



# Abortion Rights Coalition of Canada

## International Law, Abortion, and Canadian Jurisprudence

Delivered by Isabelle Berry

Prepared for Abortion Rights Coalition of Canada

Partnered with Pro Bono Students Canada | PBSC

University of New Brunswick, Faculty of Law

Published 3 May 2025



\*This document does not contain legal advice\*

This document was prepared with the assistance of a PBSC University of New Brunswick law student volunteer. PBSC volunteers are not lawyers and they are not authorized to provide legal advice. This document contains a general discussion of certain legal and related issues only. If you require legal advice, please consult with a lawyer.

## Table of Contents

<b>Introduction .....</b>	<b>2</b>
<b>Universal Declaration of Human Rights .....</b>	<b>4</b>
<b>Ratified International Covenants.....</b>	<b>5</b>
International Covenant on Civil and Political Rights.....	5
International Covenant on Economic, Social and Cultural Rights .....	6
Convention on the Rights of the Child.....	6
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.....	7
The Convention on the Elimination of All Forms of Discrimination Against Women .....	9
Trends in International Case Law in the Context of Abortion.....	11
El Salvador.....	11
Ireland.....	12
Pakistan.....	14
Poland.....	14
<b>Conclusion .....</b>	<b>15</b>

## Introduction

The purpose of this paper is to explore the way in which Canadian jurisprudence is, and can be, influenced by international law. Specifically, this paper examines the use of international treaties in Canadian courts with a significant focus on the use of comparative analyses in the interpretation and implementation of the rights they contain alongside our own Charter<sup>1</sup> values. Taken together, this paper finishes with an examination of how abortion rights and regulation have been addressed across various national contexts, emphasizing the power of international law in shaping and re-defining these issues.

For some preliminary context, international treaties do not automatically become part of domestic law. Though countries may ratify these instruments, ratification does not create law on its own—it simply signifies that the country recognizes the international standards. For an international treaty to have legal effect, it must be implemented through

---

<sup>1</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

legislation passed by parliament or provincial legislatures.<sup>2</sup> Where Canada implements principles of international instruments into legislation, Canada then becomes bound to comply with the obligations laid out therein.<sup>3</sup>

Although some international instruments such as the *Universal Declaration of Human Rights*<sup>4</sup> have no substantive legal authority in Canadian law, they nonetheless hold power in shaping Canadian common law.<sup>5</sup> International laws, especially human rights laws, are often used as tools in the translation and creation of jurisprudence. As discussed further below, judges have relied on comparative legal analyses in order to better understand patterns and methodologies of reasoning adopted in socio-economically similar areas of the world that hold identical values and perspectives.

Whether unlegislated international instruments make any difference in Canadian law at all, Douglas Cassel, an expert on business and human rights, international human rights and criminal law, and public international law, argues that:

The UN human rights system...has been a useful strand in the rope of human rights protection. It indirectly protects rights by reinforcing public awareness, exposing violations, legitimizing efforts by nongovernmental organizations and keeping issues of human rights on diplomatic agendas.<sup>6</sup>

Cassel implies that international instruments are always in the minds of lawmakers, as they embody widely endorsed values and peremptory norms. Although we may not be bound to its obligations, these values nevertheless shape what we recognize as universally accepted and agreed-upon rights that need protection.

In fact, the SCC has consistently regarded international law as a persuasive authority that informs the interpretation of domestic constitutional rights. In other words, international instruments have reinforced principles outlined in the Charter. In *Suresh v. Canada*<sup>7</sup> (discussed further below), the Court underscored the role of international human rights law in shaping the principles of fundamental justice and interpreting the Charter. The

---

<sup>2</sup> *Bijuralism and Harmonization: Bijuralism and Taxation: International Aspects: Interpretation of Treaties and Domestic Law* (Ottawa: Government of Canada, 2024), online: <<https://www.justice.gc.ca>>.

<sup>3</sup> Julianne Stevenson & Jennifer Taylor, *Access to Choice: The Legal Framework for Abortion Access in Nova Scotia* (Halifax: Leaf Halifax: Women's Legal Education and Action Fund, 2019), at page 2, online: <<https://www.leaf.ca>>.

<sup>4</sup> *Universal Declaration of Human Rights*, UNGA, 3rd Sess, UN Doc A/810 (1948) GA Res 217A (III).

