, which can shed light on past, present and future developments.

Appendices

A. Summary Table of Canadian Federal Governments from 1966-2022 and Abortion Events and Bills/Motions Debated

Parliament	Election Date	Dates of Parliament Sitting	Government	Prime Minister	Abortion Events (Non-Legislative)	Bills/Motions Debated in the House of Commons
27th	1965-11-08	1966-01-18 to 1968-04-23	Liberal - Minority	Lester B. Pearson (until 1968-04-19) P.E. Trudeau (starting 1968-04-20)	Advocacy from CBA and CMA to amend abortion laws	PMB to liberalize abortion laws from Grace MacInnis C-122, H.W. Herridge C-136, and Ian Wahn C-123 studied in committee Standing Committee on Health and Welfare studying PMB on abortion; interim report tabled Dec. 19, 1967; final report tabled Mar. 13, 1968. Omnibus bill C-195 introduced Dec. 21, 1967
28th	1968-06-25	1968-09-12 to 1972-09-01	Liberal - Majority	P.E. Trudeau	Increasing social movement mobilization and advocacy on abortion, including the Abortion Caravan in 1970 Dr. Henry Morgentaler opens an illegal abortion clinic in 1969, charged in 1970 and continues to provide illegal abortions amidst legal action	Omnibus bill C-150 debated and passed PMB C-32 (H.G. Chappell, Liberal) 2nd reading debate 1971
29th	1972-10-30	1973-01-04 to 1974-05-09	Liberal - Minority	P.E. Trudeau	Ongoing court cases for Dr. Morgentaler, including SCC	PMB C-34 (Grace MacInnis, NDP) 2nd reading debate 1973

						PMB C-40 (John Reynolds, PC) 2nd reading debate 1973
30th	1974-07-08	1974-09-30 to 1979-03-26	Liberal - Majority	P.E. Trudeau	Ongoing Morgentaler legal cases, imprisonment, and appeals; *Morgentaler v. The Queen* at SCC loses appeal in 1975 Minister of Justice Otto Lang sends memos to hospitals to enforce laws on abortion, 1974 Badgley committee appointed; report issued 1977	PMB C-219 (Perrin Beatty, PC) 2nd reading Jan. 1975
31st	1979-05-22	1979-10-09 to 1979-12-14	PC - Minority	Joseph C. Clark		PMB C-206 (Hal Herbert, Liberal), 2nd reading debate Nov 1979
32nd	1980-02-18	1980-04-14 to 1984-07-09	Liberal - Majority	P.E. Trudeau (until 1984-06-29) John N. Turner (starting 1984-06-30)		Constitutional debates include discussion of abortion PMB C-216 (Bill McKnight, PC), 2nd reading Nov 1980
33rd	1984-09-04	1984-11-05-1988-10-01	PC – Majority	Brian Mulroney	*R. v. Morgentaler* SCC case decision strikes abortion law, Jan. 28 1988 Some provinces limit funding for abortion	PMB C-226 (John Gormley, PC), 2nd reading Sept 1985, Jan. 1986 PMB C-238 (Svend Robinson, NDP), 2nd reading Oct 1985 PMB C-254 (Lawrence O'Neil, PC), 2nd Reading Jan, May 1986 PMB M-37 (Gus Mitges, PC), debated Nov 1986, Jan, Feb, Apr, June 1987

						PMB C-216 (John Reimer, PC), 2nd reading June 1987 PMB C-208 (Svend Robinson, NDP), 2nd reading Dec 1987 Government motion on abortion M-36 debated July 26-28, 1988 but not passed
34th	1988-11-21	1988-12-12 to 1993-09-08	PC – Majority	Brian Mulroney (until 1993-06-24) Kim Campbell (starting 1993-06-25)	*Murphy v. Dodd* case, decided in Ontario court, 1989 *Tremblay v. Daigle* case decided by SCC, 1989	C-43 introduced 1989, passed in House of Commons 1990, lost on tie in Senate PMB M-44 (Dawn Black, NDP), debated Oct & Dec 1991
35th	1993-10-25	1994-01-17 to 1997-04-27	Liberal – Majority	Jean Chrétien	Ongoing provincial court cases involving Dr. Morgentaler (throughout the 1990s)	PMB M-91 (Garry Breitkreuz, Reform) debated May 1996
36th	1997-06-02	1997-09-22 to 2000-10-22	Liberal - Majority	Jean Chrétien		PMB C-207 (Maurice Vellacott, Reform), 2nd reading Nov 1999
37th	2000-11-27	2001-01-29 to 2004-05-23	Liberal – Majority	Jean Chrétien (until 2003-12-11) Paul Martin (starting 2003-12-12)		PMB M-228 (Garry Breitkreuz, Reform) debated Mar 2001 PMB M-392 (Garry Breitkreuz, Reform) debated May 2002 PMB M-83 (Garry Breitkreuz, Reform) debated May 2003
38th	2004-06-28	2004-10-04 to 2005-11-29	Liberal – Minority	Paul Martin		

