

Chronology of Court Cases:

Dr. Morgentaler and Others

Background:

- 1869 ▶ Parliament enacts a criminal law which prohibits abortion and punishes it with a penalty of life imprisonment.
- 1892 ▶ Parliament enacts the first *Criminal Code*, which criminalized not only abortion but the sale, distribution & advertisement of contraception.
- 1936 ▶ Social worker Dorothea Palmer is arrested and charged under the *Criminal Code* with offering birth control information.
- 1961 ▶ Harold Fine, a wholesale druggist in Toronto, is convicted under the anti-birth control section of the *Criminal Code* for selling condoms through the mail.
- 1967 ▶ The Federal Standing Committee on Health and Welfare begins consideration of proposed amendments to the *Criminal Code* relating to abortion. The Committee hears from professional associations, religious groups, health groups, women's groups, etc. Dr. Henry Morgentaler appears on behalf of the Humanist Fellowship of Montreal, urging repeal of the abortion law and freedom of choice on abortion.
- 1969 ▶ Parliament decriminalizes contraception and some abortions. The new abortion law exempts from criminal liability a doctor, in an approved hospital, operating after the hospital's therapeutic abortion committee has certified that continuation of the pregnancy would likely endanger the woman's life or health.
- ▶ Dr. Morgentaler ends his general practice to specialise in the performance of abortions using the vacuum aspiration method at his clinic in Montreal.



Dorothea Palmer

The 1970's:

- 1970 ▶ In June the Montreal clinic is raided by police and Dr. Morgentaler is charged.
- 1971 ▶ In January Dr. Morgentaler is again charged with performing an illegal abortion.
- 1973 ▶ In March, Dr. Morgentaler issues a public statement that he is performing abortions. In May, he demonstrates his technique on national television.
 - ▶ In August the clinic is raided again and ten new charges are laid, bringing the total of charges against Dr. Morgentaler to thirteen.
 - ▶ During the fall defence lawyers Claude-Armand Sheppard and Charles Flam are unsuccessful in a motion to quash the abortion law as unconstitutional. The defence of necessity is raised at trial, and on November 13 the jury acquits.
- 1974 ▶ In February the Quebec Court of Appeal hears the Crown appeal.
 - ▶ In April the Court of Appeal quashes the acquittal and substitutes a conviction. The matter is returned to the trial Judge for sentencing. Dr. Morgentaler launches an appeal to the Supreme Court of Canada.
 - ▶ In July Mr. Justice J.K. Hugessen sentences Dr. Morgentaler to 18 months. He remains at large pending his appeal to the Supreme Court of Canada.
 - ▶ The appeal is heard in Ottawa in October. Judgement is reserved.
- 1975 ▶ In March the Supreme Court dismisses the appeal. The next day, Dr. Morgentaler surrenders into custody. He serves 10 months in jail, during which time he suffers a mild heart attack.
 - ▶ In May Dr. Morgentaler is brought to trial on a second count, and after hearing evidence as to the defence of necessity, the jury acquits on June 9. This acquittal is appealed by the Crown to the Quebec Court of Appeal. That Court dismisses the appeal in January, 1976, and the Supreme Court of Canada refuses leave to appeal in March, 1976.
 - ▶ In July the federal government undertakes to amend the *Criminal Code* to prevent any future appeal court ordering conviction after jury acquittal.
 - ▶ In September the Minister of Justice establishes the Committee on the Operation of the Abortion Law (chaired by Robin Badgley).
- 1976 ▶ In January, following the Quebec Court of Appeal's dismissal of the Crown appeal from the second jury acquittal, the Minister of Justice intervenes to set aside the conviction which the Appellate Court had imposed in 1974 and orders a new trial on that count. Dr. Morgentaler is released from custody.
 - ▶ Third jury trial is held in Montreal in March, resulting again in an acquittal.

- 1976 ▶ In November the newly elected Parti Québécois government in Quebec announces that outstanding charges against Dr. Morgentaler will not proceed. The province's Attorney General declares that doctors providing abortions in Quebec will not be prosecuted.
- 1977 ▶ In January the Badgley Committee tables its report, which concluded that the abortion law was not being applied equitably across Canada. The report states "the procedure provided in the *Criminal Code* for obtaining therapeutic abortion is in practice illusory for many Canadian women".

