The history of abortion is central to the writing of women’s history. In the words of Angus McLaren and Arlene Tigar McLaren, abortion reveals much about “women’s responses to their physical functions, the medical profession’s views of women’s health, and male and female attitudes toward sexuality.” Perspectives on the female body and on the sexual activity of women are at once conditioned by and integral to the broader social construction of gender. Writing in the mid-1980s, sociologist Susan McDaniel noted that attitudes toward abortion are “closely tied to the social roles women are expected to play” and, by extension, to the perpetuation of patriarchy. “To the extent that women are defined essentially as reproducers,” she wrote, “they come to be seen as vessels for carrying out other people’s wishes, those of their family, husbands and society.” Yet only comparatively recently has the history of abortion in Canada begun to be told from the standpoint of women’s lived experience and their reactions to the reproductive definitions thrust upon them. More
commonly, the emphasis has fallen on the roles played by the medical, political, legal, and religious sectors and their collective influence on legislation and societal norms. Significantly, these histories often transform women into passive objects—bodies on which laws are imposed and procedures carried out. This focus on external forces, rather than on women’s active agency, does not, however, mean that women played no part in the evolution of abortion policy. As legal scholar Shelley Gavigan reminds us, “the history of restrictive abortion legislation is also the history of women’s resistance to it.”

All the same, despite women’s ongoing struggles to assert control over their own bodies and despite an emerging historiographical emphasis on women’s experience, histories of abortion have generally foregrounded efforts by physicians, clergy, and politicians to criminalize, decriminalize, and recriminalize abortion. As a result, we know a lot about how these actors have shaped the history of abortion in Canada. We also know that their efforts have been variously affected by a number of factors that combined to shift dominant attitudes about abortion over the course of the nineteenth and twentieth centuries and that continue to do so today. Such factors include urbanization and industrialization; the professionalization of medical practice and the rise of scientific medicine; the connection of moral crusades and social reform to the perceived health of the nation; the increased secularization of Canadian society; the emergence of new reproductive technologies; the rise of protest movements in the 1960s; and the growing entrenchment of the pro-life and pro-choice movements. In what follows, I examine how and why the legal status of and social attitudes toward abortion changed over time, as well as the consequences of these changes. While the history offered below is not comprehensive, in part because so much of that history (especially as it pertains to women’s experiences) still needs to be written, it is intended to provide some context for the observations and experiences that are the centrepiece of this book.

The Criminalization of Abortion

Efforts to criminalize abortion began at the start of the nineteenth century. These early laws distinguished between abortions performed before and after quickening—the moment when a pregnant woman first feels the fetus move, which usually occurs sometime between the sixteenth and twentieth week. It was generally held that, once quickening occurred, the fetus was “animated,” that is, invested with a soul, and therefore represented a life.
Until the early nineteenth century, abortion prior to quickening was not a criminal offence. This changed in 1803, when the British Parliament passed Lord Ellenborough’s Act, which not only criminalized abortion both before and after quickening but also imposed the death penalty for abortions performed after quickening. Colonial administrations in Canada followed suit, enacting legislation modelled on this act.

As the nineteenth century progressed, the nature of abortion legislation began to shift. Under the early laws, in order for a person charged with performing an abortion to be prosecuted successfully, proof was needed that the woman in question was indeed “quick with child.” In 1837, revisions to Great Britain’s Offences Against the Person Act eliminated the death penalty for performing an abortion, in favour of a maximum sentence of three years’ imprisonment, in an effort to make convictions easier to obtain. But the revised law also eliminated the distinction between abortions performed before and after quickening. The distinction was subsequently abolished in Upper Canada and in New Brunswick, which passed amended laws in 1841 and 1842, respectively, with both setting the maximum penalty for abortion at life imprisonment (much harsher than in Britain). New Brunswick soon reduced the sentence to a maximum of fourteen years, but in neighbouring Newfoundland, which had chosen in 1837 to adopt British criminal law as its own, the penalty was only three years. In British North America, the net effect of the revised laws was thus to increase the punishment for abortions prior to quickening. While the rationale for removing the quickening distinction remains uncertain, the change in legislation might have represented what Constance Backhouse describes as an attempt “to eliminate the obvious evidentiary difficulties inherent in determining when a woman had quickened.”