39th	2006-01-23	2006-04-03 to 2008-09-07	Conservative – Minority	Stephan Harper	2008: Dr. Morgentaler awarded the Order of Canada; other recipients return award in protest.	PMB C-291 (Leon Benoit, CPC) deemed non-votable May 2006, debated June 2006 PMB C-484 (Ken Epp, CPC) 2nd reading debate Dec 2007 & Mar 2008, passed and referred to committee, died on order paper
40th	2008-10-14	2008-11-18 to 2011-03-26	Conservative – Minority	Stephan Harper		2010-2011: G8 Maternal Health Care Initiative/ Muskoka Initiative questioned in the House for not including abortion, including debate during a Liberal Opposition Motion Mar. 23, 2010 (motion does not pass) PMB C-510 (Rod Bruinooge, CPC) 2nd reading debate Nov & Dec 2010
41st	2011-05-02	2011-06-02 to 2015-08-02	Conservative – Majority	Stephan Harper	2014: Liberal leader Justin Trudeau requires candidates to pledge to support pro-choice policy in Parliament	Ongoing questions/critiques on the Maternal Health Initiative and abortion PMB M-312 (Stephen Woodworth, CPC) debated Apr. 2012 PMB M-408 (Mark Warawa, CPC) – deemed not votable Mar. 2013; Question of Privilege debated Mar 26, 28 and speaker's ruling issue on Apr. 23 2013
42nd	2015-10-19	2015-12-03 to 2019-09-11	Liberal – Majority	Justin Trudeau		PMB C-225 (Cathay Wagantall, CPC) 2nd reading, May & Oct 2016 Question raised regarding changes to Canada Summer Jobs; CPC Opposition Motion debated Mar. 2018

43rd	2019-10-21	2019-12-05 - 2021-08-15	Liberal – Minority	Justin Trudeau		C-233 (Cathay Wagantall, CPC) 2nd reading Apr & May 2021
44th	2021-09-20	2021-11-22 to present	Liberal - Minority	Justin Trudeau		

B. Summary Table of Hansard Documents Reviewed, Organized by Parliament

Parliament	Dates	Government	Main events regarding abortion	Number of Pages Reviewed
27th	1966-1968	Liberal (Pearson, then P. E. Trudeau)	3 Private Members Bills' on abortion introduced and studied in committee 1967 omnibus bill introduced, 1st reading	35
28th	1968-1972	Liberal Majority (P.E. Trudeau)	1969 omnibus bill introduced and passed	630
29th	1973-1974	Liberal Minority (P.E. Trudeau)	Continued advocacy from NDP for decriminalisation of abortion Morgentaler case enters the discussion in 1973, informing questions (Nov)	51
30th	1974-1979	Liberal Majority (P.E. Trudeau)	NDP advocacy for Morgentaler and his case/imprisonment Controversy over Min of Justice Otto Lang's intervention with hospitals/provinces on the administration of the law Badgley committee appointed; reports in 1977 Morgentaler case at Supreme Court (first time) in 1975 but loses	150
31st	1979-1979	PC Minority (Joe Clark)	Bill C-206 (Hal Herbert) debated	23
32nd	1980-1984	Liberal Majority (P.E. Trudeau, then John Turner)	Constitutional debates – includes abortion	273

33rd	1984-1988	PC Majority (Brian Mulroney)	Reaction to *R v Morgentaler*; introduction of motions Provinces limit funding for abortion – BC court decision	831
34th	1988-1993	PC Majority (Brian Mulroney, then Kim Campbell)	C-43 introduced, debated, passed, lost in Senate Daigle and Dodd cases 1989	628
				Days Reviewed /Relevant Pages reviewed
35th	1994-1997	Liberal Majority (Jean Chrétien)		7 days 19 pages
36th	1997-2000	Liberal Majority (Jean Chrétien)	Bill C-2017 (Vellacott) put forward to protect medical conscience rights – 2nd reading debate	2 days 8 pages
37th	2001-2004	Liberal Majority (Jean Chrétien)	Some pro-life PMB motions (Garry Breitkreuz, Canadian Alliance) debated	6 days 50 pages
38th	2004-2005	Liberal Minority (Paul Martin)		1 day 1 page
39th	2006-2008	Conservative Minority (Stephen Harper)	May 2006: Leon Benoit C-291 – deemed non-votable Nov 2007: Ken Epp C-484 (Unborn Victims of Crime Act) – referred to committee but died on order paper	18 days 171 pages
40th	2008-2011	Conservative Minority (Stephen Harper)	Maternal Health (Muskoka) Initiative with G8 yield significant criticism and controversy over lack of abortion inclusion March 2010: Rod Bruinooge C-510, Roxanne's Law – defeated at 2nd reading	44 days 216 pages
41st	2011-2015	Conservative Majority (Stephen Harper)	Feb 2012: Stephen Woodworth, M-312 – defeated	35 days 150 pages

			Sept 2012: Mark Warawa, M-408 – deemed non-votable Liberal policy changed to ban pro-lifers from running as candidates	
42nd	2015-2019	Liberal Majority (Justin Trudeau)	Cassie and Molly's Law (unborn victims of crime bill) Canada Summer Jobs controversy over changes to exclude pro-life organizations	17 days 190 pages
43rd	2019 -	Liberal Minority (Justin Trudeau)	Not reviewed	

C. Available Cabinet Documents Reviewing Involving Abortion from 1960 to 1990

Note: redaction is present on some of the 1988-1990 documents.

