Canada: Proof that no country needs abortion laws

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Canada: The Civilized Outlaw

- 28 years of abortion freedom in Canada
- Abortion law struck down by Supreme Court, January 28, 1988
- No new law or other restrictions since 1988, not even gestational limits
- Only country in world without an abortion law (except China)
- Successful ‘experiment’ – No negative effects, many positive effects
- Canada’s success is a role model to the world

Happy Anniversary!
Early History

- **1869 to 1969**: Abortion was completely criminalized except to save a woman’s life.

- **1969**: Prime Minister Pierre Trudeau liberalized the abortion law.
  - Hospital committee of 3 doctors can approve “therapeutic abortions” if woman's life or health in danger.
  - Abortions can only be done in hospitals.
  - But most hospitals don’t set up committees; many committees approve few or no abortions.

- Resulted in poor and unequal access for women, arbitrary obstacles, and delays.
A Pioneer and Hero

- **1967**: Dr. Henry Morgentaler publicly advocates for legal abortion on request.
- **1968**: Gives up successful practice in Montreal to provide illegal abortions.
- **1973**: Performs an illegal abortion on national TV. Announces he’s done 5,000 safe abortions.
- **1973–1987**: Continues to provide abortions; opens more clinics; target of numerous police raids, arrests, court cases:
  - He’s acquitted by juries in every case.
  - Judge throws out third acquittal and imposes 18-month prison sentence.
  - While in prison, Dr. Morgentaler is acquitted a fourth time.
  - He appeals to Supreme Court.
The Morgentaler Decision

- Supreme Court of Canada repealed entire abortion law on January 28, 1988
- Court said abortion restrictions violate women’s constitutional rights:
  - Security of the person (primarily)
  - Right to life
  - Personal liberty
  - Freedom of conscience
  - Privacy
- Court did not cite women’s right to equality, but later court decisions on abortion did.
- 1990: Government tried and failed to pass new abortion law.
Chief Justice Dickson, Justice Lamer

“Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman’s body and thus an infringement of security of the person.”

Justice Bertha Wilson

“Liberty in a free and democratic society does not require the state to approve the personal decisions made by its citizens; it does, however, require the state to respect them.”
Like Father, Like Son?

Prime Minister Pierre Trudeau

“There’s no place for the state in the bedrooms of the nation. What's done in private between adults doesn't concern the Criminal Code.” (1967)

Prime Minister Justin Trudeau

“The days when old men get to decide what a woman does with her body are long gone. Times have changed for the better.” (2014)
Reaping the Benefits

After 28 years with no legal restrictions on abortion:

1. Doctors and women handle abortion care responsibly.
2. Abortion rates are fairly low and have steadily declined since 1997.
3. Almost all abortions occur early in pregnancy.
4. Maternal deaths and complications from abortion are very low.
5. Abortion care is funded and better integrated into the healthcare system.
6. Further legal precedents have advanced women’s equality and solidified an unrestricted right to abortion.
7. Public support for abortion rights has increased.
1. Responsible Abortion Care

- Abortion care can be managed ethically and responsibly as part of standard healthcare, without extra regulation or criminal laws.
- Canadian Medical Association (CMA) has **Induced Abortion policy**:
  - Recommends abortion on request up to 20 weeks (or 500 grams)
  - After 20 weeks, under “exceptional circumstances” at doctor’s discretion
- Legislation: **Canada Health Act** guarantees funding and accessibility for medically required care, which includes all abortions
- Like all healthcare, abortion care is governed by:
  - Standard Code of Ethics
  - Evidence-based guidelines and clinical protocols
- Like other doctors, abortion providers are responsible medical professionals, accountable to their patients, professional associations, and to society.
- Providing safe abortion care is **ETHICS IN ACTION** – it’s “conscientious commitment”.