The fact that this early legislation punished the abortionist, rather than the woman who sought out the abortion suggests, as Wendy Mitchinson observes, that “the morality of abortion as an act was the focus, not so much the morality of the woman.” It was not long, however, before women were drawn into the circle of guilt. In 1849, New Brunswick’s anti-abortion legislation was amended to allow criminal charges to be brought against pregnant women who sought out such a procedure, and similar legal changes occurred in Nova Scotia in 1851. Although these amendments may have been prompted, most immediately, by legislation passed by the state of New York in 1845, they clearly reflected changing perceptions of women’s participation...
in and responsibility for abortions. Evidently, Canadian legislators “had come to believe that the women involved were equally the source of the problem and that the full force of the criminal law ought to be brought to bear on them.” In 1861, revisions to Britain’s Offences Against the Person Act likewise included the pregnant woman among those who could be charged. The 1861 law also allowed for the prosecution of the abortionist regardless of whether the woman “be or be not with Child,” thereby eliminating the need for proof of pregnancy, and included a new, lesser offence of acting as an accessory to the procurement of an abortion. In Canada, the Constitution Act of 1867 defined the powers of the federal and provincial governments, at which point criminal law was placed under federal jurisdiction. This division of power enabled the Canadian Parliament to unify abortion laws throughout the existing provinces under Canada’s own Offences Against the Person Act, passed in 1869. At that time, the punishment for those convicted of procuring or performing an abortion was set at life in prison.

In 1892, the first Criminal Code of Canada incorporated provisions against abortion. Section 271, captioned “Killing unborn child,” mandated life imprisonment for a person “who causes the death of any child which has not become a human being, in such a manner that he would have been guilty of murder if such a child had been born.” The same section specified that actions taken “for the preservation of the life of the mother of the child” that resulted in the child’s death were not considered an offence, indicating that the same value was not accorded to fetal and maternal life. As in the 1861 legislation enacted in Britain, section 272 of the code made it illegal to attempt an abortion regardless of whether the woman had actually been pregnant:

Every one is guilty of an indictable offence and liable to imprisonment for life who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her or causes to be taken by her any drug or other noxious thing, or unlawfully uses any instrument or other measure whatsoever with the like intent.

Section 273 went on to extend these provisions to the woman herself (“whether with child or not”), although with a lesser penalty of seven years’ imprisonment. In addition, section 179(c) outlawed the sale, distribution, or advertisement not only of abortifacients but of “any medicine, drug or article intended or represented as a means of preventing contraception.”
The criminalization of attempts to induce a miscarriage even if, as it turned out, the woman was not pregnant must be understood in the context of nineteenth-century medical knowledge. At the time, evidence of quickening was, for all practical purposes, the only way to be certain that a woman was pregnant. Thus, even after the distinction between pre- and post-quickening abortions was eliminated, the “proof of pregnancy” requirement rendered prosecution all but impossible in the case of abortions performed prior to quickening. Lifting the pregnancy requirement allowed legal sanctions to be imposed even if the woman had been mistaken about her condition, making it “finally possible to enforce the law against women who were in the early stages of pregnancy.”

These legal developments, including the ban on contraceptives, speak to the increasing regulation of women’s bodies by the state. And yet existing records indicate that fewer than two dozen abortion cases were tried in Canadian courts during the nineteenth century, and in none of them was a woman prosecuted for procuring an abortion. Rather, those charged were most commonly medical practitioners of some sort or, on occasion, the woman’s male partner, typically when he had taken an instrumental role in attempting to end the pregnancy. In other words, from the standpoint of enforcement, the emphasis fell on those who actually carried out the procedure. This focus on punishing those who provided medical services reflects the degree to which the evolution of abortion over the course of the nineteenth century was driven by efforts on the part of the nascent medical profession to establish its control over the practice of medicine. As Backhouse argues, especially in the latter half of the century, “regular” physicians—that is, those who had undertaken formal medical training and were duly licensed—used the spectre of illegal abortions performed by “irregular” practitioners to erect and solidify professional boundaries. Unsurprisingly, “regular” physicians were, with rare exception, white males, typically of middle-class origins, whereas “irregular” practitioners were more apt to be women, many of them either Indigenous or from immigrant backgrounds. In short, abortion laws disciplined female bodies in the service of male objectives.

