

Abortion Laws: Why we still don't need any – even “good” ones

Joyce Arthur
Executive Director
joyce@arcc-cdac.ca
604-351-0867
www.arcc-cdac.ca



Abortion Rights
Coalition of Canada

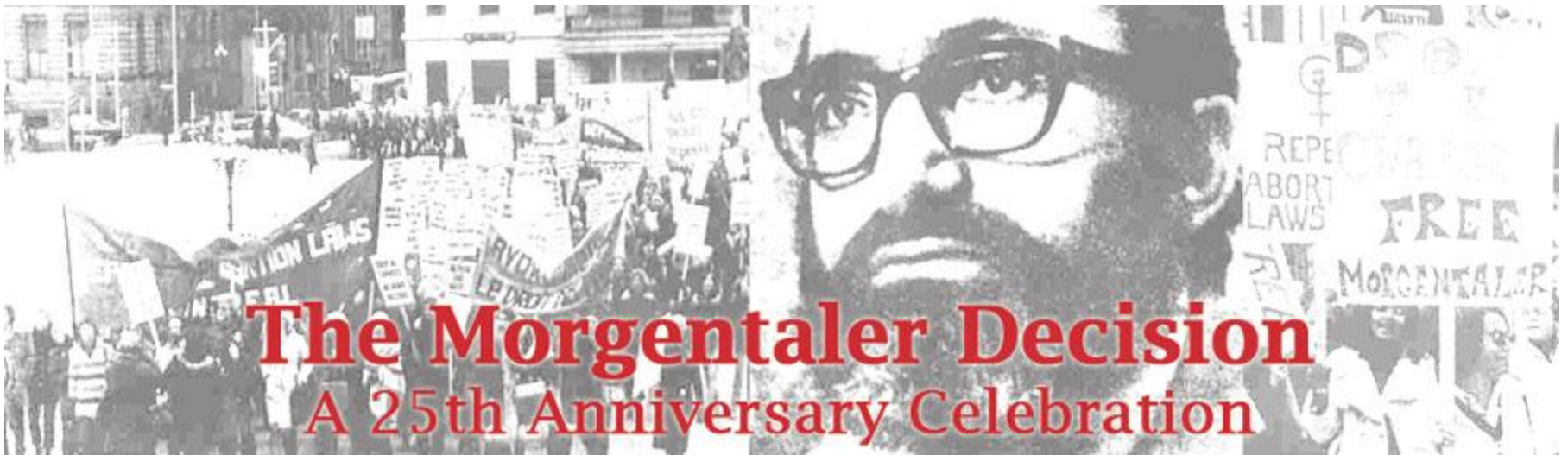
About ARCC

National, political, grassroots organization, founded 2005

- * Mission – to ensure reproductive freedom by protecting and advancing rights and access to abortion and reproductive health care
- * Early focus: Opposed private member bills in federal Parliament
- * Key activities:
 - * Lobbying
 - * Election toolkits
 - * Public education
 - * Research
 - * Countering anti-choice movement

No abortion law in Canada

- * Canada is the only country in the world with no abortion laws
- * Supreme Court struck down law in 1988 as unconstitutional because it violated women's bodily autonomy
- * Canada's lack of an abortion law is a proven strength



The old laws

- * 1869 – Parliament banned abortion completely with punishment of life in prison
- * 1967 – Royal Commission on the Status of Women considered amendments to the Criminal Code.
- * 1969 – Prime Minister Pierre Trudeau legalized abortion up to 12 weeks.
- * But hospital **Therapeutic Abortion Committees** (TACs) would decide if an abortion was necessary for the pregnant person's health.
- * Availability of abortion varied widely by province, as did wait times and acceptance by TACs.
- * Some provinces refused to provide abortion care, and it was largely unavailable outside major cities.



