

ABORTION IN CANADA: Legal but not accessible

By Pamela Cross

While abortion was decriminalized in Canada in 1988, women's access to those services remains inadequate and uncertain.

A brief history of birth control and abortion in Canada:

Along with the advertisement and distribution of contraception¹, both the provision and procurement of abortion were prohibited under the *Criminal Code of Canada* beginning in 1869. A conviction for procuring or performing an abortion could result in life imprisonment for the practitioner, and women could be charged with procuring their own abortions; if convicted, they could face a maximum penalty of 7 years in prison². The maximum penalty for advertising or distributing contraception was 2 years imprisonment.

Contraception could be advertised and/or distributed if it was for the "public good," which was not defined in the *Criminal Code*. As a result, there were inconsistent criminal responses to those who provided contraception and birth control, with some people being charged and convicted and others not. And, of course, many women found herbal and other homegrown methods to stop themselves from having babies.

Women continued to need and have abortions, which were often performed under very unsafe circumstances. Women seldom sought follow-up care because they feared being criminally charged. While no precise figures exist, it is estimated that approximately 4,000 to 6,000 Canadian women died from illegal abortions between 1926 and 1947.

Women who had illegal abortions paid a high price in every respect – financially, emotionally, physically and socially. Even during the Depression, the price range for an abortion was between \$150 and \$600. Enormous secrecy was attached to obtaining an abortion, with women almost always required to come alone to an unfamiliar location, with cash for payment to the abortionist. While some abortions were performed by medically trained people with high ethical standards, most were not and, as a result, women faced enormous risks in terms of infection, incomplete abortions, unintended sterilization and so on. Virtually no abortionists provided counseling or emotional support of any kind. Because it was illegal, most women felt unable to seek assistance if they had medical problems following the abortion or to talk to family or friends about what they had been through.³

¹ "any medicine, drug or article intended or represented as a means of preventing conception." Birth control referred to any system to prevent birth.

² *Criminal Code 1896*, Sections 272 and 273

³ No Choice: Canadian Women Tell Their Stories of Illegal Abortion Childbirth by Choice, 1999

Women who needed an abortion were determined to find one:

*"I would have done anything to terminate this pregnancy, regardless of how dangerous or stupid it would have been."*⁴

*"The fear of being pregnant outweighed the fear of dying."*⁵

In 1969, laws relating to reproductive freedom began to loosen up. At that time, it became legal to advertise and distribute contraception. However, this did not mean all women had easy access to controlling their pregnancies. By 1974, only 3 provinces and 1 territory had family planning policies. Religious groups opposed to birth control exerted control over school-based educational programs. Between 1877 and 1984, federal money for family planning programs dropped from \$2.17 million per year to less than \$1 million.

The same law reform made abortion legal under limited circumstances. Approved hospitals could perform abortions that had been approved by a Therapeutic Abortion Committee (TAC) -- three doctors, none of them the doctor who would perform the abortion, who agreed that the abortion was medically necessary to prevent the endangerment of the woman's health. Women did not have the opportunity to meet with the doctors on the TAC and had no right of appeal if their request was turned down. The procedure of working through the TAC took an average of eight weeks, which made it unfeasible for many women.

Hospitals were not required to offer abortion services or to establish TACs, and many did not. Even where abortions were available, waiting times were long. Free-standing clinics did not exist, and cost coverage by provincial medicare plans was not mandated for many years.

In 1974, five years after the changes to the *Criminal Code*, there were just over 48,000 therapeutic abortions performed in Canadian hospitals, 10,000 "assisted" abortions, 1,400 illegal abortions and 9,600 abortions obtained in the United States, for a total of approximately 70,000 abortions altogether.⁶

It is interesting to note that roughly the same numbers of abortions were performed when it was illegal as are performed today – between 7 and 14 percent of live births.

Henry Morgentaler, who began openly performing illegal abortions in Quebec in 1969, was charged for the first of many times in 1970. Over the next 18 years, he faced repeated criminal charges, convictions, personal and professional threats and attacks and an 18-month jail sentence in his efforts to provide women with safe abortions.

⁴ *Ibid.*, page 21

⁵ *Ibid.*, page 25

⁶ *Ibid.*, page 153

In 1988, the Supreme Court of Canada ruled, in the case *R v Morgentaler*, that women have the right to choose whether or not to continue with a pregnancy, bringing to an end a struggle of more than 15 years to legalize abortion in Canada. This was an important women's equality decision, and relied heavily on Canada's still new *Charter of Rights and Freedoms*.