Turn-of-the-Century Sensibilities and Illegal Social Acts

Women’s bodies and their reproductive abilities increasingly became a site of contestation not only for physicians who sought to police the scope of medical practice but also for those who saw women’s bodies as tied to larger
social, cultural, and economic issues in Canadian society. During the closing decades of the nineteenth century, Euro-Canadian nationalists became concerned with the decline of Canadian—that is, English and Protestant—fertility, fearing both “la revanche des berceaux” (“the revenge of the cradles”) of Catholic French Canadians as well as the upsurge in non-British immigration. Evidence that white, Protestant women of middle- or upper-class origins were seeking abortion in growing numbers only heightened fears of “race suicide.” As historian Tracy Penny Light observes, indications are that abortion legislation “originated with the middle class, specifically with their desire to regulate morality in the interest of building a strong and morally pure nation.” The regulation of women’s bodies, then, reflected dominant beliefs about who should, and should not, be encouraged to procreate and, by extension, about which people were valuable citizens.

The Victorian ideal of womanhood was another important aspect of the social context of abortion during the latter decades of the nineteenth century. Women (that is, white, middle- or upper-class women) were deemed to possess natural traits of character such as piety, chastity, domesticity, and submissiveness that made them perfectly suited to be wives and mothers. This was the ideal that lower-class women were encouraged to emulate. Of course, there was a disparity between the conduct prescribed for women and the ways that women actually behaved, and abortion serves as a good example of this disparity. In her study of abortion in the nineteenth century, Backhouse argues that even as laws were being passed to prohibit abortion, they were “at odds with the views of much of the population.” There is ample evidence, found in criminal records and vital statistics, that despite strict abortion laws, pregnant women continued to procure abortions. As these records reveal, during the late nineteenth and early twentieth centuries, those most likely to seek abortion were in fact married women, often already mothers, who were looking to limit family size. Since the most common form of birth control prior to the mid-twentieth century was coitus interruptus ( withdrawal), unplanned and unwanted pregnancies occurred with some frequency. There is also evidence that both married women who were sexually active outside of marriage, as well as single women who found themselves pregnant, relied on abortion as a means to cope with unwelcome consequences. What these patterns clearly suggest is that rather than simply conforming to an ideal of behaviour ascribed to them, women were active (and sexual) agents who sought to control not only their fertility but also the shape of their lives.
By examining court documents, we also learn much about the techniques used during the nineteenth and early twentieth centuries to induce miscarriage. Angus McLaren's study of illegal abortion in turn-of-the-century British Columbia reveals that “the use of instruments was by all accounts the leading method of abortion. The women would squat and with the help of a mirror insert in the cervix a catheter, speculum, sound, pencil, bougie, needle, crochet or button hook.”

The second most popular method was the oral ingestion of herbs or drugs. Of the 108 charges of abortion that Penny Light investigated, for example, 56 included the use of an herbal remedy or patent medicine. The challenge was to take enough of the herb or drug to “irritate the body or digestive system,” in order to produce the “abortion of the fetus as a side effect,” but not enough to kill the pregnant woman.

As historian Eliane Leslau Silverman and others have documented, white settlers in the late nineteenth and early twentieth centuries often relied on the medical knowledge and skills of Indigenous midwives and other healers, who were familiar with methods for inducing abortion. A Métis woman who had lived in Alberta at the turn of the century recalled that local women “used a black bag, from the bladder of a bear. They’d dry it, then mix it with some liquid, and then they’d lose the baby. There must be some medicine in that. They figure that’s okay. It’s from the land and they figure it didn’t do any harm.”

Angus McLaren found the third and fourth most common methods to be, respectively, “douching by syringe or enema bag with lysol, carbolic acid, turpentine or simple soap and water” and “dilation of the cervix by inserting slippery elm or packing the vagina with cotton batten.” None of these methods guaranteed termination of the pregnancy, and all of them came with risks of infection and hemorrhaging, which, especially in those days, could prove fatal or, short of that, leave the woman sterile. These risks, coupled with the uncertainty of success, demonstrate the degree to which these women did not want to be pregnant. The dangers attaching to abortion were not evenly distributed across social classes. In her study of thirty-four abortion-related deaths in British Columbia between 1917 and 1937, Susanne Klausen found that all of the deceased women belonged to the labouring classes and concludes that it was their need to rely on self-abortion techniques or on dubiously qualified “backstreet” abortionists, as well as a reluctance to incur the cost of seeing physicians should complications arise, that contributed to their deaths. Middle- and upper-class women, she
contends, had better access both to contraception and to physicians who “performed abortions under safer circumstances.”