Parliament	Meeting Date	Item # (in archives)	Type of Document	Context/Description
27th	1966-12-20	28068	Cabinet Conclusions	Discussion of proposed amendments to the Criminal Code – *doesn't specifically mention abortion*
	1967-07-12	29144	Cabinet Conclusions	Discussion of proposed amendments to the Criminal Code – *doesn't specifically mention abortion*
	1967-10-12	29873	Cabinet Conclusions	Min of Justice notes misunderstanding of Government's program of legislation, where media thought they were dropping the issue.
	1967-11-30	30041	Cabinet Conclusions	Discussion of amendments to omnibus criminal law bill, which included abortion
	1967-12-05	30067	Cabinet Conclusions	Discussion of cabinet committee report on the omnibus criminal law bill, which included abortion.
	1967-12-14	30114	Cabinet Conclusions	Discussion of Criminal Code Amendment Bill, with only a brief reference to abortion.
	1967-12-19	30133	Cabinet Conclusions	Discussion of Criminal Law Bill, including whether or not to include provisions on homosexuality and gross indecency, linking to the controversy involved in including abortion provisions.
28th	1968-12-12	4733	Cabinet Conclusions	Consideration of an amended version of the Omnibus bill as well as memos from the Minister of Justice among others.
	1968-12-17	4748	Cabinet Conclusions	Discussions on abortion clause within omnibus bill and approval of bill for introduction.
	1969-01-16	2789	Cabinet Conclusions	Question raised on the omnibus criminal law bill about whether government members would be asked to support the bill throughout the legislative process.
	1969-01-21	2782	Cabinet Conclusions	Tactical discussion on omnibus bill, in regards of whether to split it and allow free votes on some elements.

	1971-12-23	2582	Cabinet Conclusions	Criminal Law Relating to Abortion Considering report from cabinet committee regarding a special debate on abortion early in the next session.
30th	1974-11-07	39853	Cabinet Conclusions	Discussion on whether there should be grants for women's groups concerned with abortion.
	1975-07-03	40908	Cabinet Conclusions	Study on the Operation of the Abortion Law – considering memo from Min of Justice and report from cabinet committee on the need for such a study
	1976-01-22	41619	Cabinet Conclusions	New trial for Dr. Morgentaler indicated by the Minister of Justice
	1976-12-22	42909	Cabinet Conclusions	Strategy for dealing with the Report of the Committee on the Operation of the Abortion Law Considering memo from Min of Justice (Basford) + report from cabinet committee
	1977-01-13	42982	Cabinet Conclusions	General Discussion: Badgley Report on Abortion
Blank spot – not available digitally. Unavailable to access via Access to Information requests at Library and Archives Canada.				
33rd Parliament	1988-01-28		Cabinet Conclusions	Discussion on the SCC *R. v. Morgentaler* ruling
	1988-02-02		Minutes of Cabinet Committee on Priorities and Planning	Discussion on options following *R. v. Morgentaler*.

	1988-02-09		Minutes of Cabinet Committee on Priorities and Planning	Report on the Ad Hoc committee meeting on options based on the SCC decision. Discussion of options and agreement on pursuing legislation.
	1988-02-23		Minutes of Cabinet Committee on Priorities and Planning	Brief continuation of abortion discussions.
	1988-03-05		Minutes of Cabinet Committee on Priorities and Planning	Continued abortion discussions, ranging from discussing models of legislation to strategies to manage the house. The Ad Hoc Committee discussions and recommendations are presented.
	1988-03-15		Minutes of Cabinet Committee on Priorities and Planning	Update on Ad Hoc Committee discussions and cabinet discussion of how to proceed.
	1988-03-17		Cabinet Conclusions & Information Package on Abortion	Discussions on the report of the Ad Hoc Committee Information package presented to cabinet with draft resolutions, issues to be decided, and house strategy options.
	1988-03-22		Minutes of Cabinet Committee on Priorities and Planning	Review of cabinet and caucus discussions on abortion, with the main approaches being discussed.
	1988-03-24		Cabinet Conclusions & Draft Resolutions	Continued discussion of points raised by Ad Hoc Committee members as well as concerns raised in caucus. Draft resolutions included.