In an important and well-known case in 1989, the ex-boyfriend of a pregnant woman, Chantal Daigle, sought and initially received an injunction in Quebec to prevent her from having an abortion. In making its decision to overturn the injunction, the Supreme Court of Canada found that the fetus had no legal status in Canada as a person. This decision has played a role in other, non-abortion cases, including one involving the death of a fetus during a midwife-assisted birth and another involving the potential liability of a pregnant woman for injuries suffered by her fetus in a car accident in which she was the driver.

In 1990, the federal government introduced Bill C-43 in an attempt to recriminalize abortion. It passed the House of Commons by a very narrow vote of 140 – 131, but was defeated by the Senate by a tie vote in early 1991, perhaps at least in part as the result of media attention paid to two stories – in one, a teenaged girl sustained physical injuries after a botched back-alley abortion and in another a woman died from a self-induced coat hanger abortion.⁷

In 1995, abortion was deemed a medically necessary procedure in the *Canada Health Act*, which meant that the cost of abortions performed in hospitals and public clinics would be covered by public health insurance plans.

Unfortunately for women, the anti-choice movement in Canada remains a powerful force, with considerable public and political influence. Largely, but not exclusively, driven by religious organizations, the anti-choice movement continues to mount emotion-based campaigns aimed at politicians, the media and the public, including children and young people. This has had a significant impact on women's ability to have real access to abortion and on health care providers' willingness to provide abortion services.⁸

Province by province situation:

In 2006, Canadians for Choice, an organization dedicated to ensuring reproductive choice for all Canadians, conducted research on the accessibility of hospital abortion services in Canada. The result of that research is a paper entitled: "Reality Check: a close look at accessing abortion services in Canadian

⁷ *Ibid.*, page 154

⁸ While physicians in Canada face no legal consequences for performing abortions, they do face the wrath of anti-choice activists. Henry Morgentaler's Toronto clinic was firebombed in 1992, and three doctors have been shot since 1994. Many others receive threats and harassment for performing this legal medical procedure. The resulting shortage of abortion doctors makes access even more difficult for women in many parts of the country.

hospitals,” which can be downloaded from their website at www.canadiansforchoice.ca.

The chart below summarizes some of the key information in the paper and provides a glance at the status of abortion services in Canadian hospitals, broken down by province/territory.

Province or Territory	# hospitals providing abortions/total # hospitals	Increase/decrease since 2003	Comments
Alberta	6/100	Increase	3 rd lowest in Canada
British Columbia	26/90	Increase	<i>Access to Abortion Services Act*</i>
Manitoba	2/52	Same	Highest % rude/judgmental hospital staff
New Brunswick	1/28	Decrease	Most restrictive abortion policies in Canada **
Nfld. & Labrador	3/14	Increase	No services in Labrador, 2/3 hospitals in St. John's
NWT	2/3	Same	Distance and travel most significant barriers
Nova Scotia	4/30	Increase	No free-standing clinics
Nunavut	1/1	Increase	Women can self-refer
Ontario	33/194	Decrease	Only one hospital north of the TransCanada Hwy
PEI	0/7	Same	No services on island; women require doctor referral for out-of-province abortion
Quebec	31/129	Decrease	Best all-around access to abortion in Canada ***
Saskatchewan	4/68	Increase	No free-standing clinics, very long wait lists
Yukon	1/2	Same	Lack of informed hospital staff
TOTAL	15.9% of hospitals offer abortion services	1.9% decrease since 2003	

* The *Access to Abortion Services Act* prohibits anti-abortion activities from taking place within a set distance of hospitals that provide abortions, abortion clinics and the homes of doctors who perform abortions, which encourages doctors, even in small communities, to offer this service.

** New Brunswick does not pay for or reimburse women for abortion services performed outside the hospital. Women need authorization of two doctors before receiving an abortion at a hospital.

*** One quarter of Quebec hospitals as well as a number of community health centres provide accessible abortion services. 64% of hospitals offer abortion services on a self-referral basis. Generally, Quebec is a model for how abortion services should be offered.

Canada Health Act and abortion:

The *Canada Health Act* is the federal legislation for publicly funded health care insurance. The *Act* establishes the primary objective of Canada's health care policy: the protection, promotion and restoration of the "physical and mental well-being of residents of Canada" and the facilitation of "reasonable access to health services without financial or other barriers."