<sup>5</sup> See generally: Gib van Ert, "Dubious Dualism: The Reception of International Law in Canada" (2010) 44:3 Val U L Rev 927.

<sup>6</sup> Douglass Cassel, "Does International Human Rights Law Make a Difference" (2001) 2:1 Chicago Journal of International Law 121, at page 132.

<sup>7</sup> *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002 SCC 1](#).

Court recognized that international law, though sometimes not directly binding, serves as a vital interpretive tool.<sup>8</sup> Canadian courts often look to legal decisions and doctrines from other jurisdictions for guidance, especially in areas where Canadian law is developing or ambiguous. For example, common law jurisdictions like the United States, the United Kingdom, and Australia are frequently referenced.<sup>9</sup>

This paper will first discuss the value of comparative law by examining the impact of international instruments on affected Canadian jurisprudence. Beginning with the *Universal Declaration of Human Rights*,<sup>10</sup> it explores how courts have engaged with international law in interpreting our own rights under the Charter. It then moves to consider the similar effect of other ratified covenants. It concludes by focusing on the ‘trends’ in the application of international law in the context of abortion, examining areas such as El Salvador, Ireland, Pakistan, and Poland.

## Universal Declaration of Human Rights

The *Universal Declaration of Human Rights* (UDHR) is an international instrument used to establish, recognize, and enforce individual freedoms and rights. According to Cassel, international human rights treaties like the UDHR have significantly impacted Canadian law, influencing the creation of domestic statutes and legislation.<sup>11</sup> International human rights law is particularly relevant in discussing the Charter because the SCC has recognized that interpretation of Charter rights sometimes requires a comparative law analysis. In this context, the Court may refer to international instruments as a relevant starting point, often cross-referencing between Charter and human rights law jurisprudence.<sup>12</sup>

Cassel further claims the UDHR has served as a touchstone for the Court in aligning Canadian constitutional guarantees with global human rights norms.<sup>13</sup> For example, Canada has incorporated comparative legal analysis in the creation of human rights law, drawing from the UDHR and other international instruments. Laws against discrimination, for instance, have been recognized under the *Canadian Human Rights Act*.<sup>14</sup> Similarly, the Charter reflects many principles derived from international human rights instruments. Articles 1

---

<sup>8</sup> *Ibid*, at para 60.

<sup>9</sup> See the following international, regional and comparative law instruments: *American Convention on Human Rights*; *European Convention on Human Rights*; and the Fifth Amendment of the *Constitution of the United States of America* (the Due Process Clause).

<sup>10</sup> *UDHR*, *supra*, note 4.

<sup>11</sup> Douglass Cassel, *supra*, note 6.

<sup>12</sup> See generally: *British Columbia (Public Service Employee Relations Commission) v BCGSEU*, [1999] 3 SCR 3.

<sup>13</sup> Douglass Cassel, *supra*, note 6 at pages 126-130.

<sup>14</sup> *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, at s. 2.

through 7 of the UDHR emphasize equality and nondiscrimination, which resonate with the values enshrined in s. 15 of the Charter.<sup>15</sup> As a result, the UDHR has been interpreted as another avenue for the consideration of the parameters and protections intended to be afforded by Charter rights.

## Ratified International Covenants

### International Covenant on Civil and Political Rights

Canada has ratified the *International Covenant on Civil and Political Rights*<sup>16</sup> (ICCPR) and its principles are reflected in the Charter. Several cases in Canada have considered the ICCPR's provisions on the right to life, personal liberty, and security of the person, especially in relation to s. 7 Charter protections. While these provisions of the ICCPR do not automatically apply, courts have looked to them as persuasive authority to guide the interpretation of Charter rights.

For example, in *R v. Keegstra*,<sup>17</sup> the SCC referenced international instruments to inform its interpretation of domestic law, specifically balancing freedom of expression with the prohibition of hate speech. Specifically, the SCC used the ICCPR to justify limitations on the freedom of expression.<sup>18</sup> The Court acknowledged that the ICCPR, particularly Article 19, guarantees freedom of expression but also permits restrictions necessary to respect the rights or reputations of others, and to protect national security, public order, public health, or morals.<sup>19</sup> Additionally, the Court noted Article 20 of the ICCPR explicitly requires state parties to prohibit any “advocacy of racial or religious hatred” that constitutes incitement to discrimination hostility, or violence.<sup>20</sup> By using the principles of these Articles, the SCC emphasized the role of international law in shaping Canadian constitutional interpretation. This approach reinforced Canada’s position within the international community as a state that upholds human rights not only domestically but also in accordance with international standards.

