



Abortion Rights  
Coalition of Canada

Coalition pour le droit à  
l'avortement au Canada

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### ***Position Paper # 3***

## **Clinic Funding – Overview of Political Situation**

Although the Supreme Court of Canada struck down restrictions against abortion in 1988, Canadian women still confront barriers to access. One of the most unnecessary and unfair hurdles is the continuing refusal by two provinces, New Brunswick and Quebec, to fully fund abortions at private clinics. Over the past 15 years, all other provinces have extended full funding to private abortion clinics, including most recently Manitoba. (Note that Nova Scotia, Saskatchewan, PEI, and the territories have no abortion clinics.)

The failure of provinces to pay for the procedure in clinics contravenes the *Canada Health Act*. (To understand why abortions performed at private clinics must be funded under the Act, see our Position Paper #2, *Abortion Clinics Must Be Fully Funded under the Canada Health Act*). In New Brunswick's case, an anti-abortion government is simply refusing to obey the law. In Quebec's case, it appears the government has an aversion to funding any private clinic, although numerous such clinics exist that are charging patients directly for some medically-necessary services, in violation of the *Canada Health Act*.

Lawsuits by pro-choice proponents are currently underway in both New Brunswick and Quebec to try and rectify the situation. Below is a timeline of key events in both provinces.

### **New Brunswick**

**June 1994** - Dr. Henry Morgentaler opens his clinic in Fredericton, New Brunswick. The province invokes legislation that prohibits doctors from performing abortions outside an approved medical facility. The NB College of Physicians and Surgeons restricts Dr. Morgentaler's licence. Another provincial regulation decrees that abortions will only be covered under Medicare if they are done at hospitals with the written approval of two doctors.

**Sept 1994** - NB's Court of Queen's Bench rules that the province has no right to restrict abortions to hospitals. NB appeals, and in Jan 1995, the NB Court of Appeal upholds the lower court ruling. In August, the Supreme Court refuses to hear NB's further appeal.

**July 1999** - New premier Bernard Lord denies funding for the Morgentaler clinic, after a request from Dr. Morgentaler for the premier to uphold the *Canada Health Act*.

**Dec 2001** - Dr. Morgentaler again pressures Health Canada and the New Brunswick provincial government to fund abortions performed at his NB clinic.

**Jan 2001** - Federal Health Minister Allan Rock warns New Brunswick that it must pay in full for abortions at the clinic. Federal and provincial officials meet in Fredericton to address the issue.

**Jan 2002** - Dr. Henry Morgentaler writes new federal Health Minister Anne McLellan, urging her to force New Brunswick (and other provinces) to fund abortions in clinics.

**Sep 2002** - Dr. Henry Morgentaler announces plans to sue New Brunswick for not funding abortions at his clinic. Dr. Morgentaler criticizes federal Health Minister Anne McLellan for not using federal funding power to force the provinces into line.

**Oct 2002** - MacLellan announces that the federal government is prepared to withhold transfer payments to New Brunswick if it continues to refuse to fund abortions at the Fredericton clinic.

**Jul 2003** - Dr. Henry Morgentaler launches a lawsuit against New Brunswick, claiming that women are being denied fair access to abortions because the province only pays for abortions in hospitals with the approval of two doctors. NB's Justice Minister Brad Green vows to fight the lawsuit all the way to the Supreme Court of Canada. Premier Bernard Lord claims that the province's position conforms to Canada's Charter and the *Canada Health Act*.

**Aug 2003** - The New Brunswick government files a statement of defence in the Morgentaler lawsuit, saying funding abortions in private clinics would create an "unnecessary financial burden;" that medically necessary, Medicare-funded abortions are provided at several hospitals in the province; and that access would not be "meaningfully enhanced" by extending funding to abortions at the Morgentaler clinic. (But only one hospital in NB provides the bulk of funded abortions in the province, with no access at all in the eastern part of the province.)

