Abortion Rights Coalition of Canada
Coalition pour le droit à l'avortement au Canada

Your Voice for Choice

Canada's only national political pro-choice advocacy group

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Position Paper #61

Chronology of Abortion-Related Legal Cases in Canada

Along with the instrumental *R. v. Morgentaler* case in 1988, abortion has been the focus of many court cases in Canadian legal history. Below is a list of key cases that contributed to preserving reproductive rights. Links are provided to the legal decisions.

More information on these cases and additional cases – including links to the decisions – can be found here: *Abortion Court Decisions and Laws in Canada*: http://www.arcc-cdac.ca/court-decisions-laws-abortion-canada.pdf

R. v. Morgentaler	1 SCR 30 1988	Supreme Court of Canada in 5-2 decision (led by Chief Justice Brian Dickson) struck down abortion law as unconstitutional on Jan. 28, 1988. Law violated section 7 of Charter, infringed woman's right to life, liberty, conscience, and security of person. The decision is a cornerstone of human rights jurisprudence in Canada. All provincial and federal court cases related to abortion have since upheld women's rights and denied fetal rights.
Borowski v. Canada (Attorney General)	[1984] 1 WWR 15	After numerous appeals, in March 1989 ([1987] 4 W.W.R. 385), the Supreme Court refused to rule on the claim of Joseph Borowski that fetuses have a constitutional guarantee of right to life. The Court ruled that the case was moot due to the abortion law being struck down in R. v. Morgentaler.
Tremblay v. Daigle	2 SCR 530 1989	In Manitoba, Ontario, and Quebec, ex-boyfriends tried to get injunctions to stop their former girlfriends' abortions, and one temporarily succeeded. Chantal Daigle of Quebec was refused an abortion and appealed to the Supreme Court, which overturned the injunction. In Nov. 1989, the court released its reasons, unanimously ruling there is no fetal or paternal right to stop an abortion.
R. v. Sullivan	[1991] SCR 489	In 1986, two midwives in BC were found guilty of criminal negligence in the death of a fetus after a stillbirth. They appealed to the BC Court of Appeal, which threw out their conviction in 1988 because the fetus is not a person. The Supreme Court of Canada cleared them in March 1991. This case raised the issue of the legal status of the fetus ... the harm was to the mother as the fetus cannot be treated as legally

		autonomous from her, as it is "in and of the mother" until fully born.
R. v. Drummond	143 DLR (4th) 368	In 1996, Brenda Drummond of Ottawa shot herself in the vagina in late pregnancy and was charged with attempted murder. The charge was dismissed by an Ontario court on the basis that the child is not legally a person and therefore not included in the Criminal Code. The Attorney General of Ontario did not appeal.
Winnipeg Child & Family Services (Northwest Area) v. G. (D.F.)	1997 3 SCR 925	A Winnipeg woman ("Ms G") was pregnant with her fourth child but addicted to glue sniffing, and two previous children had been born with disabilities. Winnipeg Child and Family Services asked a judge for an order to have her involuntarily confined a treatment centre, and he complied to protect the fetus. On appeal to the Supreme Court, the court ruled in 1997 that courts cannot force pregnant women to undergo treatment programs to prevent harm to the fetus.
Dobson v. Dobson	[1999] 2 SCR 753	Cynthia Dobson of New Brunswick was at fault in a car accident in 1993, injuring her fetus who was delivered prematurely with cerebral palsy. In order to get insurance money for the baby, Dobson's father, on behalf of the child, sued her for negligence. The Supreme Court ruled in 1999 that children cannot sue their mother for injuries suffered in the womb while pregnant. A key quote: "*A pregnant woman and her foetus are physically one, in the sense that she carries her foetus within herself … The physical unity of pregnant woman and foetus means that the imposition of a duty of care would amount to a profound compromise of her privacy and autonomy."*
R. v. Spratt	2008 BCCA 340	Two anti-choice protestors in Vancouver were charged with "sidewalk interference" for protesting in a safe access zone to a clinic. They appealed their convictions citing their freedom of expression. The judge ruled that the right to freedom of expression did not include the right to a captive audience of women who were forced to pass protesters to reach the clinic." In 2013, the Supreme Court refused to hear the appeal.
R. v. Wagner	2015 ONCJ 66	Anti-choice protester Mary Wagner entered an abortion clinic in Toronto to try and convince women to not get abortions (she was already bound by two probation orders preventing her from attending or communicating with people at abortion clinics). Wagner argued she was acting in "self-defence" for the "unborn". The judge found her constitutional arguments invalid and dismissed them, finding her guilty of breeching probation orders. Wagner appealed to the Ontario Superior Court of Justice, which dismissed her fetal rights arguments in 2016.
Canadian Centre for Bio-Ethical Reform v. Grand Prairie (City)	2016 ABQB 734	An anti-choice group claimed that the rejection of their bus ad by the City of Grande Prairie Alberta contravened its freedom of expression rights. Given the graphic nature of the ad, the judge held that the City's decision was reasonable because it properly balanced Charter value of freedom of expression with its statutory objectives, and the ad would have caused harm to women who have had abortions, as well as children and transit/road users.