



## ***Position Paper #54***

# **Abortion Law and Policy: Comparisons Between the U.S. and Canada**

Abortion is currently legal upon request in Canada but the United States has seriously regressed on reproductive rights and bodily autonomy for women and gender-diverse people.

## ***Canada's Legal Situation***

Canada first liberalized its criminal abortion law in 1969, allowing it to be performed in hospitals with the approval of a “therapeutic abortion committee.” But the law resulted in unequal access so the Canadian Supreme Court threw out the entire law in 1988. Although the Canadian legislature soon tried to re-criminalize abortion, the bill failed to pass. Governments have said repeatedly over the years that they do not intend to re-legislate against abortion. This leaves Canada as the only nation in the world with no specific laws governing abortion and no legal restrictions on abortion.<sup>1</sup>

Perhaps because of this, Canada has a relatively low rate of abortion compared to other industrialized countries. An estimated 86.8% of abortions were done by 12 weeks gestation in 2020, and only 1.3% after 21 weeks.<sup>2</sup> Canada's estimated annual abortion rate per 1000 women aged 15-44, based on official CIHI data for 2022, is 97,211.<sup>3</sup> These statistics prove that no laws are needed to regulate or reduce abortions, and that pregnant people and their doctors can be trusted to exercise the right responsibly.

Canada's Supreme Court justices grounded the right to abortion in Canada's *Charter of Rights and Freedoms*, where the primary protection cited was women's right to “security of the

---

<sup>1</sup> The anti-choice movement continues to state that China and North Korea also have no abortion restrictions in order to unfavourably associate Canada with those countries. However, North Korea completely banned abortion and contraception in 2015, and China now has some policies and local laws that limit abortion access.

<sup>2</sup> Data is gathered by CIHI, the Canadian Institute for Health Information. As of 2021, CIHI no longer collects gestational age data from hospitals. It never collected such data from clinics.

<sup>3</sup> Abortion Rights Coalition of Canada. *Statistics – Abortion in Canada*. April 18, 2024. <https://www.arcc-cdac.ca/media/2020/07/statistics-abortion-in-canada.pdf>

person.”<sup>4</sup> One of the judges also found that the abortion law violated women's rights to “freedom of conscience” and “liberty.”<sup>5</sup> Unlike in the USA, gender equality rights are enshrined in Canada’s constitution, so courts have been very reluctant to confer any rights on fetuses because it would interfere with the established constitutional rights of women and gender minorities.

Several court rulings since 1988 have denied fetuses any legal recognition in Canada, and upheld the right to legal abortion.<sup>6</sup> Further, no abortion restrictions have passed since the 1988 ruling, and the last remaining provincial restriction (restricting funded abortions to hospitals) was repealed in October 2024 in New Brunswick.<sup>7</sup> Federally, the last serious attempt to reopen the abortion debate in Canada occurred in 2012 during the Stephen Harper government. Conservative MP Stephen Woodworth’s Motion 312 would have created a Parliamentary committee to discuss the definition of fetal personhood, with the aim of defining embryos to be persons. The motion was defeated. Prior to that, Conservative MP Ken Epp’s Bill C-484 “Unborn Victims of Crime Act” passed second reading in 2007 (a shock to many at the time) but died on the order paper in Sept 2008 when the election was called. The bill would have established a form of legal personhood for fetuses.

Recent years have seen additional successes, with courts countering anti-abortion activism across the country. For example, after Prime Minister Justin Trudeau blocked anti-choice groups from receiving grants for summer jobs programs, the Toronto Right to Life Association took the government to court claiming discrimination.<sup>8</sup> The Federal Court dismissed the case in 2021, because they “found it reasonable for Ottawa to require applicants to its summer jobs program to declare themselves in support of abortion rights in order to get funding.”<sup>9</sup> As such, it’s easy to see how Canadian courts are beginning to view anti-abortion groups as promoting misogynist views towards pregnant people’s right to bodily autonomy.