	1988-04-19		Minutes of Cabinet Committee on Priorities and Planning	Brief comment from the PM on the government's approach to abortion.
	1988-04-26		Minutes of Cabinet Committee on Priorities and Planning	Report from Minister of Justice and discussion on the *Borowski* decision as well as caucus concerns.
	1988-04-28		Cabinet Conclusions	Continued reporting on the *Borowski* case and discussion on the matters to be decided by cabinet on how to proceed on abortion.
	1988-05-05		Minutes of Cabinet Committee on Priorities and Planning	Discussion of options on the abortion issue.
	1988-05-10		Minutes of Cabinet Committee on Priorities and Planning	Reporting on Ad Hoc Committee recommendations – includes draft resolutions.
	1988-05-19		Cabinet Conclusions	Discussion of options moving forward given that the opposition rejected the government's proposal.
	1988-08-11		Minutes of Cabinet Committee on Priorities and Planning	Minister of Justice reports on his position for the *Borowski* case. Discussion of possibility of delaying a decision until after the election.
34th	1989-03-21		Ad Hoc Committee on Abortion	Review of the discussion paper (also included) on options and points agreed upon.

				Discussion paper includes legal commentary, as well as medical and social consequences of abortion and factors in allow abortions.
	1989-07-25		Cabinet Conclusions	Report on the Ad Hoc Committee and recommendations and comments from the Prime Minister.
	1989-08-23		Cabinet Conclusions	Brief report on Ad Hoc deliberations [part of the entry is redacted].
	1989-09-13-14		Minutes of Cabinet Committee on Priorities and Planning	Conclusions of Ad Hoc Committee presented and discussed by cabinet. [includes slides presented to cabinet]
	1989-09-19		Minutes of Cabinet Committee on Priorities and Planning	Discussion amongst cabinet on approach to legislation on abortion.
	1989-09-21		Cabinet Conclusions	Reporting on Ad Hoc Committee and further cabinet discussions.
	1989-09-26		Minutes of Cabinet Committee on Priorities and Planning	Discussing the Ad Hoc Committee's proposal of a 3-stage and then 2-stage model to legislation.
	1989-10-10		Minutes of Cabinet Committee on Priorities and Planning	Reporting on Ad Hoc Committee and further cabinet discussions.

	1989-10-31		Minutes of Cabinet Committee on Priorities and Planning	Reporting on Ad Hoc Committee for a 1-stage approach to legislation and further cabinet discussions. Draft legislation included.
	1989-11-07		Minutes of Cabinet Committee on Priorities and Planning	Discussion and preparation for upcoming introduction of abortion legislation in Parliament.
	1990-05-15		Minutes of Cabinet Committee on Priorities and Planning	Discussion of arrangements for the debate and vote on legislation as well as caucus management.
	1990-05-31		Minutes of Cabinet Committee on Priorities and Planning	Brief concluding remarks from the Prime Minister.
Later documents unavailable due to 20 year publishing ban				

D. Committee Documents Reviewed

Parliament	Volumes	Committee	Context	Pages in Documents
27	1st Session vol 1 & Report from Committee	Standing Committee on Health and Welfare	Review of PMB on abortion & report of recommendations	682 pgs
28	1st session vol 1, 1st sess vol 2	Standing Committee on Justice and Legislative Affairs	Review of omnibus bill (not exclusively focused on abortion, but includes it)	880 pgs + 976 pgs
34	2nd session vol 1 Vol 2 Vol 3	Legislative committee on Bill C-43, an Act Respecting Abortion	Review of C-43	Vol 1 – 978 pgs Vol 2 – 860 pgs Vol 3 – 978 pgs
35	2nd Session, Wed March 13 1996 (meeting 02)	Sub-committee on PMB		22 pgs of evidence
39	June 6, 2006	Standing Committee on Procedure and House Affairs (PROC)	Discussion of Leon Benoit's bill on abortion	16 pgs of evidence
39	March 11, Apr 3, June 5 2008	Status of Women	Discussions of C-484 (unborn victims crimes)	62 pgs of evidence
40	3rd session, meetings 15-19, 22-23, 26 (May 3, 5, 10, 12, 26, June 7, 9, 14)	Status of Women	Maternal Health Initiative study	132 pgs of evidence
40	Report & Government response	Status of Women	Study on Harper government maternal health initiative/G8 summit	Report: 30 pgs Govt response: 5 pgs
41	1st session, March 8 2012, March 21 2013 (no. 003/007)	Sub-committee on PMB (SMEM)	Regarding M-312//M-408	26 pgs of evidence
41	March 27 2013 (no. 068)	PROC	Mark Warawa appealing M-408 being declared non-votable	8 pgs of evidence

E. **Interview Documents**

Note: Documents produced in both English and French. The English versions are included in this appendix.

Letter of Information

University of Ottawa
(Date)

Dear (name of participant),

I would like to request your participation in an interview as part of a research study for my doctoral studies at the University of Ottawa's School of Political Studies, under the supervision of Professor Nathalie Burlone. This letter outlines the research study as well as the details of my request for your consideration.

This study investigates the development and evolution of policy within political parties, specifically with the case of federal abortion policy. As part of my study, I am interviewing those who have been involved with or who have witnessed important developments in this policy area. I believe that you would be able to offer important insights for this study based on your role within the Liberal Party.

