

Future of abortion hangs on landmark hearing

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A court case has again stirred up public debate about a heart-wrenching subject, writes Anne Summers.

FOR the first time in more than 20 years a medical practitioner has been charged under section 83 of the NSW Crimes Act with unlawfully procuring a miscarriage. The committal hearing against Dr Suman Sood, former owner of abortion clinics in Fairfield and Rosemeadow, has been proceeding at the Liverpool Local Court since Monday.

It has now been deferred until November but if she is sent to trial and a conviction ensues, the entire legal foundation of abortion in this state could be in jeopardy.

Abortion in NSW is still prohibited by provisions of the Crimes Act that are more than a century old, but more recent judicial interpretations of these provisions have allowed for terminations of pregnancy to be widely available to those who can find a service and pay the cost. (Even with a health-care card, a termination in NSW will cost about \$160.)

The 1971 ruling by Judge Aaron Levine of the District Court was the foundation of legal access to abortion until 1995, when Justice Michael Kirby, then of the NSW Court of Appeal, reaffirmed and somewhat widened the Levine ruling to include consideration of whether a woman's mental or physical health might be endangered by the pregnancy or - and this was new - by the birth of the child.

A medical malpractice suit rather than a Crimes Act interpretation occasioned Kirby's majority ruling.

One reason there is a lot of nervousness among women's health services and abortion providers because of the current case is that the Crimes Act provisions have not been thoroughly tested since 1971. There has been only one conviction since then, of a medical practitioner, under section 83.

This occurred in 1981, when Dr George Smart was found guilty of procuring a miscarriage on a teenager, who, as in the present case, had been refused a termination by a number of other clinics because her pregnancy was past 20 weeks.

Smart died soon after lodging an appeal against his conviction. Had the NSW Court of Appeal heard the case, argued the lawyer Natasha Cica in *Abortion Law in Australia*, a research paper prepared for the federal Parliamentary Library in 1998, "it presumably would have commented on whether the Levine ruling represented the correct interpretation of when an abortion is lawful in NSW".

That could now happen with the Sood case.

Defenders of women's right to safe and legal abortion are not looking forward to this prospect.

Sood is hardly a poster girl for the industry. It will be interesting to see if her defence counsel is able to produce any of her medical peers to lend her support. Smart was unable to attract such support.

In addition, Sood was convicted in April of 96 counts of Medicare fraud in relation to the provision of abortion. It was claimed in court that she bulk-billed for these services in addition to taking upfront cash payments from patients. Sood was sentenced to 300 hours of community service and fined more than \$20,000.

An experienced counsellor in the field of pregnancy termination told me yesterday that it was unfortunate this case had come forward because it would overshadow the fact that most providers worked safely and within the law. That law requires that women's physical and mental health be assessed - something it is alleged in the present case that Sood failed to do. (She is also the first person to be charged with manslaughter of a foetus, a result of allegedly using a method of termination that resulted in the birth of a live baby who subsequently died.)

Every abortion invariably involves some heartache, but women make the choice because they feel it is their only economic or health option.

The choices need to be easier so the terminations can take place as soon and as safely as possible, as is the case in the ACT, where women can request early abortion and don't need a medical green light. There is probably no such thing as a "good" case on which to defend abortion laws but the Sood case may, unfortunately, turn out to be the one.