Canada's obligations under the ICCPR regarding torture and cruel, inhuman, or degrading treatment or punishment have also been referenced, specifically in cases related to police conduct, detention conditions, and the treatment of individuals in the criminal

---

<sup>15</sup> *UDHR, supra*, note 4, Articles 1-7.

<sup>16</sup> *International Covenant on Civil and Political Rights* (adopted December 16, 1966, entered into force March 23, (1976) 999 UNTS 171.

<sup>17</sup> *R v Keegstra*, [1990] 3 SCR 697.

<sup>18</sup> *Ibid*, at pages 749-755.

<sup>19</sup> *Ibid*, at pages 752-753.

<sup>20</sup> *Keegstra, supra*, note 17 at pages 752-753.

justice system. In *R. v. Bissonnette*,<sup>21</sup> the SCC examined whether the ICCPR's prohibition on torture could be used as a benchmark for interpreting s. 12 of the Charter, which protects individuals from cruel and unusual punishment. The Court acknowledged international human rights law as part of the legal context for understanding the prohibition on cruel and unusual punishment, drawing on the ICCPR to inform its interpretation of the Charter.<sup>22</sup>

## International Covenant on Economic, Social and Cultural Rights

Canada is also a party to the *International Covenant on Economic, Social and Cultural Rights*<sup>23</sup> (ICESCR), which influences policies related to economic, social, and cultural well-being, including the right to health, education, and an adequate standard of living. In Canadian jurisprudence, the ICESCR has been used as a tool in comparative analyses, providing a broader context for understanding constitutional rights and obligations.

For example, in *Schuyler Farms Limited v. Dr. Nesathurai*,<sup>24</sup> the Ontario Superior Court acknowledged the ICESCR's relevance to rights' interpretations. The court discussed the ICESCR primarily as part of a broader legal and constitutional framework. While the case itself focused on a medical negligence claim and its direct impact on the plaintiff's business, the reference to the ICESCR was tied to the broader concept of economic, social, and cultural rights, particularly the right to health and the right to work. The Court stated the ICESCR: "form[s] part of Canada's international legal obligations" and, along with other instruments, "is part of the body of human rights law and norms to which Canadian adjudicators may look in interpreting statutory or common law obligations and in reviewing administrative decisions."<sup>25</sup>

## Convention on the Rights of the Child

The *Convention on the Rights of the Child*<sup>26</sup> (CRC) has had a significant impact on laws and policies regarding children's rights. The CRC sets forth guidelines for the protection of children, including preventing violence, abuse, and exploitation,<sup>27</sup> as well as ensuring children's right to a family environment.<sup>28</sup>

---

<sup>21</sup> *R v Bissonnette*, [2022 SCC 23](#).

<sup>22</sup> *Ibid*, at para 100. (See also: *Quebec (Attorney General) v 9147-0732 Québec Inc.*, [\[2020\] 3 SCR 426](#) at para 32-34.

<sup>23</sup> United Nations, 'International Covenant on Economic, Social and Cultural Rights,' Treaty Series, vol. 993, December 1966.

<sup>24</sup> *Gosselin v. Québec (Attorney General)*, [2002 SCC 84](#).

<sup>25</sup> *Schuyler Farms Limited v. Dr. Nesathurai*, [2020 ONSC 4711 \(CanLII\)](#), at para 92.

<sup>26</sup> United Nations, 'Convention on the Rights of the Child,' Treaty Series, vol. 1577(3), November 1989.

<sup>27</sup> *Ibid*, Article 19.

<sup>28</sup> *Ibid*, Article 9.

*Martinez v. Canada (Minister of Citizenship and Immigration)*<sup>29</sup> is a case that highlighted the application of Article 3 of the CRC, which requires that the best interests of the child be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.<sup>30</sup> In this context, the CRC was referenced as a standard for ensuring that children's rights and well-being were properly protected when making determinations about refugee claims and deportation.