2. Low, Declining Abortion Rates

- **2014**: 81,897 abortions reported in Canada:
  - Lowest reported number since 1989
  - Decline of 27% since 1997 (highest reporting year on record)
  - About 11.6 abortions per 1,000 women of childbearing age (15-44)

- Canada’s abortion rate is quite low when compared globally:
  - Global average: 28 in 2008 (per 1,000 women childbearing age)
    - Developed countries average: 17 (excluding Eastern Europe)
    - Developed countries average: 24 (including Eastern Europe)
    - Developing countries average: 29
    - Western Europe average: 12
    - United States average: 16.9 (2011)
3. Earlier Abortions

- At least 90% of abortions performed in first 12 weeks. *(without mife/miso – not available until Feb 2016)*
- Two-thirds done in clinics, one-third in hospitals.
- About 0.63% of abortions take place after 20 weeks.
- Almost all abortions after 20 weeks performed in cases of lethal fetal anomaly; a few for compelling maternal life or health circumstances.
- Women sometimes sent to U.S. for 3rd trimester procedures, due to lack of trained doctors.
4. Low Complications and MMR

- Estimated abortion complication rate: about 1.6% (mostly minor)
- Maternal deaths from abortion virtually unheard of (one in 2001)
- 1990: A Toronto woman died from a self-abortion using a coat-hanger because she apparently thought abortion was illegal. Parliament was trying to re-criminalize it at the time.

Never again.
5. Funding and Integration

- Before 1988, funded “therapeutic abortions” were already being done in hospitals. This continued.
- Hospital access important for acceptance/integration of abortion care as regular healthcare.
- In 1995, federal government required provinces to fund private abortion clinics, under Canada Health Act. Some obeyed, some don’t.
- Long battle to fund abortion clinics was fought province by province, often with lawsuits. Mostly successful. New Brunswick still a holdout.
- Government funding of abortion is critical:
  - Helps integrate abortion care into healthcare system
  - Protects women from discrimination
  - Facilitates early access
  - Helps ensure acceptable standards of care (accountability)
  - Prevents service from becoming marginalized or further stigmatized
6. Further Legal Precedents

- Subsequent court rulings have entrenched the 1988 Morgentaler Decision and broadened its approach to Charter rights (constitutional rights).
- The decision has become a cornerstone of human rights jurisprudence in Canada.
- Judges have cited it in dozens of court rulings.
- All provincial and federal court cases related to abortion have upheld women’s rights and denied fetal rights.
- In *Dobson v. Dobson* (1999), the Supreme Court said:
  - “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*.”
7. Increased Public Support

- Strong public support exists for abortion rights in Canada.
- Most Canadians don’t want to “re-open the debate.”
- Half of Canadians appear to want some restrictions on abortion, but even anti-choice polling shows a gradual increase in pro-choice support since 1980’s.
- 49% of Canadians support abortion on request at any time, while only 6% want a total ban. (2012 Ipsos Reid poll)
- In comparison, 29% of Americans want it fully legal, while 19% prefer a total ban. (2015 Gallup poll)
Anti-Choice Influence

- Since 1988, anti-choice Members of Parliament have tried **45 times** to recriminalize, restrict, or condemn abortion via Private Members Bills or Motions in Parliament.
- Not one has passed, nor is one likely to pass.
- Since 2005, pro-choice movement fought hard against all attempts – with objective to shut them down.
- No bills/motions since 2012, and none expected.
- Anti-choice movement is active, but increasingly marginalized as extremist, and has little political influence.
- Distribution of 1 million graphic “aborted fetus” postcards during 2015 federal election campaign backfired.

Anti-choice activist from Quebec said, that if use of aborted fetus images continues:

“...I would venture to lament that the pro-life movement in Canada is on its last wobbly legs.”
- October 2015
Canada still has problems with access and attitudes because of:

- Ongoing abortion stigma, especially in conservative/religious areas
- Active anti-choice movement
- Inadequate training in medical schools
- Reluctance of conservative politicians to improve things
- No abortion services in small province of Prince Edward Island
- Two provinces with limited hospital services only – no clinics
- Lack of providers outside big cities
- Simple geography – women in Canada’s vast rural and northern areas usually must travel

But a benefit of decriminalization is that we can focus on addressing these issues instead of struggling against restrictive laws.
We Can’t Ignore Women’s Rights

- Women’s human rights are globally established with *Universal Declaration of Human Rights*, other international instruments, and in country constitutions.

- Fetal rights are not recognized by international law or human rights codes, and are directly protected only by a few conservative countries.