In terms of availability, abortion care is not as equitable as it could be (primarily due to lack of facilities and providers in rural and remote areas), but nationwide, medical and surgical abortion is funded by Medicare in Canada.<sup>10</sup>

---

<sup>4</sup> The 1988 decision and later court decisions used gendered language, which is reflected here.

<sup>5</sup> Shelagh Day and Stan Persky, eds. 1988. “The Supreme Court of Canada Decision on Abortion.” New Star Books, Vancouver, BC.

<sup>6</sup> Abortion Rights Coalition of Canada. April 2024. “Abortion Court Decisions and Laws in Canada.” <http://www.arcc-cdac.ca/court-decisions-laws-abortion-canada.pdf>

<sup>7</sup> Tracy Glynn. “‘History in the making,’ says New Brunswick abortion provider on repeal of restrictive abortion regulation.” NB Media Coop, Nov 7, 2024. <https://nbmediacoop.org/2024/11/07/history-in-the-making-says-new-brunswick-abortion-provider-on-repeal-of-restrictive-abortion-regulation/>

<sup>8</sup> Tonda MacCharles. “Anti-Abortion group takes Trudeau government to court,” Jan 5, 2018, [https://www.thestar.com/news/canada/anti-abortion-group-takes-trudeau-government-to-court/article\\_b8a2c4d1-128a-52b7-bb2b-cf5202c2daa2.html](https://www.thestar.com/news/canada/anti-abortion-group-takes-trudeau-government-to-court/article_b8a2c4d1-128a-52b7-bb2b-cf5202c2daa2.html)

<sup>9</sup> Action Canada for Sexual Health and Rights. Nov 2021. <https://www.actioncanadashr.org/news/2021-11-01-legal-victory-ruling-confirms-anti-choice-organizations-will-be-barred-canada-summer-jobs-program>

<sup>10</sup> <https://www.canada.ca/en/public-health/services/sexual-health/abortion-canada.html>

Health Canada approved Mifegymiso (better known as the abortion pill) for use in Canada in July 2015, although it did not become available to patients until 2017. The combination of mifepristone and misoprostol has been on the World Health Organization’s list of essential drugs since 2005 and is the recommended method for medical abortion.

Initially, Health Canada placed several unnecessary restrictions on the medication’s use. These restrictions were not legal requirements, but doctors were expected to dispense the medication themselves, take special training to be able to prescribe it, and limit the drug’s use up to seven weeks in a pregnancy. After sustained lobbying by the medical and reproductive rights communities, these restrictions were lifted in 2017 except for the requirement for patients to first get an ultrasound,<sup>11</sup> which was lifted in 2019.<sup>12</sup>

## ***U.S. Legal Situation***

In the United States, abortion was legalized in all 50 states by the Supreme Court in 1973, in the famous *Roe v. Wade* decision. The court grounded abortion rights in a constitutionally-derived right to privacy. Although there is no explicit right to privacy in the American Bill of Rights, it was enshrined as a constitutional right in two prior court decisions that legalized birth control (*Griswold v. Connecticut* in 1965, and *Eisenstadt v. Baird* in 1972). These precedents made the *Roe v. Wade* ruling possible.<sup>13</sup>

In *Roe v. Wade*, the Supreme Court gave abortion the highest degree of constitutional protection with its "strict scrutiny" standard, but that was watered down in 1992 by court in *Planned Parenthood v. Casey*, which established an “undue burden” test, ruling that an abortion restriction is unconstitutional if it imposes burdens (on pregnant people) that outweigh its benefits. This vague standard allowed all manner of restrictions over the next two decades, especially by right-wing judges. It culminated in the devastating blow to human rights in June 2022, when the Supreme Court overturned *Roe v. Wade* with the *Dobbs v. Jackson Women’s Health Organization* case. This was made possible because during his first presidency, Donald Trump was able to stack the deck of the Supreme Court with anti-choice justices.