The Court did not strictly base its decision on the CRC, but it was part of the broader international human rights framework that influenced the interpretation of Canadian law.<sup>31</sup> The reference to the CRC reinforced the notion that Canada must take into account international human rights obligations, including those concerning children's rights, when making decisions that affect children.

Importantly, according to the *Committee on the Rights of the Child*, the CRC "does not protect a prenatal right to life."<sup>32</sup> Courts have decided that constitutional rights, including the right to life, accrue at birth.<sup>33</sup> Even if prenatal rights were established, courts have "distinguished this interest in the value of prenatal life from a legally constructed right to life and emphasized that efforts to protect this legitimate interest must be consistent with an individual's fundamental rights."<sup>34</sup> As such, it seems unlikely the CRC could be interpreted by the courts to provide for restrictions on abortion access.

## Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Canada's anti-torture laws are influenced by the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*<sup>35</sup> (CAT). This convention condemns practices that result in cruel, inhuman, or degrading treatment,<sup>36</sup> similar to s. 7 of the Charter. Canada has implemented its obligations outlined under the CAT specifically under

---

<sup>29</sup> *Martinez v. Canada (Minister of Citizenship and Immigration)*, [2003 FC 1341 \(CanLII\)](#).

<sup>30</sup> *Ibid*, at para 10.

<sup>31</sup> *Ibid*, at para 13.

<sup>32</sup> "Whose Right to Life?," *Women's Rights and Prenatal Protections under Human Rights and Comparative Law* (Center for Reproductive Rights, 2014) at page 6, online: <<https://www.reproductiverights.org>>.

<sup>33</sup> *Ibid*, at page 11.

<sup>34</sup> "Who's Right to Life?," *supra*, note 32 at page 9.

<sup>35</sup> United Nations, 'Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,' Treaty Series, vol. 1465, December 1984.

<sup>36</sup> *Ibid*, at Article 4.



s. 269.1 of the Code, which criminalizes acts of torture committed by public officials or persons acting on their behalf.<sup>37</sup>

In the case of *Suresh v. Canada*,<sup>38</sup> the SCC dealt with the issue of whether the Canadian government could deport a person to a country where they faced a risk of torture. The Court used Articles of the CAT, taking its definition of torture<sup>39</sup> and recognizing its reflection to prevailing international norms.<sup>40</sup> With its interpretation, torture was reinforced as inconsistent with Charter protections and principles of fundamental justice.

Importantly, the *United Nation Committee Against Torture* (UNCAT) describes how anti-abortion laws, particularly those that deny access to abortion in cases of rape, incest, or when the pregnancy threatens a person's health, are analogous to torture.<sup>41</sup> Thus, UNCAT recognizes that complete bans on abortion "may constitute torture or ill-treatment...because these laws place women at risk of preventable maternal mortality."<sup>42</sup>

Further, they argue that:

Some reproductive rights violations may constitute torture, rather than ill-treatment, because they are manifestations of systematic discrimination against women. Article 1 of CAT states that an offence may be elevated to torture when it is performed for an impermissible purpose, including 'discrimination of any kinds.' This includes discrimination based on gender...Because women have the biological capacity to become pregnant and, due to discriminatory traditional roles, are often expected to bear a disproportionate burden of childcare, access to reproductive health services is essential for women's physical, mental and social health and well-being.<sup>43</sup>

In support of their position, UNCAT references the case of *L.C. v. Peru*,<sup>44</sup> decided by the *Committee on the Elimination of Discrimination against Women*, where a girl suffered extreme physical and mental consequences after being denied an abortion after falling pregnant from rape. UNCAT has found that "states have an obligation to ensure access to abortion for individuals whose health or life is at risk, who are victims of sexual violence, or

---

<sup>37</sup> *Criminal Code*, R.S.C., 1985, c C-46, s. 269.1.

<sup>38</sup> *Suresh*, *supra*, note 7.

<sup>39</sup> *Ibid*, at para 68.

<sup>40</sup> *Ibid*, at para 72.

<sup>41</sup> "Reproductive Rights Violations as Torture or Ill-Treatment" (Center for Reproductive Rights, accessed 2025), online: <<https://www.reproductiverights.org>>.

<sup>42</sup> *Ibid*.

<sup>43</sup> "Reproductive Rights Violations," *supra*, note 41.

