



Abortion Rights
Coalition of Canada

Your
Voice for Choice

Coalition pour le droit à
l'avortement au Canada

Canada's only national political pro-choice advocacy group

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Position Paper #60

The History of Abortion in Canada

Overview

In the 19th century, abortion was illegal in Canada. Parliament banned it completely in 1869 with the punishment being life in prison.

Beginning in the 1960s, pressure to de-criminalize the practice began to rise from medical and legal professionals, women's and social justice groups, and most notably, the Humanist Fellowship of Montreal run by Dr. Henry Morgentaler.

In response to public demand, in 1967 the federal government convened the Royal Commission on the Status of Women. In 1969, the commission recommended that abortion be made legal for the first 12 weeks of a pregnancy (and after 12 weeks, abortions would only be legal if the pregnancy threatened the health of the woman, or if the expected child would be born "greatly handicapped" mentally or physically).¹ In regards to this recommendation, the government (under Prime Minister Pierre Trudeau) decriminalized contraception and homosexuality in 1969, and made abortion legal if a Therapeutic Abortion Committee ("TAC") decided the abortion was necessary for the woman's health (Section 251 of the Criminal Code). Despite this new ruling, the availability of abortion varied by province, as did wait times and acceptance by TACs.

In 1969, Dr. Henry Morgentaler began his foray into the legal system, first by opening an abortion clinic in Montreal which was raided in 1970; he was charged with several offences. Morgentaler went through several trials in the 1970s: he was acquitted (1973), acquitted again after the Quebec Court of Appeal overturned his verdict and was put on trial again (1974), was convicted by a Quebec court for conspiracy to commit an abortion (1975) and was put in jail, was acquitted again (March 1975), had his original conviction retried (Jan 1976), and was finally acquitted of the original charge from 1970 (in Sept 1976). In November 1976, he had all his outstanding charges dropped.²

Morgentaler and his colleagues appealed to the Supreme Court of Canada, and on January 29, 1988, the court struck down the abortion law on the basis that it conflicted with the *Canadian Charter of Rights and Freedoms*, specifically Section 7 ("Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice").

Decades after that momentous day in 1988, abortion is still not performed in an ideal manner for those in need. Although many more clinics have opened in the intervening years, most are in large

cities.³ Women and transgender people in rural areas and the North are not well-served in most provinces, and many people have to travel. Only about one-third of all abortions in Canada are now performed in hospitals, but some hospitals have long waiting lists, most require a doctor's referral, some impose some restrictions on abortion services, they can fall victim to anti-abortion politics, and they often feature a sterile and sometimes judgmental environment, with insufficient privacy and compassion for patients.⁴

All hospital abortions are funded, including those done in hospital-based clinics. Provincial governments are required to fully fund abortions in clinics, but two provinces are currently in violation of the *Canada Health Act*. New Brunswick refuses to pay entirely for the clinic in Fredericton, while Ontario provides only partial funding to new clinics that opened after the mid-1990s (approximately). There are no clinics in Saskatchewan or Nova Scotia, but if one were to open in the future, the provincial governments would likely refuse to fund them. Further, it took until January 2017 before PEI finally opened its first hospital clinic. Abortion had not been performed there in hospitals since 1982, in violation of both the *Canada Health Act* and women's Charter rights.

On July 1, 2008, Morgentaler received the Order of Canada, one of many awards he received over the years in recognition of his important work on human rights.⁵

Timeline – History of Abortion Rights in Canada⁶

1869: Abortion is made illegal, under the threat of life imprisonment. Dissemination of information about birth control is also made illegal.

1892: Parliament enacts the first Criminal Code, which prohibits abortion and the sale, distribution, and advertisement of contraception.

1967: A federal committee considers amendments to the Criminal Code on abortion. The committee hears from many groups and individuals on both sides of the issue, including Dr. Henry Morgentaler, who urges repeal of the abortion law and the right to abortion on request.

1969: Parliament passes amendments to Section 251 of the Criminal Code, decriminalizing contraception, and allowing some abortions under extremely restricted conditions. Some hospitals with Therapeutic Abortion Committees can approve and provide an abortion, if the pregnancy would endanger the woman's life or health. Access to abortion is applied unevenly and unfairly across the country. Women wait an average of 8 weeks for an abortion. Some provinces refuse to provide any abortion services at all, and abortion is largely unavailable to women outside major cities.

1969: Dr. Henry Morgentaler defies section 251 of the Criminal Code and performs abortions in his medical practice in Quebec. In June 1970, Morgentaler's office is raided by the police and he is charged with conspiracy to perform an abortion.

1970: The Vancouver Women's Caucus, a group of independent feminists that formed out of Simon Fraser University, organizes political opposition to Section 251. The Caucus leads the Abortion Caravan, the first national feminist protest. Women travel over 3,000 miles from Vancouver to Ottawa, gathering numbers as they go. In Ottawa, the Abortion Caravan, now 500 women strong, holds two days of demonstrations. Thirty women chain themselves to the parliamentary gallery in the House of Commons, closing Parliament for the first time in Canadian history.

1971 - 1973: Ten more criminal charges are laid against Dr. Morgentaler. In November 1973, a Montreal jury of 11 men and one woman acquit Morgentaler. In an unprecedented move, the Quebec Court of Appeal overturns the jury verdict and finds Morgentaler guilty in 1974. The doctor appeals

his case to the Supreme Court of Canada. In 1975, the court votes 6-3 to uphold the Quebec Court's conviction and Morgentaler is sentenced to 18 months in prison. While serving his sentence, he is tried on a second charge. A jury acquits him again, and the Quebec Court of Appeal upholds that acquittal.

1974: The Canadian Abortion Rights Action League (CARAL) is founded, the first national group promoting abortion rights in Canada.

