Abortion Rights
Coalition of Canada

Coalition pour le droit à
l'avortement au Canada

POB 2663, Station Main, Vancouver, BC, V6B 3W3 • info@arcc-cdac.ca • www.arcc-cdac.ca

Position Paper #22

Later Abortions (after 20 weeks)

This paper describes the incidence of later abortions – which we define here as abortions after 20 weeks – explains the reasons why they are performed, and argues that any effort to ban later abortions in Canada would necessarily infringe on the constitutional rights of women and transgender people who can get pregnant.

Incidence of Later Abortions

The Canadian Medical Association's abortion policy defines abortion as the active termination of a pregnancy up to 20 weeks of gestation[1]. Most facilities calculate gestational age by date of last menstrual period (LMP), meaning that some facilities perform abortions on request up to 22 weeks LMP. In hospitals in 2017, according to the Canadian Institute for Health Information, 30.4% of abortions were performed at less than 8 weeks, 35.6% between 9-12 weeks, and 3.2% at 21+ weeks[2]. There is no gestational age information provided for clinics; however, very few clinics provide abortions past 21 weeks, so we have estimated the actual percentage of abortions at 21+ weeks to be closer to 0.66%.[3]

Why Later Abortions Are Necessary

A small number of abortions occur after 20 weeks of gestation primarily because the fetus is gravely or fatally impaired, or the woman's life or physical health is at risk, or both[4]. Many impairments or health risks are not detectable until after the 24th week of gestation. For example, in a 2016 case, a fetus showed no abnormalities at a 20-week scan for a Montreal woman. Yet, at seven months "a new ultrasound showed the fetus was abnormally small and had skeletal

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[1] Canadian Medical Association. *Policy on Induced Abortion* (1988). http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD88-06.pdf

[2] Canadian Institute for Health Information. "Induced Abortions Reported in Canada in 2017". This information excludes Quebec. https://www.cihi.ca/sites/default/files/document/induced-abortion-2017-en-web.xlsx / Table 4 "Gestational Age".

[3] Abortion Rights Coalition of Canada. (January 2019.) *Statistics – Abortion in Canada.* http://www.arcc-cdac.ca/backrounders/statistics-abortion-in-canada.pdf

[4] Statistics Canada, 2003. http://www.arcc-cdac.ca/action/bill_c338.html#facts

malformations, likely caused by a genetic mutation." The couple sought an abortion, rather than given birth to a child who would likely suffer greatly[5].

Those opposed to abortion rights have portrayed women as having later abortions out of "selfish convenience" or because they "suddenly can't get into a bathing suit." This misrepresentation of women's decision-making with regard to abortion is always inaccurate, but especially so in cases of later abortion. Most people who terminate their pregnancies after 20 weeks wanted to have a child, and were forced to consider abortion for medical reasons. Others may be in desperate social circumstances, such as an abusive relationship, or they may be children or young teens who have delayed abortion care because they were unaware of the pregnancy or in denial.

Who Performs Later Abortions

Hospitals and some clinics in Canada perform abortions on request up to about 20 weeks, or 22 weeks LMP. However, most of the small number of abortions performed over 20 weeks' gestation in Canada are done to protect the patient's physical health, or because of serious fetal abnormalities. Such problems cannot be discovered until an amniocentesis test is done on the fetus later in pregnancy[6]. Rare abortions after 22 or 23 weeks' gestation are also done in Canada for some cases of fatal fetal abnormalities, where the fetus cannot survive after birth.

Since abortion services after 20 weeks are not always readily accessible in all parts of Canada, patients are sometimes referred to one of the few clinics in the United States that do them. Such procedures and associated expenses may be funded in full or part by some provincial governments.

Why Later Abortions Should Not Be Banned or Regulated

Some later abortions have been inappropriately labelled "partial-birth" abortions by those opposed to abortion rights. These lobbyists are most likely referring to a specific procedure called D&X (dilation and extraction), which is often, though not always, used in later abortions in the United States. The *Partial-Birth Abortion Ban Act* was signed into U.S. law by President George W. Bush in 2003. This legislation has been upheld by the U.S. Supreme Court in 2007 even though it fails to leave an exception for the woman's life and health. Justice Ruth Bader Ginsburg wrote in dissent that the decision departed from established abortion jurisprudence, and that lack of a health exception "jeopardizes women's health and places doctors in an untenable position."

Anti-abortion activists in Canada often mimic the efforts of their American counterparts. Some have suggested that "partial-birth" and later abortions should be banned in Canada. The point is

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[5] http://montrealgazette.com/news/local-news/montreal-woman-who-had-late-abortion-says-she-made-the-right-decision (December 23, 2016)

[6] In Ontario, Integrated prenatal screening (an ultrasound and blood test between weeks 11-13) is covered by OHIP. Amniocentesis or further testing is only provided if the fetus shows more than a 1/450 chance of having Down Syndrome, Trisomy 18 or Spina Bifida (unless the maternal age is over 40 – then the woman can choose to begin with a non-invasive prenatal test). As the results do not arrive until the fetus is at week 18, and the results of further invasive tests do not arrive until week 18-20, this pushes a possible termination of the pregnancy into later. If a pregnant person wishes to forgo the pre-screening, defects and abnormalities may also be determined at the morphology ultrasound at weeks 18-22 (2016, Association of Ontario Midwives).

moot because the D&X abortion technique is rarely if ever used in Canada.[7] Later abortions done in Canada are generally performed via D&E or induction of labour. In any case, such a ban would infringe on women's constitutional right to the security of the person. At the same time, it would put politicians in the doctor's office and substitute legislation in place of medical decisions made in the patient's best interest. All medical care, including abortion care, should be based on clinical standards with the goal of meeting patients' needs and minimizing risk to patients. Physicians should not face criminal prosecution or imprisonment for providing clinically appropriate care for their patients.

Canada is the only democratic country in the world with no laws restricting abortion. Because of that, Canada serves as a respected role model for abortion care internationally. Abortion is a health procedure and as such, can be left up to the discretion of the doctor and patient. It requires no extra regulation, in the same way that childbirth or heart surgery requires no extra regulation.

It would be reactionary and counter-productive to pass any restriction against abortion, because that would endanger women's health and lives, and infringe on equality rights: only women and some transgender people get pregnant, so abortion restrictions amount to a form of gender discrimination. It would also give the anti-abortion movement something to build on, and agitate from. Abortion opponents target rare cases of later abortion, describing it in horrific detail, to evoke an emotional response in listeners. Their ultimate goal is to restrict all abortion rights. What these lobbyists strategically fail to mention, however, is that banning later abortions would force women pregnant with dying fetuses to give birth at great risk to their own health, undermining both the rights of women and the medical authority of doctors.

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[7] About 72.3% of abortions are performed by aspiration and curettage, and 9.9% by dilation and curettage and/or dilation and evacuation (D&E / D&C). Canadian Institute for Health Information. "Induced Abortions Reported in Canada in 2017", Table 7: Method. https://www.cihi.ca/sites/default/files/document/induced-abortion-2017-en-web.xlsx /