<sup>44</sup> *L.C. v Peru*, CEDAW, U.N. Doc. CEDAW/C/50/D/22/2009 (2011).



who are carrying non-viable fetuses.”<sup>45</sup> Additionally, a law that denies access to abortion in cases of sexual violence “leads to ‘constant exposure to the violation’ and causes ‘serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression,’ recommending that the country liberalizes its laws to allow for abortion in cases of sexual violence as a means of preventing such trauma.”<sup>46</sup>

In other words, the UNCAT upholds the view that legal restrictions on abortion may violate international law, including abortion restrictions in circumstances “where a pregnancy may cause a woman severe physical or mental suffering.”<sup>47</sup> The position of UNCAT can then be said to hold potential influence in future Canadian litigation in the context of abortion.

## The Convention on the Elimination of All Forms of Discrimination Against Women

The extent to which international law has provided potential protections for access to abortion can be further recognized in Canada’s ratification of the *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>48</sup> (CEDAW). The CEDAW obligates states to eliminate discrimination against women in all aspects of life. As a binding international treaty, the CEDAW has influenced the interpretation of Canadian laws and policies aimed at promoting gender equality and emphasizes Canada’s obligations to uphold the rights of women, including their right to access reproductive health services.<sup>49</sup>

CEDAW principles were considered in *Reference re: Section 293 of the Criminal Code of Canada*.<sup>50</sup> This case addressed the constitutionality of Section 293 of the Criminal Code, which criminalized polygamy in Canada. Specifically, the issue was whether s. 293 was consistent with ss. 2(a) and 7 of the Charter. A significant part of the court’s reasoning was the potential harm caused by polygamy. The court emphasized the negative consequences polygamy can have on women’s and children’s rights, including: women’s security of the person, as polygamy was linked to gender inequality and vulnerabilities within relationships; discriminatory effects, such as power imbalances, coercion, and the exploitation of young women and girls in some polygamous relationships; and the potential for increased

---

<sup>45</sup> “Reproductive Rights Violations,” *supra*, note 41.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> United Nations, ‘Convention on the Elimination of All Forms of Discrimination against Women,’ Treaty Series, vol. 1249(13), 1988.

<sup>49</sup> See, for example: *Charter*, *supra*, note 1, s. 15; *Reference re Same-Sex Marriage*, [2004 SCC 79](#); *Fraser v Canada (Attorney General)*, [2020 SCC 28](#).

<sup>50</sup> *Reference re: Section 293 of the Criminal Code of Canada*, [2011 BCSC 1588 \(CanLII\)](#).

domestic violence and economic hardship for women who were often in subordinate roles within these relationships.<sup>51</sup>

The Court made reference to CEDAW, stating:

Canada's international treaty obligations, particularly under CEDAW...include a duty to take all appropriate measures to eliminate discrimination against women. As part of this duty, the treaty bodies have encouraged member states to abolish polygamy. Similarly, the international trend among nations, particularly those to which Canada would invite comparison, is to increasingly restrict polygamy through measures that include criminalization.<sup>52</sup>

The court found that the prohibition on polygamy was justified as a reasonable limit on religious freedom, based on the harm to society, including the exploitation and abuse that could arise from polygamous relationships.

CEDAW also encourages the consideration of intersectional discrimination, acknowledging that women may face multiple forms of discrimination based on other identity factors like race, disability, or socioeconomic status. Canadian courts have begun to adopt this intersectional approach in their analyses of discrimination cases. In *Fraser v. Canada (Attorney General)*,<sup>53</sup> the SCC examined whether the denial of pension benefits to women who took job-sharing positions disproportionately affected them compared to men, violating s. 15 of the Charter. The Court's decision acknowledged an understanding of systemic discrimination and the need for an intersectional approach, resonating with CEDAW's broader goals of combating all forms of discrimination against women.

The *Committee on the Elimination of Discrimination Against Women* has consistently advocated for the decriminalization of abortion and the removal of barriers to reproductive health services. Specifically, CEDAW asserts that some rights, such as the right to bodily autonomy, require access to services that enable women to exercise these rights.<sup>54</sup> Of note, the right to bodily autonomy, to decide freely, and to have access to health care are principles that have been recognized to align with Canadian Charter provisions, including ss. 7 and 15.<sup>55</sup>

---

<sup>51</sup> *Ibid*, at paras 813-815.