Participation in this study is voluntary. If you agree to participate, an interview of approximately 60-90 minutes would be scheduled at a mutually agreed date and location. This study has been reviewed and received ethics clearance through the Office of Research Ethics and Integrity at the University of Ottawa. All information you provide is completely confidential and your name will not appear in any dissertation or report resulting from this study. With your prior permission, however, anonymous quotations *may* be used.

If you have any questions regarding this study or if you would like any additional information, please contact me by email at_____.

In order to further discuss this project and schedule an opportunity to meet, I will contact you by telephone or email within the next two weeks.

I look forward to speaking with you. Thank you in advance for your assistance in this project.

Sincerely,

Rebecca Vachon
PhD Candidate
School of Political Studies
Faculty of Social Sciences
University of Ottawa

Nathalie Burlone
Associate Professor and Project Supervisor
School of Political Studies
Faculty of Social Sciences
University of Ottawa

uOttawa
Faculté des sciences sociales
Faculty of Social Sciences

École d'études politiques
School of Political Studies

Consent Form

Title of Project: Agenda Change among Agenda-Setters: Abortion Policy's Shifting Frames within Canada's Federal Political Parties

Rebecca Vachon
PhD Candidate
School of Political Studies
Faculty of Social Sciences
University of Ottawa

Nathalie Burlone, Ph.D.
Associate Professor and Project Supervisor
School of Political Studies
Faculty of Social Sciences
University of Ottawa

Invitation to participate: I am invited to participate in the abovementioned project conducted by Rebecca Vachon, who is working under the supervision of Professor Nathalie Burlone.

Purpose of the Study: To become familiar with policy processes within political parties. To gain insight into the evolution and development of policy positions on the issue of abortion within political parties. To comprehend and analyze the language used in describing the policy position and its role in policy development.

Participation: My participation will consist essentially of engaging in one 60-90 minute telephone or in-person interview with the researcher, at a date and time that suits my convenience. The aim of the interview is to respond to questions related to the abovementioned purpose of the study. The interview will be audio recorded. At my discretion, I can refuse that audio recording take place.

Risks: My participation in this study will entail that I volunteer information related to my current and/or previous professional work with abortion policy. I have received assurance from the researcher that every effort will be made to ensure confidentiality and anonymity of my responses.

Benefits: My participation in this research project will contribute to a better understanding of the processes of policy development within political parties. Additionally, I will be adding to a body of knowledge on abortion policy.

Confidentiality and Anonymity: I have received assurance from the researcher that the information I will share will remain completely confidential. The interview will take place in an enclosed space, unless I indicate otherwise, so as to ensure my answers will not be heard by individuals who are not involved in the research project. Only the researcher

Pièce 7005 / Room 7005
7e étage / 7th floor
120, rue Université / University Pvt.
Ottawa ON K1N 6N5

uOttawa
Faculté des sciences sociales
Faculty of Social Sciences

École d'études politiques
School of Political Studies

and project supervisor will have access to the information provided. The researcher will keep my identity anonymous by ensuring my name or other personal identifiers do not appear on any research report. I am aware that with my permission my answers will be audio recorded and that excerpts will potentially be used in the final report. Any quotations used will be anonymous. If needed for quotations, I am aware the researcher will send, by mail or by password protected PDF file, the transcript of my interview for my review, before the material is used in the final report. I understand that the contents will be used only for the purposes of the research project.

Data storage: Data collected will be retained for a period of five (5) years. All written records and audio recordings on compact disk will be kept in a locked filing cabinet in the thesis supervisor's locked office. Any electronic/typewritten data will be stored on a password protected laptop, as well as a password protected USB memory stick. Paper copies of data will be shredded after the conservation period is complete. Electronic data (including information stored on compact disc) will be securely deleted.

Voluntary Participation: I am aware that I can withdraw my consent to participate at any time, without penalty, by advising the researcher verbally and/or in writing. Any information obtained by the researcher up until the point of my withdrawal from the study will not be used to inform the final report. By signing this form, I am not waiving my legal rights or releasing the researcher and/or involved institutions from their legal and professional responsibilities.

Acceptance:

Pièce 7005 / Room 7005
7e étage / 7th floor
120, rue Université / University Pvt.
Ottawa ON K1N 6N5

I,

_____

_, agree to participate in the above research project conducted by Rebecca Vachon of the University of Ottawa, whose research is under the supervision of Professor Nathalie Burlone.

I agree to have my interview audio recorded.

YES _____ NO _____

I agree to the use of anonymous quotations in any dissertation/report that comes of this research.

YES _____ NO _____

If I have any questions about the study, I may contact the researcher or her supervisor.

This research project has been reviewed and received clearance through the Office of Research Ethics and Integrity at the University of Ottawa. If I have any questions regarding the ethical conduct of this study, I may contact the Protocol Officer for Ethics in Research, University of Ottawa, Tabaret Hall, 550 Cumberland Street, Room 159, Ottawa, ON K1N 6N5, by phone at 613-562-5841 or email at ethics@uottawa.ca .

