

Legal Abortion in Canada

Abortion was illegal in Canada until 1969 when the Canadian Parliament passed a law that allowed abortion in certain circumstances to protect the “health” of the mother—the word “health” was not defined or limited. Then-Justice Minister Pierre Trudeau introduced a bill to amend Section 251 of the Criminal Code of Canada, which provided for abortions where the health of the woman was deemed at risk by a therapeutic abortion committee consisting of three doctors. Under the amendment abortions could only be performed in accredited hospitals by licensed physicians.

Amendment: change, make better

Accredited: certified

Proscribed: not allowed, forbid

All other abortions were still subject to the Criminal Code sanctions. Abortion remained in the Criminal Code as a criminal offence outside of the proscribed circumstances.

In January 1988, the Supreme Court of Canada, in a case brought by Henry Morgentaler challenging the law, struck down Section 251 of the Criminal Code on procedural grounds. It found that the law was not applied equally across the country thereby violating the security of the person guarantee in Section 7 of the Canadian Charter of Rights and Freedoms. Not all hospitals had established therapeutic abortion committees. Some had committees that simply approved any requests and others were far stricter. The court did agree that the state had a legitimate interest in protecting the fetus, referring to such an interest as a “perfectly valid legislative objective,” and invited parliament to draft another law restricting abortion.

In the *Morgentaler* ruling, the court did not declare abortion a constitutional right. Only one of the seven Supreme Court Justices who heard the case, Madam Justice

Fetus: embryo, unborn baby

Draft: copies before original

Legitimate: appropriate, reasonable

Bertha Wilson, wrote in support of a woman’s right to abortion, and then only in the first trimester of pregnancy. Dissenting Justices McIntyre and La Forest JJ. wrote in their opinion, “Save for the provisions of the Criminal Code permitting abortion where the life or health of the woman is at risk, **no right of abortion can be found** in Canadian law, custom or tradition and the Charter, including s.7, **does not create such a right.**”

Furthermore, they stated that “there has always been a clear recognition of a public interest in the protection of the unborn and there is no evidence or indication of general acceptance of the concept of abortion at will in our society. The interpretive approach to the Charter adopted by this court affords no support for the entrenchment of a constitutional right of abortion.”

Chief Justice Dickson reiterated his statement from the 1975 Morgentaler case that Parliament “holds the view that the desire of a woman to be relieved of her pregnancy is not, of itself, justification for performing an abortion.”

The court declined to address whether or not the fetus should be considered a person under Section 7 of the Charter, stating that “it is unnecessary for the purpose of deciding this appeal to evaluate or assess ‘fetal rights’ as an independent constitutional value.”

The Mulroney government introduced a bill in 1989 to restrict abortions to those required for health reasons with maximum jail sentences of two years for doctors who violated the law. The bill passed in the House of Commons but died on a tie vote in the Senate. Since then, abortion has been unrestricted in Canada, legal through all nine months of pregnancy up until the point of birth. Most abortions are funded by taxpayers through the publicly funded health system. There are now over 105,000 abortions a year in Canada. We are one of the few countries in the Western world that does not have any legal restrictions on abortion.

Trimester: 3 months
Reiterate: say it again
Relieved: eased in mind, relaxed
Appeal: when you want the decision to be re-evaluated by higher courts

Questions:

1. Do you think it should be up to the person to abort a baby or not? Explain your answer.
2. Should the government get involved in making such a personal decision for someone else?
3. **Continuity and Change:** What other things can you think about that were illegal at one point and is no longer illegal now?