<sup>52</sup> *Ibid*, at paras 1280-1281.

<sup>53</sup> *Fraser, supra*, note 49.

<sup>54</sup> *Access to safe and legal abortion: Urgent call for United States to adhere to women's rights convention, UN committee* (United Nations Human Rights: Office of the Rights Commissioner, 2022), online: <<https://www.ohchr.org>>.

<sup>55</sup> See generally: *R v Morgentaler*, [1988] 1 S.C.R. 30.

## Trends in International Case Law in the Context of Abortion

The *UN Committee on Human Rights* (UNCHR) and other human rights bodies have emphasized the importance of recognizing reproductive rights as part of a broader commitment to gender equality. These international perspectives are argued to have helped ensure that Canadian law evolves in line with global human rights standards, reinforcing the country's commitment to protecting health, dignity, and autonomy.<sup>56</sup> The UNHRC has formally recognized the harmful impact of restrictive abortion laws, noting how international human rights norms have evolved to establish the denial of abortion as a violation of rights.<sup>57</sup>

The scope of human rights protections in relation to abortion access has been litigated across the world. While foreign legal decisions are not binding, they have helped Canadian judges to resolve complex legal issues or understand how similar laws are applied in other countries.

For example, Johanna Fine, Katherine Mayall, and Lilian Sepúlveda, Legal Fellows and Directors at the International Legal Program at the Center for Reproductive Rights, emphasize:

The evolution of international and regional human rights norms to recognize safe abortion as a human rights imperative has significantly influenced judicial and legislative developments on the issue across the globe. These increasingly progressive standards have played a critical role in liberating national-level abortion laws by both influencing domestic high court decisions to recognize access to abortion as a constitutional guarantee and by serving as an important resource in advancing law and policy reform.<sup>58</sup>

## El Salvador

Places with absolute restrictions on abortion have run into trouble with international human rights obligations. El Salvador offers no exceptions to abortion. In fact, even those who suffer miscarriages and other medical emergencies during pregnancy have been criminalized through Salvadorian laws.<sup>59</sup> The implications of these types of medical

---

<sup>56</sup> See generally: *Canadian Human Rights Commission*. Visit: <<https://www.chrc-ccdp.gc.ca>>.

<sup>57</sup> Johanna B. Fine, Katherine Mayall & Lilian Sepúlveda, "The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally" (2017) 19:1 *Health Hum Rights* 69.

<sup>58</sup> Fine, Mayall & Sepúlveda, *supra*, note 57.

<sup>59</sup> Press Release, *El Salvador is Responsible for the Detention, Conviction and Death of a Woman who Suffered an Obstetric Emergency* (El Salvador: Inter-American Court of Human Rights, 2021), online: <<https://www.corteidh.or.cr>>.

emergencies result in individuals being prosecuted and convicted of aggravated homicide and are subjected to 30 to 50 years in prison.<sup>60</sup>

In 2021, El Salvador was found responsible for the detention, conviction and death of a woman who suffered an obstetric emergency. In San Jose, Costa Rica, the Inter-American Court of Human Rights in *Manuela et al. v. El Salvador*<sup>61</sup> found principles including personal liberty, judicial guarantees, equality before the law, the right to life, personal integrity, private life and health to have been violated. The Judgment viewed situations such as obstetric emergencies to be a medical condition where automatic criminal sanctions are not only unfavourable but constitutionally unjust.<sup>62</sup> The Judgment insisted that criminal prosecutions should not prevail over the rights of individuals, and found the case of Manuela to constitute an act of violence against women.<sup>63</sup>

In 2013, Beatriz was denied timely access to terminate her fetus that was incompatible with life. In 2024, the Inter-American Court of Human Rights (IACtHR) condemned El Salvador for violations of Beatriz's right to health. The Court acknowledged the lack of protocols for abortion restricted health access. The Court therefore ordered the Salvadoran state to adopt "the necessary regulatory measures for situations involving pregnancies that endanger the life and health of women."<sup>64</sup> Activists believe this verdict could "pave the way" for the decriminalization of abortion in El Salvador and "set an important precedent for Latin America."<sup>65</sup>

## Ireland

Before Ireland repealed its constitutional amendment that enshrined fetal rights, Ireland was considered to have amongst the most restrictive abortion laws. Abortion was only permitted in risky circumstances that could have a substantial effect on an individual's health and safety.<sup>66</sup> On September 7th, 1983, Ireland had passed Article 40.3.3 as a part of their Constitution, recognizing the "right to life of the unborn...with due regard to the equal right of life of the mother."<sup>67</sup> The law, however, was criticized by social justice groups for

---

<sup>60</sup> Ibid.