There are two copies of the consent form, one of which is mine to keep.

_____

Participant Signature Date

_____

Researcher Signature Date

Interview Guide

Project Title: Agenda Change among Agenda-Setters: Abortion Policy's Shifting Frames within Canada's Federal Political Parties

Research Question: How does morality policy change occur, and more specifically, how do political parties serve as agenda-setters by controlling or enabling morality issues on the political agenda? How does frame construction within political parties enable this change?

Introduction to Researcher and Project

My background:

Thank you so much for taking the time to meet with me.

As mentioned in our communications, I'm a doctoral candidate studying Public Administration at the University of Ottawa, specializing in how governments address moral issues in public policy.

Themes of Project/Structure of Interview:

This project looks to understand how political parties have evolved in their understanding of the abortion issue and their approach to the issue in politics.

We'll start with general questions about your background so that you can introduce yourself. The themes of the interview look at 1) past moments of abortion policy developments, 2) the current situation and 3) how the language and approach to abortion policy has changed.

The interview is semi-structured, which means that I have a few general questions to guide our conversation, but we also have some flexibility, so I may ask you follow-up questions to go more in depth depending on what you bring up.

Reminders/Consent:

Our interview will be 60 to 90 minutes long.

As noted in the consent form, you are free to decline to answer any question. You are also free to end the interview at any time.

If you have any difficulties understanding a question, please feel free to ask for clarification.

As a reminder, I will be recording our interview. You can ask me at any time during the interview to turn off the recording. Do you have any questions or concerns about this?

Any other concerns or questions?

Questions for former/current Party members/politicians/activists/advisors

1. General Background Information of Respondent (*confirm basic facts, test recording):*
   1.1. Would you describe your professional background and how that led you to your [position/role]?
   1.2. How did you become involved in your political party?

2. General Understanding of Abortion Policy
   2.1. How would you describe federal abortion policy?
   2.2. When did you first encounter abortion policy?
      2.2.1. What was your impression of the issue at that time?

3. Past Involvement in in Party Policymaking
   3.1. What was your role in the party in setting its abortion policy in the past?
   3.2. What do you remember being the main concerns/stakes/issues discussed in the internal deliberations on how to approach abortion policy?
      3.2.1. How did people in the party talk about abortion policy? What words, phrases, or arguments do you remember being used?
   3.3. How would you describe the party's approach to abortion policy?
      3.3.1. Did it match your own approach? If not, how would you have proceeded?
   3.4. Overall, in setting abortion policy, *who (what kinds/groups of actors)* did you see as being the most influential?

4. Current Approaches to Abortion Policy
   4.1. How do people within the party talk about abortion policy and politics *currently* in the party*?*
      4.1.1. Are there main voices or groups that you hear advancing a particular approach to abortion policy within the party?
         4.1.1.1. Where do such groups or voices agree and disagree in the approaches they advance?

5. Perception of change:
   5.1.Has the way that the party approaches abortion policy changed over time?
      5.1.1. What has changed?
      5.1.2. When did you notice changes?
      5.1.3. Why do you think there has been a change?
      5.1.4. In what direction do you think this change is heading?
      5.1.5. What is positive and negative about where the policy is going?
   5.2. If you were able to return to that period of policy development, would you do things differently?

Closing the Interview

- Is there anything you feel I should know on the subject that we haven't addressed?
- Are there any questions that you thought I would ask you but didn't?
- *Other documents:* Part of my research consists of reviewing documents, including cabinet minutes when available, policy documents and convention resolutions, Hansard, etc. Are there any documents you would recommend that I consult as part of my study?
    - *If applicable* - Are there any documents you would be able to help me access?
- *Other interviewees?* Are there any others that you would recommend that I speak to?
    - *If applicable* - Would you be willing to help me get in touch with that person? OR, Can I mention that you recommended that I meet with that person?
- If necessary, can I contact you again for additional information or clarification (email, phone call, etc.)?
- As noted in the consent form, if I intend to use anonymous quotations in my report, I will send you a transcript for your review. You are also welcome to request a transcript at any time.
- If you are interested in reading the thesis after it is defended, it will be my pleasure to send you the document by email.
- *Thank them for their time.*

F. Criminal Code Changes Related to Abortion Made with the 1969 Omnibus Bill

C-150, also referred to as the omnibus bill, addressed a broad range of issues. The clauses that amended the existing Criminal Code clauses dealing with abortion included clauses 14, 15 and 18. This appendix details the changes that these clauses made to the relevant Criminal Code sections and cites from the bill (House of Commons Bills, 28th Parliament, 1st Session, C123-C173).

Clause 14 amended the definition of human being in section 195 of the Criminal Code. Section 195 section originally read,

> *195. (1) 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 whether or not*
> *(a) it has breathed,*
> *(b) the navel string is severed.*
> *(2) A person commits homicide when he causes injuries to a child before or during its birth as a result of which the child dies.*

Clause 14 amended the end of subsection (2), such that it read: (2) A person commits homicide when he causes injuries to a child before or during its birth as a result of which the child dies ***after becoming a human being*** [emphasis added].