- **Anti-abortion laws violate women’s fundamental human rights:**
  - Right to life
  - Right to liberty
  - Right to bodily integrity
  - Gender equality
  - Personal autonomy
  - Right to privacy
  - Right to dignity
  - Freedom of conscience
  - Freedom of religion
  - Right to self-defense
  - Right to be free from cruel or unusual treatment or punishment (and torture)
Gender Equality

- Constitutional guarantee of gender equality can be used to overturn abortion laws and ensure funding of abortion:
  - Laws prohibiting abortion are **discriminatory** because they criminalize healthcare that only women need.
  - Enforced pregnancy imposes an unfair duty on women – they are obligated by law to sacrifice their own interests for society and family.
  - Childbearing has a much more profound effect on women’s lives than men’s.
  - Women’s equality rights cannot be justifiably limited for the welfare of a fetus.

- Refusal of governments to fund abortion or contraception is discriminatory too:
  - The burden falls largely – and unfairly – on women.
  - Both are basic, life-saving healthcare needs for women.
Right to Privacy

- Privacy is not always an explicit constitutional right, but it’s usually recognized as inherent to human rights.
- The most sacred realms of privacy are our family life and sexual life.
- Private activities such as enjoying sex with those we are attracted to, choosing who to marry, and deciding whether we want children and when, are integral to our identities and liberty in a democratic society.
- The profound effects of reproductive decisions, coupled with the taboo nature of sex in our society, requires these decisions to be private.
- One’s autonomy depends on the ability to make these private decisions without the unwanted intervention of third parties.
Freedom of Religion

- The assumption that motherhood is women’s nature and duty is rooted in ancient patriarchy justified through religious laws.
- If abortion is wrong largely on religious grounds, laws against abortion are ultimately based on religious doctrine, rendering them unconstitutional.
- Judges must prevent a minority from imposing its beliefs on us all, as that would negate everyone’s freedom of religion.
- When women decide to have an abortion, they often exercise freedom of religion by applying their own religious or philosophical beliefs to their situation.
- Religious women having abortions may:
  - Decide to use their God-given free will and conscience
  - Validate their decision by praying and seeking peace with God
  - Believe they have a right to receive God's grace or forgiveness
Right to Self-Defense

- Abortion rights override fetal “rights,” even if the fetus is deemed a full human being with legal rights.
- A woman with an unwanted pregnancy has the right to defend herself with an abortion because:
  - Bringing a pregnancy to term is far riskier than having an abortion, and also has many unpleasant side effects.
  - Any pregnancy has a profound effect on a woman’s whole being, mentally and physically.
  - An unwanted fetus is not “innocent” – there’s no ill intent, but it co-opted the woman’s body and endangers her life and health against her will.
  - No-one is obligated by law to donate a kidney or blood to save someone’s life – therefore, women can’t be required to save fetuses by loaning out their bodies for nine months. (Judith Jarvis-Thompson)
  - Sex is not a contract for pregnancy. People have a right to enjoy non-procreative sex because of legalized birth control. Legal abortion must back up this right.
Right to Be Free from Torture, Cruel or Unusual Treatment

- In 2013, UN Special Rapporteur Juan E. Méndez (on torture and other cruel, inhuman or degrading treatment or punishment) stated that denial of legal abortion can amount to torture or ill-treatment.
- The UN Committee Against Torture has repeatedly said that restrictions on access to abortion and absolute bans on abortion violate the prohibition on torture and ill-treatment.
- New lawsuit in Canada against province of P.E.I. says that the lack of abortion services on the Island (forcing women to travel), violates the “right not to be subjected to any cruel and unusual treatment or punishment.”
Partly inspired by Canada, two Australian states have successfully decriminalized abortion in recent years. (Victoria and Australian Capital Territory)

In 2011, a groundbreaking report from the United Nations boldly called on all states to decriminalize abortion.

Looking at Canada, concerns about eliminating punitive laws on abortion are clearly unfounded.

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.
Thank You!

Abortion Rights Coalition of Canada

Coalition pour le droit à l'avortement au Canada

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“Woman must have her freedom, the fundamental freedom of choosing whether or not she will be a mother and how many children she will have. Regardless of what man’s attitude may be, that problem is hers — and before it can be his, it is hers alone. She goes through the vale of death alone, each time a babe is born. As it is the right neither of man nor the state to coerce her into this ordeal, so it is her right to decide whether she will endure it.”

Margaret Sanger,
Woman and the New Race