<sup>61</sup> "Manuela et al. v. El Salvador" (Inter-American Court of Human Rights).

<sup>62</sup> Press Release, *supra*, note 59.

<sup>63</sup> Press Release, *supra*, note 59.

<sup>64</sup> "El Salvador: IACtHR advances reproductive justice with ruling in favor of Beatriz and her family" (Amnesty International, 2024), online: <<https://www.amnesty.org>>.

<sup>65</sup> Tiago Rogero, "International court rules against El Salvador in key abortion rights case" (The Guardian, 2024), online: <<https://www.theguardian.com>>.

<sup>66</sup> "Mellet v. Ireland," *Ireland must legalize abortion to end violations of women's human rights* (Switzerland: Center for Reproductive Rights, accessed 2025), online: <<https://reproductiverights.org>>.

<sup>67</sup> Kitty Holland & Enda O'Dowd, *Savita Halappanavar: 10 years after her death, will Irish abortion laws be reformed further?* (Dublin: The Irish Times, 2022), online: <<https://www.irishtimes.com>>.

having caused the premature and avoidable deaths of pregnant individuals.<sup>68</sup> Savita Halappanavar was one of these casualties, whose death was said to have partially inspired “one of the largest movements for social change seen in Ireland,”<sup>69</sup> leading to a referendum that repealed the constitutional amendment in 2018.

Considered a “groundbreaking decision,”<sup>70</sup> *Mellet v. Ireland*<sup>71</sup> was a 2016 case decided by the *United Nations Human Rights Committee* that dealt with the prohibition and criminalization of abortion in Ireland. Ms. Mellet’s pregnancy involved a “fatal fetal impairment”<sup>72</sup> which meant that her fetus was likely to die in utero or soon after birth. Ms. Whelan was not considered to have met the criteria for undergoing an abortion, which severely contributed to her mental distress.<sup>73</sup> The *United Nations Human Rights Committee*, referencing Articles 7, 17, and 26 of the ICCPR, as enshrined in Ireland law, found that the prohibition and criminalization of abortion violates individual’s human rights.<sup>74</sup>

In 2017, the ‘Mellet law’ was reaffirmed in *Whelan v. Ireland*.<sup>75</sup> After finding out that her fetus would not make it to birth, or would die shortly after, like Ms. Mellet, Ms. Whelan was nevertheless informed that she was unable to obtain an abortion.<sup>76</sup> Using the UDHR, the United Nations Human Rights Committee specifically addressed the Mellet concern that strict abortion laws “gravely harm”<sup>77</sup> those capable of pregnancy, which engages in cruel and unusual punishment:

Previous judgments and decisions by international and regional adjudicative bodies have affirmed that where abortion is legal under domestic law it must be available in practice and that the arbitrary denial of access to abortion services can violate women’s rights to freedom from cruel, inhuman or degrading treatment and to privacy. However, the Human Rights Committee’s decisions in *Mellet* and *Whelan* go further: they unambiguously confirm that laws prohibiting and criminalizing abortion give rise to human rights violations. As a result, the decisions not only direct the Irish government to change its laws, but they also put governments in other countries with highly restrictive abortion laws on notice as

---

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> Holland & O’Dowd, *supra*, note 67.

<sup>71</sup> *Mellet, Amanda Jane v Ireland, Merits*, UN Doc CCPR/C/116/D/2324/2013.

<sup>72</sup> “*Mellet v. Ireland*,” *supra*, note 66.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

<sup>75</sup> *Whelan v Ireland*, Human Rights Committee, Commc’n No. 2425/2014.

<sup>76</sup> “*Whelan v. Ireland*,” *Ireland must reform its abortion law to prevent violations of women’s human rights* (Switzerland: Center for Reproductive Rights, accessed 2025), online: <<https://reproductiverights.org>>.