Clause 15 amended section 209 of the Criminal Code, which originally read:

> *209. (1) Every one who causes the death of a child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.*
>
> *(2) This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.*

Clause 15 amended subsection 1, such that it read: (1) Everyone who causes the death***, in the act of birth***, of any child that has not become a human being [emphasis added].

Clause 18 amended section 237 of the Criminal Code. The original section had read:

> *237. (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.*
>
> *(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.*
>
> *(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.

Clause 18 added to this a fourth subsection, which read:

(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 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 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 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 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.

(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 (c) of 15 subsection (4) issued by that committee, together with such information relating to the circumstances surrounding the issue of that certificate as he may require, or
(b) require a medical practitioner who, in that province, has procured the miscarriage of any female person named in a certificate described in paragraph (c) of subsection (4), to 25 furnish to him a copy of that certificate, together with such other information relating to the procuring of the miscarriage as he may require.

In sum, therefore, Bill C-150 added subsections to Section 237, indicating that exceptions existed for qualified medical practitioners "who in good faith" provided an abortion within an accredited hospital, as well as exceptions for pregnant women who allow a qualified medical practitioner to provide abortion in such a hospital, provided that a majority of a Therapeutic Abortion Committee (TAC) approved the abortion. Definitions were also provided for accredited hospitals, the Minister of Health, qualified medical practitioners and therapeutic abortion committees.

G. Amendments pertaining to abortion moved during the Report Stage debate of C-150, the Omnibus Bill

Amendment Number*	Party Affiliation of the Mover	Brief Description
15	Ralliement Créditiste	Adding a stipulation that the person can only act in "good faith" to preserve the life of the mother and causes the death of the child – if unable to find a medical practitioner, in order to prevent killing children in act of birth.
21	PC	Adding that hospitals are not required to have TACs and medical practitioners are not required to procure an abortion.
24	PC	"Before period of implementation" as the only time abortion would be lawfully available.
26	Liberal	Remove "would be likely to" endanger woman's life.
27	Ralliement Créditiste	Add condition that the female patient must be married, or 21 and older, or under 21 with written parental consent.
28	Ralliement Créditiste	Sets higher bar for hospitals that can provide abortions, requiring them to have 400+ beds and/or be part of university.
29	Ralliement Créditiste	Adds requirement to have a gynecologist on the TAC and to be approved by the College of Physicians and Surgeons.
30	PC	Adds requirement that the 4 members of TAC must include 2 medical practitioners, 1 psychiatrist appointed by the board, as well as a clergyman or spiritual advisor when requested by patient.
33	Ralliement Créditiste	Removes "female" from some lines.
34	Liberal	Removes "would be likely to endanger her life or health" and replaces with "endanger her life or seriously and directly impair her health".
35	Ralliement Créditiste	Removes "or health" as a reason that would allow a therapeutic abortion.
38	Ralliement Créditiste	Requiring TACs to have a unanimous decision to grant an abortion, rather than a majority decision.
37	Ralliement Créditiste	Requiring a written certificate from the TAC that the life of the mother is in danger from continuing her pregnancy.
19	Ralliement Créditiste	Delete clause on abortion entirely from the omnibus bill.

**Organized according to the order in which they were debated, rather than by their number.*

H. Description of Caucus Committee's Development of C-43 Based on Interview Sources

A caucus committee of 12 members was set up, with members representing both sides of the issue, including an interviewee (Confidential Interview). This interviewee described the committee's marching orders as, "We were told, 'You're going to meet,' and they gave us a nice room, big oval table, lots of food, coffee, water, drink, whatever. And we were told, 'You're going to stay there every day until you come up with a proposal. So that was a simple instruction" (Confidential Interview). Additionally, Stanley Hartt, the Prime Minister's Chief of Staff, was assigned to participate in the meetings, which was an unusual measure for such committees. A minister of this time quipped that perhaps the caucus committee was able to draft a bill "because Stanley Hartt twisted their arms or put them against the wall….I don't know what he did, but he got an agreement" (Confidential Interview). Hartt's role, however, according to a member of the caucus committee, was to provide assistance and keep the Prime Minister updated on their progress (Confidential Interview). This committee member did not characterize Hartt's involvement as coercive.