The 1980's:

- 1982 ▶ In April the *Constitution Act*, 1982 receives Royal Assent.
- 1983 ▶ In May Dr. Morgentaler opens a clinic in Winnipeg.
 - ▶ In June the Winnipeg clinic is raided and Dr. Morgentaler, Dr. Robert Scott, and 7 staff members are charged with conspiracy to procure a miscarriage. Subsequently, the prosecution decides to proceed against the doctors and head nurse Lynn Crocker only, on the substantive charge of procuring a miscarriage. Dr. Morgentaler opens another clinic in Toronto.
 - ▶ On July 5, 1983, police raid the Toronto clinic, seizing equipment and charging Drs. Morgentaler, Scott and Smoling with conspiracy to procure a miscarriage.
 - ▶ On July 29, 1983 the Toronto clinic is the object of an arsonist's attack.
 - ▶ In November a pre-trial motion begins in Toronto. Morris Manning, counsel for the defence, challenges the constitutional validity of s. 251 of the *Criminal Code*. Evidence is heard until mid-December. Argument begins in mid-January and continues intermittently into May. Judgement is reserved.
- 1984 ▶ On July 20, Mr. Justice Parker dismisses the motion.
 - ▶ The trial begins on October 15. On November 8 the jury acquits all 3 doctors.
 - ▶ On December 4, Ontario Attorney-General Roy McMurtry announces that he will appeal. On December 10 the Toronto clinic reopens. On December 19 and 20 respectively, Drs. Scott and Morgentaler are again charged with conspiracy to procure a miscarriage.
- 1985 ▶ On March 23, the Winnipeg clinic reopens and is raided a few days later. Dr. Morgentaler is charged with three counts of procuring a miscarriage. On March 30 the clinic reopens again and is raided again. Dr. Morgentaler is subsequently charged with three more counts under section 251 of the *Criminal Code*, bringing the total number of charges outstanding against him in Manitoba to seven.
 - ▶ On April 29, a five-man panel of the Ontario Court of Appeal commences hearing the Crown appeal against the November 1984 acquittal of Drs. Morgentaler, Scott and Smoling as well as defence arguments about the constitutionality of the abortion law. On May 7 the appeal is concluded and judgement is reserved.
 - ▶ On October 1, the Ontario Court of Appeal's decision is released. The Crown's appeal has been allowed, the jury acquittal set aside and a new trial ordered. Dr. Morgentaler announces immediately that he will appeal to the Supreme Court of Canada. The province says that it will not seek to shut down the Toronto Clinic while the appeal is pending.
- 1986 ▶ In May Dr. Robert Scott opens the second Toronto clinic.
 - ▶ On September 24, Toronto police lay abortion charges against Dr. Morgentaler, Dr. Scott, and Dr. Colodny, but the Attorney-General stays the proceedings, pending the Supreme Court of Canada appeal.
 - ▶ In September the Manitoba College of Physicians and Surgeons rejects Dr. Morgentaler's request for a licence for his Winnipeg clinic on the grounds that the *Criminal Code* states abortions can be performed only in accredited hospitals.
 - ▶ In September, Quebec Justice Minister Herbert Marx halts private prosecution of Dr. Yvan Machabee by abortion opponent Reggie Chartrand.
 - ▶ Hearing of the doctors' appeal before the Supreme Court of Canada begins in October.
 - ▶ In November, Quebec Justice Minister Herbert Marx orders a halt in proceedings against Dr. Jean-Denis Berbube and a Chicoutimi community clinic, accused of performing an illegal abortion, after a private complaint.

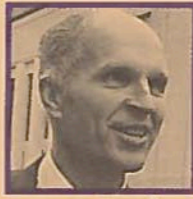


Henry Morgentaler

1986 ▶ In December, a Quebec Superior Court judge overrules Marx' decision to halt Dr. Machabee's case. Dr. Machabee files a notice of appeal.

1987 ▶ In June the Supreme Court of Canada denies Rev. Ken Campbell leave to appeal the ruling by the Ontario Court of Appeal to the effect that the province's Attorney General, Ian Scott, was within his rights to order stay of proceedings in September 1986.

▶ In June the Supreme Court of Canada agrees to hear anti-abortion activist Joe Borowski's appeal from a Saskatchewan Court of Appeal ruling to the effect that the constitutional guarantee of right to life does not apply to fetuses.