<sup>77</sup> *Ibid.*

to the human rights imperative of law reform and the international legal and policy consequences of inaction.<sup>78</sup>

## Pakistan

Similarly, *Syed & Others v. Sindh*<sup>79</sup> was a case in Pakistan that dealt with the need for maternal health laws, especially for poor, rural, and less educated individuals who are disproportionately affected with fistula. Fistula is a preventable condition, yet the restricted access to health care was considered to constitute a violation of fundamental rights to life and dignity guaranteed under Articles 9 and 14 of the Pakistani Constitution. These violations were found to specifically arise due to the non-implementation of maternal health policies, resultantly demonstrative of violations of its international human rights obligations to ensure individual's right to health without discrimination under the CEDAW and the ICESCR.<sup>80</sup>

## Poland

Polish people have also faced severe human rights violations due to restrictive abortion laws. The 2007 Judgement of *Tysiac v. Poland*<sup>81</sup> found that the Polish government had failed to fulfill its positive constitutional obligation under Article 8 of the *European Convention on Human Rights*.<sup>82</sup>

More recently, the CEDAW published an inquiry report in 2024 which concluded that the restrictive legal framework violated the CEDAW.<sup>83</sup> Relying on the CEDAW report, the UNHRC found Polish laws against abortion to “severely”<sup>84</sup> violate human rights for similar reasons described in the Ireland cases. Because Polish law makes it “virtually impossible”<sup>85</sup> to access a legal abortion, tragic incidents have emerged where people have died after being denied an abortion. The UNHRC highlighted how the denial of abortion illustrates the “dangerous consequences of these stringent laws.”<sup>86</sup>

---

<sup>78</sup> Ibid.

<sup>79</sup> *Shershah Syed and Others v Province of Sindh and Another*, C.P. No. 4243 of 2015 (High. Court of Sindh at Karachi).

<sup>80</sup> “Syed & Others v. Sindh” (Sarjai: Center for Reproductive Rights, accessed 2025), online: <<https://reproductiverights.org>>.

<sup>81</sup> *Tysiac v Poland*, Appl. No. 5410/03, Council of Europe: European Court of Human Rights, 2007.

<sup>82</sup> *Tysiac v. Poland (European Court of Human Rights)* (Poland: Center for Reproductive Rights, 2005), online: <<https://reproductiverights.org>>.

<sup>83</sup> *Poland violated women's rights by unduly restricting access to abortion, UN committee finds* (United Nations Human Rights: Office of the Rights Commissioner, 2024), online: <<https://www.ohchr.org>>.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> UN Report, *Polish Abortion Law Violates Human Rights* (Center for Reproductive Rights, 2024), online: <<https://reproductiverights.org>>.

## Conclusion

International instruments such as the UDHR and the CEDAW have influenced judicial reasoning and common law principles. These instruments have affirmed the importance of gender equality and access to healthcare, aligning with Canadian Charter values. However, the courts have emphasized that international law serves as persuasive guidance, rather than binding authority, in shaping domestic legal protections. While international law may be relevant, it is ultimately our Constitution that governs domestic legal protections.

As recognized, courts only refer to international provisions in cases where an issue of rights intersects with rights inscribed within the Charter. As such, the analysis is often comparative, relying on the international consensus embodied in international instruments while considering the specific Canadian legal landscape. Nevertheless, the power of a comparative analysis suggests that the interpretation of our own constitutional rights and values can be better accomplished in an examination of how other socio-economically similar areas in the world apply international instruments.

Countries such as El Salvador, Ireland, Poland, and Pakistan, which once criminalized abortion, have, through the lens of international human rights law, recognized the profound harm inflicted by restrictive abortion laws on individuals' rights and autonomy. These transformative trends highlight the inherent universal values enshrined within international instruments, which have been interpreted to endorse the protection of abortion access and reproductive justice.

Much like Canada's Charter, international instruments have steadfastly defended the autonomy and freedom of individuals, especially in times of conflict. It is plausible that in the future, Canadian courts will draw upon international law to interpret peremptory norms embedded within our Constitution in the context of abortion, reinforcing shared values of human dignity and fundamental rights. The alignment of international trends with domestic legal principles suggests that Canada's commitment to justice and equality will continue to evolve, guided by both constitutional imperatives and the universal principles reflected in international law.