The caucus committee started off with two Department of Justice (DOJ) lawyers brought in by Hartt to address how the SCC decision on *Morgentaler* impacted what a law could be; the DOJ lawyers argued that such a law would have to be what the cabinet had proposed, with no restrictions before 24 weeks and restrictions only following that stage of pregnancy. This was not helpful for the committee who was well aware that this gestational approach was widely opposed within caucus. One member of the committee, interviewed for this project, in the face of this "hopeless" state, proposed several options, most notably asking Stanley Hartt to contact any two of "the brightest legal minds in Canada on Charter issues" and to ask them, "can a law begin at conception, from conception on? Or must it wait till the 24th week or stage of viability of the child?" (Confidential Interview). In other words, this MP asked Hartt to verify the conclusion of the DOJ lawyers as to whether a gestational approach was the only means by which they could regulate abortion within the bounds of the Charter and SCC decision. When Hartt reported back, the interviewee described his behaviour as "nervous" and "agitated":

> He stood up, he got a cup of coffee, he can hardly – why he couldn't hold the cup and saucer properly! I was afraid he was going to spill it. So I took it from him and put that down on the desk in front of him, because that poor cup was just bouncing around that saucer. And he sat down. Then he turned to me and said, "You are right. I am wrong. You can start at conception." (Confidential Interview).

The lawyers Hartt had contacted, from Queen's University and the Université de Laval, had both agreed that a law could start at conception. This interviewee was not surprised by this conclusion as he had proactively contacted 15 such legal experts who had all provided the same conclusion. Hartt subsequently turned to the DOJ lawyers, according to this member of the committee, and told them they should be fired and kicked them out of the room (Confidential

Interview). This interviewee noted that, “Now whether they [the DOJ lawyers] were fired or not, I don’t know. But they had to get out. So Stanley Hartt kicked them out of the room. From then on, we were the 12 members plus Stanley Hartt, nobody else” (Confidential Interview).

The interviewee described civil, though difficult, committee discussions that followed, with the group compromised of 3 pro-life and 9 pro-choice members. They were able, regardless, to develop a unanimous proposal that “wasn’t that much different than what we used to have, which was the life or health of the mother. And if a doctor said the life or health of a mother was an issue, then you could have an abortion” (Confidential Interview).

This proposal became C-43. According to this interviewee, the PM was briefed by Hartt and “was delighted that we had a proposal and we were unanimous” (Confidential Interview). Interestingly, however, at an October 10, 1989 cabinet committee meeting, when the non-gestational approach was proposed, prohibiting abortion in principle but allowing it for broad health reasons, the approach seemed to be unexpected, with the minutes recording that “The Prime Minister indicated that this was the first time he had heard of this” (Tromp, 2013, pp. 54-55). Regardless of when, precisely, the PM was briefed on the matter, this was the approach that was chosen to be pursued in legislation.

Overall, this process of shifting legislative models in response to the fractured PC caucus indicates the kinds of pressures that were present in the party and in Parliament. We also know that the caucus committee created the proposal quite quickly, because at a September 26 1989 cabinet meeting, the Ad Hoc Minister’s Committee on Abortion was still being referred to and the Prime Minister is noted as having indicated, during this meeting, that Ministers were invited to “submit their suggestions on how to manage the issue in Caucus (when to launch the discussion, whether to form a Caucus Committee” (Tromp, 2013, p. 54). Then, by the Oct 10, 1989, cabinet meeting, the caucus committee has already met and developed a bill, at least in principle if not in full detail (unclear based on the documents). According to an interviewee who was a member of that caucus committee, their meetings covered about three days (Confidential Interview).

I. Private Members' Business

Order of Precedence

PMB is subject to a lottery system in which only those whose names are drawn are placed on the List for Consideration of Private Members' Business. Since limited time is allocated to PMB, only those at the top of the list or high in the order of precedence have the opportunity to have their PMB go to debate (Bosc & Gagnon, 2017, p. Chapter 21). As such, getting PMB to *debate* is challenging from a procedural standpoint, because, although, introducing a PMB bill or motion was easy enough, the chances of an MP with a pro-life PMB coming up on the order of precedence was relatively rare (Confidential Interview). As discussed in the *House of Commons Procedure and Practice* manual,

> items of Private Members' Business are called according to their place in the order of precedence. Only those items in the order of precedence may be considered during Private Members' Hours. The order in which Members may place an item in the order of precedence for debate is based on their position on the List for the Consideration of Private Members' Business, which is the list of the names of Members constituted by a random draw at the beginning of the first session of a Parliament and, as required, during the course of a Parliament (Bosc & Gagnon, 2017, p. Chapter 21).

The first thirty Members who were drawn for the list are put on the order of precedence, so long as they have an eligible item of PMB on the Order Paper or Notice Paper.

Votability

The Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs (SMEM) judges non-votability of PMB based on the following criteria:

> bills and motions must not concern questions that are outside federal jurisdiction; bills and motions must not clearly violate the Constitution Acts, 1867 to 1982, including the Canadian Charter of Rights and Freedoms; bills and motions must not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session of Parliament, or as ones preceding them in the order of precedence; and bills and motions must not concern questions that are currently on the Order Paper or Notice Paper as items of government business (Bosc & Gagnon, 2017, p. Chapter 21, "Votable and Non-votable Items").

In brief, therefore, PMB must be constitutional, must not be repetitive of something parliament has recently voted on or will shortly vote on, and must not impinge on government business.

Appeals for votability can be made, as Mr. Benoit and Mr. Warawa did, to the main committee: Procedure and House Affairs Committee (PROC).

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