Joe Borowski

▶ In July Dr. Morgentaler is ordered to court on August 12 for arraignment on charges initiated by Reggie Chartrand. Dr. Morgentaler petitions Quebec Superior Court to block all actions against him by anti-abortion people. On August 12 a sessions judge adjourns proceedings against Dr. Morgentaler until Quebec Superior Court rules on whether three earlier complaints by Reggie Chartrand should proceed.

▶ In August Quebec Court of Appeal rules that Justice Minister Marx had the right to order a halt to Dr. Machabee's trial in 1986.

▶ In September Quebec Superior Court rules that two abortion-related complaints against Dr. Morgentaler by Reggie Chartrand are valid and should not be dismissed. A pre-inquiry will determine if there are grounds for formal charges against Dr. Morgentaler.

▶ On September 23, the Ontario government drops charges of procuring abortions laid in Sept. 1986 against Drs. Morgentaler, Scott and Colodny.

▶ In November Dr. Morgentaler's arraignment on the charges initiated by Reggie Chartrand is postponed until December 7th awaiting the Supreme Court of Canada ruling on his case in Ontario.

1988 ▶ On January 28, the Supreme Court of Canada strikes down Canada's abortion law (section 251 of the *Criminal Code*), ruling that it is unconstitutional. The Justices find that the law violates Canada's *Charter of Rights and Freedoms* because it infringes upon a woman's right to "life, liberty and security of the person." The decision comes approximately 20 years after Dr. Morgentaler first performed an abortion.

▶ In July the federal government introduces a resolution to Parliament containing the broad outline of a new gestationally based abortion law. The resolution is defeated, along with five amendments.

1989 ▶ In March the Supreme Court of Canada refuses to decide on the claim of Joe Borowski that fetuses have a constitutionally guaranteed right to life. Since the abortion law had already been struck down, his case was found to be moot (i.e. made abstract or purely academic).

▶ Also in March, the province of Nova Scotia, in response to Dr. Morgentaler's plans to open a free-standing abortion clinic in Halifax, passes legislation prohibiting the performance of abortions in clinics.

▶ In May, the Canadian Abortion Rights Action League (CARAL) launches a legal challenge of the Nova Scotia government's anti-clinic legislation. CARAL's standing to launch such a case is then challenged by the N.S. Attorney General.

▶ In Manitoba, Ontario and Quebec during July, ex-boyfriends try to get injunctions to halt their former girlfriends' abortions. In the Ontario and Quebec cases, they are successful. Injunctions are granted to stop Barbara Dodd and Chantal Daigle from having their planned abortions. The injunction against Barbara Dodd is set aside on appeal, but the Quebec Court of Appeal upholds the injunction against Ms. Daigle, who immediately appeals to the Supreme Court.



Chantal Daigle

▶ During the Supreme Court of Canada hearing of the case in August, the court learns that Ms. Daigle has already obtained her abortion in the U.S. Nevertheless, the court quickly overturns the Quebec Court's injunction against Ms. Daigle's abortion.

▶ In October CARAL's standing to challenge the Nova Scotia anti-clinic legislation is denied by Mr. Justice Merlin Nunn of the N.S. Supreme Court, who reasons that CARAL is not directly affected by the abortion clinic issue.

▶ In October Dr. Morgentaler challenges the N.S. law by announcing that he has just performed seven abortions at his Halifax clinic. He is immediately charged under the provincial *Medical Services Act*.

▶ In November Dr. Morgentaler is charged with performing seven more abortions in Halifax and the province obtains an injunction against his performing any more until charges against him have been heard.

▶ In November, 1989 the federal government introduces Bill C-43, an amendment to the *Criminal Code* which would prohibit abortion unless a physician finds the pregnancy a threat to the woman's physical, mental or psychological health.

▶ Also in November, 1989 the Supreme Court of Canada releases its reasons in the *Daigle* case. The court finds that the law does not recognize a fetal or paternal right to stop an abortion.

1990 ▶ In April, the Nova Scotia Appeal Court denies CARAL the right to launch its own constitutional challenge because Dr. Morgentaler's case is already underway. CARAL announces its intention to appeal.