The “reasoning” for the overturning was provided by Samuel Alito, who said that “the only legitimate unenumerated rights—that is, rights not explicitly stated in the Constitution—are those “deeply rooted in the Nation’s history and tradition” and “implicit in the concept of

---

<sup>11</sup> Action Canada for Sexual Health and Rights. “Key Dates.” [www.mifegymiso.com/key-dates/](http://www.mifegymiso.com/key-dates/)

<sup>12</sup> “Health Canada approves updates to Mifegymiso prescribing information: Ultrasound no longer mandatory.” Oct 2019. <https://www.canada.ca/en/health-canada/services/drugs-health-products/drug-products/fact-sheets/mifegymiso.html>

<sup>13</sup> NARAL Pro-Choice America. 2016. “Supreme Court Decisions Concerning Reproductive Rights.” <https://www.prochoiceamerica.org/report/u-s-supreme-court-decisions-concerning-reproductive-rights-1927-2016/>

ordered liberty.” Abortion, the majority held, is not such a right<sup>14</sup> – relying on the fact that women had no rights in the nation’s history and tradition.

Dissenting Justices Stephen Breyer, Sonia Sotomayor, and Elena Kagan said that the court decision means that "young women today will come of age with fewer rights than their mothers and grandmothers ... from the very moment of fertilization, a woman has no rights to speak of. A state can force her to bring a pregnancy to term even at the steepest personal and familial costs."<sup>15</sup>

After this decision, several Republican states enacted “trigger laws” (laws set up to go into effect as soon as Roe was overturned) that immediately banned abortion. As of December 2024, 13 states have a total abortion ban, 41 states have abortion bans with limited exceptions, and 28 states restrict abortion based on gestational age – 7 at or before 18 weeks, 21 at some point after 18 weeks. Nine states and DC do not restrict based on gestation.<sup>16</sup>

## **Conclusion**

Roe v. Wade proves how legal victories for abortion rights can be hollow without extensive social and government support to back them up. Living without any laws against abortion puts Canada far ahead of the United States and is in fact one of the best protections we have.

While many anti-choice groups in Canada have tried to pass laws restricting abortion access like those in the United States, the reproductive rights movement has ensured this does not happen by remaining vigilant and vocal.

Abortion access in Canada is currently expanding, as are regulations to protect abortion providers. Since 2016, six more provinces have passed safe access zone laws, following BC’s example in 1995. These zones prohibit the presence of anti-abortion protestors and ensure people accessing abortion can do so free from harassment.<sup>17</sup>

However, with the increasingly likely election of Pierre Poilievre of the Conservative Party in 2025, abortion access in Canada is under threat. Despite our political and social differences from the U.S., we share a long border with them and tend to follow their social trends. Anti-abortion groups like Campaign Life Coalition, RightNow, Association for Reformed Political Action, and We Need a Law, are actively trying to bring American-style anti-abortion politics to Canada and pass new laws against abortion. We cannot let that happen.

---

<sup>14</sup> The Brennan Centre. « Roe v. Wade and Supreme Court Abortion Cases.” Sept 28, 2022.

<https://www.brennancenter.org/our-work/research-reports/roe-v-wade-and-supreme-court-abortion-cases>

<sup>15</sup> Nina Totenberg and Sarah McCammon, “Supreme Court overturns Roe v. Wade, ending right to abortion upheld for decades,” June 24, 2022, <https://www.npr.org/2022/06/24/1102305878/supreme-court-abortion-roe-v-wade-decision-overturn>

<sup>16</sup> Guttmacher Institute. “State Bans on Abortion Throughout Pregnancy.” January 2025.

<https://www.guttmacher.org/state-policy/explore/state-policies-abortion-bans>

<sup>17</sup> <https://www.arcc-cdac.ca/media/2020/06/Bubble-Zones-Court-Injunctions-in-Canada.pdf>