A pioneer and hero

- * 1967: **Dr. Henry Morgentaler** publicly advocated for legal abortion on request.
- * 1968: Gave up successful practice in Montreal to provide illegal abortions.
- * 1973: Performed an illegal abortion on national TV. Announces he's done 5,000 safe abortions.
- * 1973–1987: Continued to provide abortions; opened more clinics; target of numerous police raids, arrests, court cases.
- * He was acquitted by juries in every case.
- * One acquittal rejected by judge, who imposed 18-month jail sentence.
- * Dr. Morgentaler appealed to Supreme Court and won in 1988.



The Morgentaler Decision

- * Supreme Court ruled 5-2 in favour of striking down entire abortion provision in Criminal Code (Section 251).
- * Judges ruled that the law was unconstitutional because it violated women's right to **security of the person** under section 7 of the *Canadian Charter of Rights and Freedoms* (our constitution).
- * One judge in a concurring opinion said it also violated the rights to liberty and freedom of conscience.

“Section 251 clearly interferes with a woman's physical and bodily integrity. Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference.”

Further legal precedents

- * Subsequent court rulings entrenched the 1988 Morgentaler Decision and broadened its approach to Charter rights.
- * The decision has become a cornerstone of human rights jurisprudence in Canada.
- * Judges have cited it in dozens of court rulings.
- * All provincial and federal court cases related to abortion have upheld women's rights and denied fetal rights.
- * In *Dobson v. Dobson* (1999), Supreme Court said:



“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.”

What does it mean to have no law?

- * Regulation occurs exclusively within healthcare frameworks:
 - Clinical standards
 - Ethical codes
 - Professional oversight
 - Evidence-based practice
- * Full alignment with WHO and FIGO best practices.
- * Globally-recognized outcomes: safer care, earlier access
- * Abortion care is funded and integrated into healthcare system.
- * Decriminalization is the global gold standard.
- * Increased public support for abortion rights, less stigma
- * Protection from cyclical political fights.
- * **The model works precisely because politicians are not the arbiters of abortion care.**



Weaponizing an abortion law

- * An abortion law gives the anti-choice movement a useful platform from which to launch attacks.
- * Cyclical attacks on abortion occur in the UK, sometimes in other countries like Australia – by **trying to amend the liberal abortion law** to make it more restrictive.

MPs reject cut in abortion limit

The upper time limit for abortions will remain at 24 weeks after MPs voted against proposals to reduce it.

Bill to restrict abortions later in pregnancy defeated in South Australia after emotional debate

Anti-choice MPs and Bills in Canada

Repeated calls to “re-open abortion debate” and pass restrictions

- * 48 anti-choice private member bills and motions from 1988 to 2023
- * All were defeated or dropped.

Party	Total MPs	Anti-choice MPs	Pro-choice MPs**	Unknown or Indeterminate Stance
Liberal*	171	2 (1.2%)*	167 (97.6%)*	2 (1.2%)
Conservative	142	109 (76.8%)	3 (2.1%)	30 (21.1%)
NDP	7		7	
Bloc Québécois	22		22	
Independent	0		0	
Green	1		1	
Total	343	111 (32.4%) (Excluding Libs: 31.8%)	200 (58.3%)	32 (9.3%)

Abortion Is Regulated

- * Some people fear that the lack of a law – *in itself* – means that abortion rights cannot be fully realized, or makes our rights vulnerable to attack, and subject to politics.
- * But Canada has plenty of regulation – which can include: “a law, rule, or other order prescribed by authority.”
- * ARCC’s list of regulations include laws, policies, guidelines, and codes that relate to abortion specifically, or that apply to all healthcare.

Charter of Rights and Freedoms. violated if abortion is restricted (Charter does not include fetuses.

Case law on abortion. All cases h against fetal rights, thereby stren the “common law” and is just as them.)