▶ On May 29, in a close (140-131) vote, the House of Commons passes Bill C-43 and the legislation is sent to the Senate for approval.

▶ In June the media reports two cases of women having clandestine, illegal abortions (one woman died), the first such cases in almost 20 years.

▶ October 19, a Nova Scotia provincial court judge strikes down the *Medical Services Act* as unconstitutional and acquits Dr. Morgentaler of all charges. The court finds that abortion law is a matter of federal, not provincial, jurisdiction. The N.S. government soon seeks leave to appeal this decision.

▶ November 15, the Supreme Court of Canada denies CARAL leave to appeal.

1991 ▶ On January 31, Bill C-43, the legislation to recriminalize abortion, is defeated by the Senate. Abortion is now treated like any other medical procedure, governed by provincial and medical regulations.

▶ On July 5, the appeal division of the Supreme Court of Nova Scotia upheld the lower court decision in favour of Dr. Morgentaler. The N.S. government soon launches an appeal, and on November 14 the Supreme Court of Canada agrees to hear it.

1992 ▶ On May 18, a firebomb destroys the Toronto Morgentaler Clinic.

▶ On June 12, the Court of Queen's Bench of Manitoba finds the province's refusal to fund abortions in clinics (but not in hospitals) to be discriminatory. The Manitoba government appeals the ruling.

▶ In June Dr. Morgentaler notifies the P.E.I. government of his plans to take legal action against its refusal to pay for clinic abortions under medicare.

▶ On September 14, Dr. Morgentaler initiates legal action against the government of Newfoundland for its refusal to cover clinic abortions under medicare. Soon afterwards, the province begins paying a portion of the cost of a clinic abortion.

1993 ▶ On February 4, Dr. Morgentaler is once more before the Supreme Court of Canada defending the legality of clinic abortions. The Supreme Court hears the appeal by the Nova Scotia government of the lower court decision which confirmed abortion to be a federal, not a provincial matter.

▶ On March 2, the Manitoba Court of Appeal rules that doctors must be paid for performing abortions at the province's one abortion clinic. The Manitoba Health Minister says the government will likely introduce amending legislation that would again prohibit payment for non-hospital abortions.

▶ On July 27, the Manitoba government passes the *Health Services Amendment Act*, which excludes payment for non-hospital abortions.

▶ On September 30, 1993 the Supreme Court of Canada dismisses the appeal by the Nova Scotia government, thereby confirming that the province was trying to legislate in the area of criminal law when it passed legislation prohibiting the performance of abortions in clinics.

1994 ▶ On January 10, the court hearing begins for the Province of Ontario's application for a public injunction to restrict anti-abortion harassment and intimidation of patients, health-care providers and their families at specific locations in the province.

▶ In June Dr. Morgentaler's court challenge of P.E.I.'s refusal to pay for Island women's clinic abortions is heard.

▶ On June 28, Dr. Morgentaler opens an abortion clinic in Fredericton, N.B. The New Brunswick government immediately invokes its *Medical Act* which prohibits doctors from performing abortions outside an approved medical facility. The N.B. College of Physicians and Surgeons agrees to restrict Dr. Morgentaler's licence to practice and services end.

▶ On August 30, in Ontario, a temporary public injunction is granted by the court to protect women going into clinics and specific doctors at their offices and homes in London, North Bay, Brantford, Toronto and Kingston.

▶ On September 14, the N.B. Court of Queen's Bench rules that the province had no right to restrict abortions to hospitals, and that its medical legislation overstepped the legitimate powers of a province. N.B. decides to appeal.

▶ On November 8, B.C. gynaecologist and abortion provider Dr. Garson Romalis is shot and seriously wounded by a sniper at his home in Vancouver.

1995 ▶ On January 23, the New Brunswick Court of Appeal upholds the lower court ruling against the province's attempt to prohibit abortion clinics.

▶ On February 2, the P.E.I. Supreme Court rules that the province must cover physician fees for clinic abortions for Island residents.

▶ On August 17, the Supreme Court of Canada refuses to hear the New Brunswick government's appeal of the N.B. Court of Appeal decision which held that abortions could not be restricted to hospitals.

▶ In mid-September, the British Columbia government's *Access to Abortion Services Act* becomes law. It sets up "bubble" zones around abortion clinics, doctors' offices and doctors' homes.