The provinces and territories have responsibility for the management, organization and delivery of health services for their residents.

For the provinces and territories to receive their full federal contribution towards health care costs through the Canada Health Transfer (CHT), they must meet the criteria and conditions established in the *CHA*.

There are five criteria of the *CHA*:

- **public administration:** provincial and territorial health care insurance plans must be administered and operated on a not-for-profit basis by a public authority
- **comprehensiveness:** provincial and territorial plans must cover all insured health services provided by hospitals, physicians and dentists
- **universality:** all insured residents of a province or territory are entitled to the insured services on uniform terms and conditions
- **portability:** residents moving from one part of the country to another must continue to be covered by the old jurisdiction until they are eligible for coverage by the new jurisdiction. Residents who are temporarily absent from their province or territory must be covered during their absence for urgent or emergency medical needs
- **accessibility:** Insured persons are to have reasonable access to services on uniform terms and conditions and without the interference of additional charges

Despite the fact that abortion is a legal, medically necessary procedure, not all provinces meet the 5 criteria set out above:

- mergers between hospitals in which public hospitals are folded into Catholic hospitals result in the operation of hospitals by non-public authorities, a violation of the **public administration** criterion. These

non-public hospitals may determine what services they wish to offer or not offer⁹

- although provision of abortion services at clinics has been approved in the *CHA*, not all provinces pay for this, which is a breach of the **comprehensiveness** criterion
- there is no **universality** of access to abortion because availability across the country ranges wildly
- not all provinces permit reciprocal billing for abortion, which violates the **portability** criterion
- abortion services are not available at all in Prince Edward Island, which means that province clearly fails to meet the **accessibility** criterion.

The federal government has not allowed the numerous breaches to the *Canada Health Act* related to abortion services to interfere in the flow of health care money to the provinces and territories.

Key barriers and recommendations for action

Barrier: Not enough providers

There is a lack of doctors to perform abortions for a number of reasons:

- hospital mergers that result in the closing of abortion services
- 40% of Canadian medical schools do not teach abortion procedures
- younger doctors are not replacing older doctors
- abortion providers leave the work because they fear violence and harassment directed at themselves and their families
- some doctors do not perform abortions because of their religious beliefs and/or moral values

Recommendations for action:

- fight hospital mergers
- work with the provincial and territorial professional colleges to increase the number of medical schools that teach abortion procedures as a standard part of the obstetrics/gynecology curriculum
- lobby for provincial legislation like British Columbia's *Access to Abortion Services Act*, which prohibits anti-abortion activities within a set distance of hospitals, clinics and homes of doctors
- make doctors accountable through their professional colleges if they refuse to perform abortions or to refer woman to someone who will.

⁹ Two hospitals in a small Ontario community recently entered into negotiations to merge. Because of the high debt level of the public hospital, the two hospital boards agreed that it would close and hospital services would be provided by the Catholic hospital. This meant there would be no more reproductive health (including birth control, tubal ligations, vasectomies and abortions), HIV/AIDS or certain "end of life" services provided. Fortunately, a massive community response, including threatened resignations by many of the public hospital's doctors, forced the hospital boards to reconsider their decision and to keep the public hospital open, at least in the short run.

Barrier: Reciprocal billing

Provinces set their reciprocal billing policies through the Interprovincial Health Insurance Agreements Coordinating Committee. Some provinces have listed abortion as an excluded service, even though it should not be:

- to be excluded, a procedure must not be time sensitive, insured by a federal institution or experimental or a more conventional or cheaper treatment must exist
- abortion does not fall into any of these categories. In particular, it is very time sensitive
- this affects women who are temporarily living away from home (eg students) or who have recently moved and are not yet qualified in the new province

Recommendations for action:

- demand that all provinces follow the requirements of the *Canada Health Act*, one of which is portability
- remind politicians that while abortions are not always eligible for reciprocal billing, pregnancy and child birth are
- lobby to ensure the committee sets a common standard across the country that ensures women can receive out of province abortions without paying

Barrier: Unknowledgeable hospital staff

Many women turn to their local hospitals for information about abortion.