Canada Health Act. This law man

National Abortion Federation: Clinical Policy Guidelines (North Am

Health Canada: Product Monograph for Mifegymiso (medical abort

Canadian Medical Association: Code of Ethics and Professionalism

Why it's hard to restrict (*criminalize*) abortion in Canada

- * The **lack of a law** in Canada has made it difficult for anti-choice politicians to make headway:
 - They have no framework to modify or dismantle
 - They must find a new place for it in the Criminal Code
 - They need to create the “problem” then offer the “solution” (eg, coerced abortion, sex-selective abortion)
 - The “debate” is settled, with prochoice MPs strongly opposed
 - The Conservative Party has consistently promised not to pass a new abortion law.
- * It's unpopular – talking about abortion brings attacks from media, medical groups, feminists, society at large.
- * Parties have lost elections for implying they might restrict abortion,
- * Since 1988, anti-choice MPs have never passed a private member bill or won a court case against abortion rights.

But then suddenly...

“Let’s pass an abortion law!”

Roe v. Wade is overturned in the USA in June 2022

- * The Liberal Canadian government talked about protecting abortion rights and access by law.
- * Some academics, media commentators, and pro-choice people agreed.

But medical / reproductive rights / feminist groups said...

NO! (thank you)

Society of Gynecologists and Obstetricians
National Association of Women and the Law
Action Canada for Sexual Health and Rights
Abortion Rights Coalition of Canada
Fédération des femmes du Québec
Fédération du Québec pour le planning des naissances
and others...

What's Wrong with a Good Law?

- * In Canada, a federal abortion law would be a **criminal law**.
- * Any bill needs to go through the legislative process – including debates and amendments (*remember those anti-choice MPs*)
- * Once in effect, a law can be amended, challenged, or repealed.
- * Politicizing a medical treatment creates the risk of new barriers, even if unintentional.
- * Even a good law provides a foundation from which anti-choice forces can start meddling.
- * Politics is about compromise – NOT an appropriate model for regulating medical care.

Why not enshrine abortion rights in the constitution?

- * In Canada, it's unnecessary – the right is already well protected legally.
- * A broad and completely unrestricted right to abortion exists under court precedents and Charter rights (including gender equality).
- * Amending our Charter is virtually impossible.
- * Even if it somehow passed, conservative provinces could invoke the “Notwithstanding clause” – allowing governments to override fundamental rights and freedoms.

France – Enshrining abortion rights felt good, but it was symbolic. Subject to limits “set by law” – including the 14-week limit.

Chile – Proposed inclusion in 2022, but it was understood that a later law would define limits.

But Quebec tries to enshrine!

- * Bill 1 – the Quebec Constitution Act 2025, proposed to amend Quebec’s *Charter of Human Rights* to include a “right to abortion.”
- * Feminist and legal groups unanimously opposed it, because:
 - Abortion is already protected under the Charter and Supreme Court jurisprudence.
 - Quebec has a highly functional model of abortion care, **precisely because** abortion has never been legislated separately.
 - Singling out abortion for legislation politicizes a clinical act that has been governed by evidence-based practice for 38 years.
- * If enacted, Bill 1 could have been challenged or amended like any other law.
- * An anti-choice leader in Quebec said Law 1 would be a good tool for restricting abortion in future.

Feb 20 – Law 1 withdrawn by Justice Minister!

Suggestions

When working towards legal reform:

- * Never assume a law is necessary.
- * Be aware of and cite Canada's example and our success.
- * Explore capacity and authority of medical associations to implement abortion care without a law.
- * Can barriers be overcome by means other than a law?
- * Do you have an HCP champion who can establish access?
- * To sidestep abortion stigma, focus on health outcomes for patients.
- * Build broad-based coalition of support.
- * Don't compromise – every minor restriction is bad.
- * Never stop defending abortion rights and access.

Thank you!



**Abortion Rights
Coalition of Canada**

Joyce Arthur
Executive Director
joyce@arcc-cdac.ca
604-351-0867
www.arcc-cdac.ca

