

# Canada since 1988: The benefits of decriminalizing abortion

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**On January 28, 2013, Canada will celebrate 25 years of reproductive freedom. Since our Supreme Court struck down Canada's abortion law in 1988, our country's experience is proof that laws against abortion are unnecessary. A full generation of Canadians has lived without a law and we are better off because of it.**

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Canada is the first country in the world to prove that abortion care can be ethically and effectively managed as part of standard healthcare practice, without being controlled by any civil or criminal law. Our success is a role model to the world.

## History: Previous laws and one Doctor's civil disobedience

In **the 1988 Morgentaler decision**, the Supreme Court of Canada ruled that our criminal law on abortion violated the constitutional right to "security of the person" under our Charter of Rights and Freedoms. One justice, Bertha Wilson, also found that women's rights to life, liberty, conscience, privacy, and autonomy were compromised by the law. She stated that every individual must be guaranteed "a degree of personal autonomy over important decisions intimately affecting his or her private life. Liberty in a free and democratic society does not require the state to approve such decisions but it does require the state to respect them."

The struck-down law was a liberalized one that passed in 1969, replacing a strict ban on abortion. The 1969 law required women to apply for permission from a hospital committee, which would decide if a woman's health or life was at risk. The law obstructed access for women because most hospitals did not even establish committees, while some that did refused to approve most or all applications. In practice, access to abortion was spotty and unfair. Long delays at hospitals also increased the health risks for many women. Abortion clinics were illegal.

Dr. Henry Morgentaler had begun performing safe — but illegal — abortions in his private office in Montreal in 1968, a year before the new law passed. In 1967, he told a Parliamentary committee that women had a right to abortion on request without having to state a reason. After the 1969 law passed, he continued to break the law because he knew that sending women to a committee for approval was a discriminatory barrier that increased medical risks to women.

During his 20-year battle, Dr. Morgentaler challenged the law by opening illegal abortion clinics in

three cities and inviting media coverage of his safe abortion services. Police raided the clinics several times, resulting in repeated arrests and trials that eventually led to the historic Supreme Court victory on January 28, 1988.

### **Reaping the benefits of decriminalization**

The evidence now vindicates Dr. Morgentaler's perspective and Canada's legal position. After 25 years with no legal restrictions on abortion whatsoever:

- Doctors and women handle abortion care responsibly.
- Abortion rates are fairly low and have steadily declined since 1997.
- Almost all abortions occur early in pregnancy.
- Maternal deaths and complications from abortion are very low.
- Abortion care is fully funded and integrated into the healthcare system (improving accessibility and safety).
- Further legal precedents have advanced women's equality by affirming an unrestricted right to abortion.
- Public support for abortion rights has increased.

*Responsible abortion care:* Since 1988, the Canadian Medical Association (CMA) has successfully managed abortion just as it does for every other medical procedure — by applying **policy** and encouraging medical discretion for doctors, subject to a standard code of ethics.

Doctors abide by CMA policy and guidelines, and follow best medical practices based on validated research and clinical protocols. Criminal laws are inappropriate and harmful in medicine because they constrain care and negatively impact the health of patients.

*Low and declining abortion rates:* Canadian women had 93,755 abortions in **2009** — the last year for which reliable numbers are available. This translates to an annual abortion rate of 14 per 1000 women of childbearing age, approaching the lowest rates in the world. Incidentally, the **annual abortion rate in the United States** has also declined significantly in the last decade, and now sits at 15 abortions per 1000 women of childbearing age.

Although western European countries and the U.S. enforce various legal restrictions on abortion care, their declines in abortion rates are not attributed to the effect of laws, but largely to more effective and increased use of contraceptives. The evidence is clear that contraception and family planning services are key to reducing **unintended pregnancy**, which is the main cause of abortion. In countries where abortion is legal and contraceptive use improves over time, abortion rates decline predictably and often dramatically. This **pattern has repeated itself** countless times around the world, including in Canada, where our abortion rate has declined by at least 14 per cent since 1997, and by 29 per cent amongst teenagers.

*Earlier abortions:* At least 90 per cent of abortions in Canada are now performed on request in the first 12 weeks. The procedure is very safe and **97.6 per cent** of terminations (in hospitals) have no complications. Less than 2 per cent of abortions occur after 20 weeks (again in hospitals only), and these are performed only in cases of severe fetal anomaly or under compelling maternal life or

health circumstances. A similar situation exists in every country independently of any laws — the majority of women seeking abortions **will present early**, while a small number of women will always need **later abortions** because of exceptional circumstances.