1976: The Federal Minister of Justice sets aside Morgentaler's conviction on the first charge and orders a new trial. In September, he is acquitted at the retrial of the original charges, the third time a jury acquits him. In late 1976, the Quebec government drops all further charges against Morgentaler.

1977 to 1983: Dr. Morgentaler opens clinics in Quebec, Toronto, and Winnipeg in defiance of Section 251. Prince Edward Island refuses to fund abortions and all hospitals stop providing the service. Morgentaler's Winnipeg and Toronto clinics are raided by police and Dr. Morgentaler is charged with conspiracy to procure a miscarriage, along with other doctors. At the 1984 trial, everyone is acquitted.

1985: The Ontario Attorney General appeals the 1984 jury acquittal. In October 1985, the Ontario Court of Appeal sets aside the jury acquittal and orders a new trial. Dr. Morgentaler appeals to the Supreme Court of Canada.

1987: The BC Coalition for Abortion Clinics (later called the Pro-Choice Action Network) is founded to establish clinics in BC.

1988: On January 28, the Supreme Court of Canada strikes down Canada's abortion law as unconstitutional. The law is found to violate section 7 of the *Charter of Rights and Freedoms* because it infringes upon a woman's right to security of the person (as well as life, liberty, privacy, and conscience).

1989: Dr. Morgentaler opens a clinic in Nova Scotia after the provincial government passes legislation prohibiting abortions at clinics. Morgentaler is charged under the provincial *Medical Services Act*. In 1990, a provincial court strikes down the Act as unconstitutional and acquits Morgentaler.

1989: The federal government introduces Bill C-43, an amendment to the Criminal Code that would prohibit abortion unless a doctor finds the pregnancy is a threat to the woman's physical, mental, or psychological health. Massive pro-choice protests occur across the country, and dozens of doctors say they will quit providing abortion if the law passes.

1990: In May, the House of Commons passes Bill C-43 and the legislation is sent to the Senate for approval. In 1991, the bill is narrowly defeated by the Senate in a tie vote. Abortion now has the same status as any other medical procedure.

1991 - 2000: About eight violent attacks against abortion providers and clinics occur over these years, including a firebombing, arsons, butyric acid attacks, shootings, and a stabbing.⁷

1995: In response to the shooting of Dr. Romalis, British Columbia introduces the *Access to Abortion Services Act*, the first legislation in Canada to prohibit protests outside abortion clinics, and doctors' offices and homes. Although protesters challenge the law in court, and some elements get struck down by a lower court, the BC Court of Appeal restores the Act to its full force in Sept 1996, saying that specific, geographical limits on free speech are justified to protect vulnerable groups.⁸ The

Supreme Court of Canada declines to hear the protesters' appeal. In subsequent years, about 8 clinics across Canada obtain court injunctions preventing protesters.

2008: Private Member's Bill C-484, the "*Unborn Victims of Crime Act*," passes Second Reading in Parliament. The bill would have endangered abortion rights and pregnant women's rights by creating fetal personhood. After a national pro-choice campaign against it, the Conservative government withdraws its support for the bill, and it dies when a federal election is called in October. Bill C-484 was the first anti-abortion bill to ever make it past Second Reading. Over the years, 46 anti-choice bills and motions have been introduced, and all have been defeated.⁹

2015: The abortion drugs mifepristone and misoprostol (Mifegymiso) received the green light from Health Canada to be used to terminate pregnancies up to a gestational age of 49 days. Studies suggest the drug can be used safely as late as 70 days into a pregnancy.¹⁰ There have been setbacks in the availability of this drug since the announcement. It finally becomes available in January 2017, although it is not yet funded in most cases.

2016: The Athena Health Centre in St. John's Newfoundland obtains an injunction preventing protesters outside the clinic. The Justice Minister plans to pass a province-wide bubble zone similar to BC's *Access to Abortion Services Act*.¹¹

2016: PEI announces it will establish a women's health clinic on the Island, which will also provide abortions. The government was forced to act after a lawsuit threat by a local pro-choice group and LEAF. The clinic opens in January 2017.¹²

¹ <http://www.thecanadianencyclopedia.ca/en/article/abortion/>

² <http://www.cbc.ca/news/canada/abortion-rights-significant-moments-in-canadian-history-1.787212>

³ List of Abortion Clinics in Canada. <http://www.arcc-cdac.ca/list-abortion-clinics-canada.pdf>

⁴ Clinics Are Better Than Hospitals —Really! *Pro-Choice Press*. www.prochoiceactionnetwork-canada.org/02spring.html#hospitals

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http://www.med.uottawa.ca/historyofmedicine/hetenyi/assets/documents/Access_abortion_Canada_Shannon_Hargreaves.pdf

⁶ <http://www.prochoiceactionnetwork-canada.org/abortioninfo/history.shtml>.

⁷ Anti-Choice Violence and Harassment. <http://www.arcc-cdac.ca/postionpapers/73-Anti-choice-Violence-Harassment.pdf>

⁸ Convicted anti-abortion protesters challenge clinic access zone (and lose). <http://www.prochoiceactionnetwork-canada.org/articles/bubble-zone-case.html>

⁹ <http://www.arcc-cdac.ca/presentations/anti-bills.html>

¹⁰ <http://www.cbc.ca/news/health/ru-486-abortion-pill-approved-by-health-canada-1.3173515> \ <http://www.cmaj.ca/content/186/1/13>

¹¹ <http://www.ctvnews.ca/canada/agreement-reached-for-protest-buffer-zone-around-newfoundland-abortion-clinic-1.2967230>

¹² <http://www.cbc.ca/news/canada/prince-edward-island/pei-abortion-reproductive-rights-1.3514334>