



Position Paper #61

Canadian Regulation of Abortion

Canada does not have any criminal laws on abortion and we don't need any.¹ However, in contrast to the anti-choice claim that Canada has no abortion laws or even “zero regulation” — as if abortion care is a free-for-all with no oversight whatsoever — Canada has plenty of regulation.

The definition of **regulation** is: “*a law, rule, or other order prescribed by authority, especially to regulate conduct.*”² Given that, we compiled the following comprehensive list of regulations by governing authorities and professional associations. The lists include laws, policies, guidelines, and codes that relate to abortion specifically, or that apply to all healthcare generally, including abortion.

Laws:

1. Charter of Rights and Freedoms. Rights to bodily security, conscience, life, and privacy are violated if abortion is restricted (R. v. Morgentaler, 1988). Also, the word “Everyone” in the Charter does not include fetuses.
2. Case law on abortion. All cases have been decided in favour of women's rights and equality, and against fetal rights, thereby strengthening the legal right to abortion. (Court-made law is called the “common law” and is just as binding as statutory law, provided no conflict exists between them.)
3. Canada Health Act. This law mandates full funding and accessibility for medically necessary care. All provinces/territories have deemed abortion as medically necessary.
4. Federal Bill C-3. The Liberal government amended the Criminal Code in January 2022 to criminalize the intimidation or obstruction of healthcare workers and patients. While aimed at protesters of COVID-19 restrictions and vaccines, the law also protects abortion providers.
5. Criminal Code definition of “human being” (Section 223). This section defines legal personhood as beginning only when fully born alive. It has been relied upon to stop prosecution or

¹ See Position Paper #64, Why Canada Needs No Legal Restrictions: <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/64-why-abortion-needs-no-restrictions.pdf>

² Dictionary.com: <https://www.dictionary.com/browse/regulation>

conviction of pregnant persons and midwives who cause a fetal death, as well as prevent charges of fetal harm against those who assault pregnant people.

6. Provincial acts and regulations that govern health. Each province has various statutes governing all healthcare in general. None appear to have anything specific to abortion, except # 7,8,9 next.
7. Ontario's *Independent Health Facilities Act*, 1990. The law provides additional funding to cover overhead costs – the “facility fee” – of four private abortion clinics in Ontario. Unfortunately, four other abortion clinics that opened after 1990 have not been covered under the Act.
8. New Brunswick's *Regulation 84-20* in the *Medical Services Payment Act*. The regulation limits funded surgical abortions to hospitals. **This law is Canada's only abortion restriction.** It is both unconstitutional and in violation of the *Canada Health Act*.³
9. British Columbia's *Abortion Services Statutes Amendment Act*, 2001. The law requires 34 hospitals across BC to provide abortion facilities and services. Part 2.1 - Hospitals Providing Abortion Services.
10. *Freedom of Information and Protection of Privacy Act* provisions. Two provinces limit the disclosure of abortion-related information to protect the safety of staff at facilities that provide abortion – BC: Section 22.1 and Ontario: Chapter 5, Exemptions and Exclusions, Section 33.
11. Safe access zone laws in six provinces (BC, AB, ON, QC, NL,NS). These laws protect patients, providers, and clinics from protesters, who are prohibited from being within a certain distance.
12. International human rights law. Canada has ratified the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and the *Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment* (CAT).
 - The CEDAW Committee has repeatedly made clear that it considers restrictive abortion laws incompatible with the human rights of women (and gender-diverse people).
 - CEDAW has also said that violations of sexual and reproductive health and rights “may amount to torture or cruel, inhuman or degrading treatment.”
 - The U.N. Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment said in 2013 that denial of abortion can be considered torture.

Policies, Guidelines, Codes, Resources

1. Provincial Colleges of Physicians and Surgeons: Practice guidelines around termination of pregnancy (Alberta, Quebec), and unwanted pregnancy (Saskatchewan).
2. Society of Obstetricians and Gynecologists of Canada: Clinical Practice Guidelines for surgical abortion and medical abortion (not available on website for non-members).

³ The province is currently being sued by the Canadian Civil Liberties Association over this regulation: <https://ccla.org/major-cases-and-reports/reproductive-rights/>

3. National Abortion Federation: [Clinical Policy Guidelines](#) (North America).
4. Health Canada: [Product Monograph for Mifegymiso](#) (medical abortion).
5. Canadian Medical Association: [Code of Ethics and Professionalism](#) (general).⁴
6. College of Physicians and Surgeons of Ontario: [Professional Obligations and Human Rights](#) policy, requiring doctors to provide an effective referral for services they object to.
7. Provincial health ministries / health authorities: Most have policies or resources related to abortion – the following were found online:
 - British Columbia: HealthLink BC: [Abortion](#)
 - Alberta: Alberta Health Services: [Termination of Pregnancy](#)
 - Saskatchewan: Saskatchewan Health Authority: [Abortion Services](#)
 - Manitoba: [Teen Pregnancy Options – Your Choice for Your Reasons](#) with accompanying [Handbook for Service Providers](#)
 - Ontario (regional):
 - Region of Durham: [Pregnancy Options](#)
 - Hamilton Niagara Haldimand Brant: [Abortion Services](#)
 - Quebec: [Avortement : Services](#) (available in English)
[Avortement : Prise de décision](#) (decision-making)
 - Prince Edward Island: [Abortion Services](#)
[Medical Abortion](#)
 - New Brunswick: [Medical Abortion Program](#)
[Vitalité Health Network: Unplanned Pregnancy](#)
 - Nova Scotia: Nova Scotia Health/IWK Clinical: [Access to Abortions in Nova Scotia](#)
811.novascotia.ca: [Medical Abortion](#)
811.novascotia.ca: [Surgical Abortion \(Procedural Abortion\)](#)
811.novascotia.ca: [Ending a Pregnancy](#)
 - Northwest Territories: Health and Social Services Authority, [Northern Options for Women](#)
8. Hospitals: Some hospitals have a 12-week gestational limit for aspiration (surgical) abortions, as set by the provincial College.⁵ These decisions are based on the additional skills required and potential for complications with increasing gestational age, as well as availability of providers. Not many providers are trained in abortion methods after 12 weeks, even fewer after 20 weeks.

⁴ Note: The Canadian Medical Association rescinded its 1988 *Induced Abortion* policy in 2020 because it provided clinical guidance that was largely obsolete. It will not be replaced.

⁵ Shaw D, Norman WV. When there are no abortion laws: A case study of Canada. *Best Practice & Research Clinical Obstetrics and Gynaecology*, <https://doi.org/10.1016/j.bpobgyn.2019.05.010>