**Mar 2004** - An anti-choice group, Coalition for Life and Health, argues in court for intervenor status in the Morgentaler lawsuit against New Brunswick to fund his clinic. The intervenor request is later denied because the coalition's issues were related to the morality of abortion and had nothing to do with funding.

**Oct 2004** - Federal Health Minister Ujjal Dosanjh launches new talks with New Brunswick to enforce the *Canada Health Act*. Dosanjh said that New Brunswick is consistently ranked among the most difficult provinces for a woman to get an abortion, and that NB has a responsibility to cover the cost of all abortions performed by doctors in the province. The media reports that 602 women paid between \$500 and \$750 to have an abortion at the Fredericton clinic in 2003.

**Apr 2005** - Dosanjh sends a letter to New Brunswick's provincial Department of Health and Wellness, initiating an official dispute avoidance resolution process to attempt to settle the issue

of the province not funding the Fredericton Morgentaler clinic. The NB Health Minister says he will not bow to threats.

**May 2005** - Dr. Henry Morgentaler sends an open letter to Premier Bernard Lord offering to end his lawsuit against the government if it buys his private clinic and continues offering abortions there.

**Jun 2005** - Dosanjh says New Brunswick has ignored a 60-day process of fact finding and negotiations to solve the long-standing dispute over whether NB must pay for abortions at the clinic. He says he will appoint a three-member panel to hear the two sides' arguments and render a ruling within another 60 days. New Brunswick's Health and Wellness Minister Elvy Robichaud says he will defend NB's restricted abortion policies before the panel.

**Feb 2006** – New Conservative Health Minister Tony Clement appears reluctant to continue dispute resolution process with New Brunswick, and no progress has been made (as of June 2006). New NB provincial Health Minister Brad Green continues to defend NB's existing policy.

**Dec 2006** - Federal Health Minister Tony Clement says the federal government does not intend to pursue the matter of abortion funding at the NB clinic and says the issue is "off the radar." Meanwhile, access deteriorates. Only two doctors are available to do abortions at hospitals.

**Jan 2007** - A group of pro-choice activists and attorneys led by lawyer Michelle Caron announce they are preparing a lawsuit against New Brunswick because of its restrictive law. The group includes ARCC, NAF, and the NB Advisory Council on Status of Women.

**Aug 2007** - Dr. Morgentaler's lawsuit is ongoing, but progress is slow. Currently before the court is the issue of whether Dr. Morgentaler has "standing" since he is not a woman who had to pay for abortion services at the clinic.

## **Quebec**

**Jan 2001** - Allan Rock, Minister of Health, warns Quebec (and other provinces) that it must pay in full for abortions at private clinics, because it is violating the *Canada Health Act*.

**Jan 2002** - Dr. Henry Morgentaler writes new federal Minister of Health, Anne McLellan, urging her to force Quebec (and other provinces) to fund abortions in clinics.

**Apr 2002** - Federal Health Minister Anne McLellan proposes a three-member panel to adjudicate disputes over the *Canada Health Act*. One member will be selected by Ottawa, one by the provinces, and the two will select a third by mutual agreement. All provinces except Quebec accept the arrangement.

**Jul 2002** - An anonymous woman files a class-action suit against the province of Quebec for failing to fund her abortion at a private clinic. A coalition of four private abortion clinics in Montreal, the Association for Access to Abortion, are helping her with the lawsuit. They first had to go before a judge to guarantee her anonymity, lost that, appealed, then won.

**Jan 2006** - The class-action case by the Association for Access to Abortion is heard by Quebec Superior Court. The Quebec government defended its policy by arguing that by offering abortions free in hospital and publicly run clinics the procedure is accessible.

**Dec 2006** – Quebec health minister Philippe Couillard announces an amendment to a Quebec law to allow abortions to be funded at private clinics. However, women would have to go to a hospital, CLSC, or public women's health centre first, and if they can't get a timely abortion there, then go to one of the private clinics and have it funded.