According to the Canadians for Choice 2006 study:

- 41% of hospital staff they surveyed did not know their own hospital's policy, even when their hospital provided abortion services
- inaccurate and/or incorrect referrals were common

Recommendations for action:

- all hospital staff who are in a position to receive inquiries about abortion services should be trained to provide accurate, unbiased information and referrals, whether or not the hospital where they work offers those services
- lobby for a national abortion hotline so women everywhere in the country can receive accurate, current, unbiased information about abortion services

Barrier: Judgmental health care providers:

Women seeking an abortion often encounter negative judgmental attitudes on the part of those in the health care system. This includes:

- both medical and non-medical hospital staff
- doctors

Recommendations for action:

- make health care providers accountable through the appropriate channels if their treatment of women reflects their own anti-choice beliefs
- lobby for full funding for public clinics in all parts of the country, so women can receive abortion services in a supportive setting performed by committed, positive professionals

Barrier: Distance/travel:

This is a huge barrier for women in Canada who do not live in urban areas:

- in particular, abortion services are very sparse for anyone living more than 150 km from the U.S. border
- Prince Edward Island offers no abortion services at all
- women in the north must travel very long distances to obtain an abortion, even when there are providing hospitals

Recommendations for action:

- lobby for Increased numbers and quality of hospital services
- demand that all provinces and territories provide health insurance for clinic-provided abortion services

Barrier: Cost:

There is no consistent approach to public insurance coverage for abortions provided outside hospitals:

- New Brunswick does not pay at all
- in some provinces, the woman must pay first and then claim reimbursement from the public health insurance plan
- the lack of services in many parts of the country means women must cover travel and child care costs

Recommendations for action:

- demand full funding for all clinics – operating budget and public health insurance – as required by the *Canada Health Act*¹⁰
- lobby the federal government to withhold federal transfer payments to any provinces that do not cover clinic abortions upfront
- lobby for travel funding for women in remote parts of the country

Barrier: Inconsistent approach:

Women in different parts of the country face very different approaches to the way in which abortion services are delivered.

- wait times vary by as much as 8 weeks
- gestational limits vary from 10 to 22 weeks
- even the number of doctors required to approve the abortion varies, despite the legislation and case law

¹⁰ Because abortions are deemed medically necessary services, they must be funded, regardless of where they are performed. In 2006, almost 50% of abortions in Canada were performed in clinics.

Recommendations for action:

- lobby for a national standard for abortion services that meets the requirements of the *Canada Health Act* and the needs of women

Barrier: Anti-choice organizations

Anti-choice organizations in Canada often do not clearly identify themselves as such.

- some offer “crisis pregnancy counseling” without explicitly telling women they operate from an anti-choice perspective
- some are involved in school educational curriculum
- often calling themselves names that focus on family values, they currently have enormous influence over public policy

Recommendations for action:

- demand an end to public funding for anti-choice pregnancy counseling centres
- lobby for public funding for unbiased, pro-choice public education and awareness on sexual and reproductive health, including abortion

Conclusion:

In the present political climate, little action is being taken at any government level to increase accessibility of abortion. Indeed, it is not difficult to imagine a move backwards in terms of accessibility or even legality.

The right of women to control our bodies, including our reproductive capacity, is essential to our health, empowerment and equality. This is particularly so in a society where women continue to experience high levels of sexual violence, do not have adequate information about or access to contraception, make only 73 cents for every dollar earned by men and do not have access to quality, affordable child care.

The fact that abortion has been decriminalized in Canada is not enough. We must continue the hard work of the pro-choice movement to ensure that all women who make the choice to terminate a pregnancy are able to obtain one.

For more information:

There are a number of strong pro-choice organizations in Canada:

Abortion Rights Coalition of Canada

www.arcc-cdac.ca

Canadian Federation for Sexual Health (formerly The Planned Parenthood Federation of Canada)

www.cfsh.ca

Canadians for Choice
www.canadiansforchoice.ca

Catholics for a Free Choice Canada
www.catholicsforchoice.ca

Childbirth by Choice Trust
www.cbctrust.com

Pro-Choice Action Network
www.prochoiceactionnetwork-canada.org

Each of these websites contains excellent information about the abortion issue in Canada as well as links to international organizations working on this issue.

Recommended reading:

No Choice: Canadian Women Tell Their Stories of Illegal Abortions. Edited by the Childbirth by Choice Trust. 1999. ISBN: 0-9683796-0-5.

Reality Check: a close look at accessing abortion services in Canadian hospitals. Jessica Shaw. 2006. Canadians for Choice.