*Low complication and death rate:* About half of abortions are now done in private clinics in Canada, virtually all by 16 weeks of pregnancy. Since early abortions are safer than later abortions, and hospitals handle the later and more complex cases, our hospital statistics likely overestimate the number of later abortions, as well as maternal deaths and complications from abortion. Statistics Canada reported that in 1995, less than **1 per cent of abortions in Canada** resulted in any complication at all, whether minor or more serious. Further, Canada has one of the world's lowest maternal mortality rates from legal abortion. Between 1976 and 1994, the mortality rate was estimated to be **0.1 deaths for every 100,000 abortions** — about one every ten years — compared to a rate of 0.7 in the U.S (from **1988 to 1997**). Maternal death from legal abortion remains virtually unheard of in Canada today.

*Funding and integration into healthcare system:* Abortion care has become better integrated into the Canadian healthcare system, partly because it was already being done in hospitals and funded as “therapeutic abortion” before 1988. However, between 1988 and 2006, the pro-choice movement successfully challenged provincial governments to also fund all procedures done at private clinics. Today, only the province of New Brunswick refuses to pay for abortions at one private clinic, in defiance of federal law. (The *Canada Health Act* guarantees funding and equitable access for all “medically required” treatment, which includes abortion.) Full government funding for abortion is essential to protect women from discrimination, facilitate early access, ensure acceptable standards of care, and prevent the service from becoming marginalized or further stigmatized.

*Further legal precedents:* Subsequent court rulings have solidified the Morgentaler decision, which has been widely cited in other rulings due to its advancement of women's constitutional rights. The Supreme Court appears to have **adopted** Justice Wilson's broader approach to such rights, recognizing for example that the right to liberty includes the **autonomy** to make decisions of fundamental personal importance. Our **federal Criminal Code** states that the legal status of “human being” accrues only after exiting the birth canal alive, a definition validated by several Supreme Court decisions that established that fetuses are not legal persons and that women's rights must prevail. In a 1999 decision, **Dobson v. Dobson**, the Supreme Court ruled that: “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.”

*Increased public support:* Strong public support exists for abortion rights in Canada, despite lingering social stigma against abortion that is continually reinforced by anti-choice propaganda. Even though half of Canadians appear to want some restrictions on abortion, this **anti-choice article on polling** shows a gradual increase in pro-choice support since the 1980's. A **2012 poll** revealed that 49 per cent of Canadians support abortion on request at any time, while only 6 per cent want a total ban. (In comparison, **30 per cent** of Americans want it fully legal while 15 per cent prefer a total ban.)

## **Having no laws is not enough**

Of course, the lack of restrictive laws alone does not guarantee access or availability of services. Canada still has problems with access because of ongoing abortion stigma, inadequate training in medical schools, reluctance of politicians to implement improvements, and simple geography —

abortion is much easier to access in larger cities than in Canada's vast rural areas and North, where women often must travel to find abortion care. However, another benefit of decriminalization is that we have been able to focus our time on addressing these issues instead of struggling against restrictive laws.

Key to understanding the incidence of abortion is that it can never be eliminated. We will never live in a perfect world — contraception is far from 100 per cent effective, people are human, and continuing inequality means that disadvantaged women will experience higher rates of unintended pregnancy. The lowest possible abortion rates — **the rates of 6 to 7 per 1000 women** of childbearing age that were achieved in the past by Holland and Belgium — require a sustained commitment and dedicated resources in areas such as family planning and reproductive health services, comprehensive sex education, and doctor training. The other key element in reducing abortion is to advance women's status and equality so they are more empowered to avoid unintended pregnancy.

Vigilance is also required due to the endless tenacity of the anti-choice movement. Since 1988, Canada has seen 45 attempts to recriminalize or restrict abortion through the introduction of Private Members Bills or Motions in Parliament. Not one has passed, and nor is one likely to pass. Despite the loud voices and campaigning power of anti-choice activists, women's rights are well established in Canada and sexual and reproductive health is understood as a vital facet of overall health.

### **The moral high road: Decriminalizing abortion**

The rest of the world is catching up to Canada. Two Australian states have also **successfully decriminalized abortion** in recent years. And in 2011, a **groundbreaking report** to the United Nations boldly called on all states to decriminalize abortion. The UN's Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health described laws restricting abortion as an abuse of state power. Such restrictions "infringe human dignity by restricting the freedoms to which individuals are entitled under the right to health, particularly in respect of decision-making and bodily integrity."

Looking at Canada, concerns that other countries may have about eliminating punitive laws on abortion are clearly unfounded. Even with our remaining issues, our outcomes are exemplary. We can all thank Henry Morgentaler for that.

The Canadian pro-choice movement will do all it can to ensure that Canada never goes back, and we encourage other countries to embark upon a similar journey. When women can make their own reproductive decisions without interference from the state, society takes the moral high road — one that saves lives, raises women's status and potential, and ultimately benefits everyone.

**Joyce Arthur**

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**P.S.**

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