As Angus McLaren argues, illegal abortions were “social acts,” in the sense that, to procure one, a pregnant woman required help. Faced with an unwanted pregnancy, women relied on the assistance of family and friends, who formed a community of support around her. Indeed, in 70 percent of the cases that Penny Light examined, charges were laid against family and friends of the pregnant women. In the case of single women, McLaren found, the most likely accomplice was their male partner, who often had a vested interest keeping the pregnancy a secret, whether to protect the woman’s reputation or his own. Criminal records also show that both regular and irregular doctors performed abortions, whether driven by profit or a sincere desire to help a woman in need.

The social networks surrounding the procuring of illegal abortions remind us of Backhouse’s contention that the restrictive abortion legislation enacted in the nineteenth century was out of touch with the reality of people’s lives. In part, such legislation attempted to regulate sexual activity, in accordance with Victorian notions of propriety, and such attempts have rarely been successful. In the absence of effective and reliable methods of birth control, unwanted pregnancies were inevitable—a problem in need of a solution. The involvement of lovers, friends, and family in finding that solution suggests that abortion did not necessarily carry the same sense of personal shame that later came to be associated with it. At least among the “respectable” classes, social shame attached to becoming pregnant out of wedlock, although only if the pregnancy became public. Quietly seeking an abortion was therefore the sensible course of action, one in which the woman could depend on help from others. Arguably, it was only when reliable methods of birth control became widespread that (except in cases of rape) a woman who needed an abortion began to be blamed for becoming pregnant—and that she began to blame herself.

A Shift in Consciousness: Birth Control and the Bourne Defence

In the opening decades of the twentieth century, both the legal status and the practice of abortion remained relatively unchanged, with women continuing to use abortion as a means to limit family size. The status quo began to change in the 1930s, however, with the onset of the Great Depression, during
which birth control advocates, many of whom were influenced by eugenics, became increasingly visible.

Although the laws on abortion remained unchanged during the Depression, two important developments occurred in the 1930s that affected abortion. First, a number of groups and individuals became public advocates of birth control. Marie Stopes, in Great Britain, and Margaret Sanger, in the United States, rose to prominence as birth control activists in the second decade of the twentieth century, and they had a great deal of influence on the shape and nature of the birth control movement for several more decades. Neither woman supported abortion, but they both espoused eugenic beliefs regarding who should and should not be allowed to procreate. Accordingly, they felt that the more “desirable” people (that is, people who were white and at least middle class) should be encouraged to reproduce, while “less desirable” people should have smaller families.33 In 1936, Dorothea Palmer—a nurse who worked for the Parents’ Information Bureau, founded by Canadian industrialist and birth control advocate A. R. Kaufman—was tried for distributing birth control information in Eastview (now Vanier), a poor Roman Catholic neighbourhood in Ottawa. Like Sanger and Stopes, Kaufman was motivated by theories of eugenics and sought to make birth control available to working-class people.34 Ultimately, Palmer was acquitted, on the grounds that her actions had been undertaken as a public service, a decision that reflected the growing popular acceptance of birth control in Canada.35 Such activism contributed to the normalization of public discussions of birth control, as well as forcing the state, doctors, and churches to acknowledge people’s desire to control their fertility. During these years, many countries witnessed the growth of family planning movements that advocated the widespread availability of effective contraception as central to improving the quality of family life.36

Another event that influenced the evolution of abortion politics in Canada was the 1938 trial of Dr. Aleck Bourne in the United Kingdom. In Britain, the Infant Life (Preservation) Act of 1929, which amended the 1861 Offences Against the Person Act, had established that an abortion performed solely to preserve the mother’s life was not a legal offence. Bourne was charged with performing an abortion on a fourteen-year-old girl who had been raped by several off-duty British soldiers. At his trial, he argued that he had performed the abortion to save the girl’s mental health, and he was acquitted by the jury. As John Keown points out, although “long
before 1938, therapeutic abortion was judicially approved, both tacitly and expressly” in Britain, the Bourne case was the first time that the principle of medical necessity had been used as a defence in court. Not only was the principle formally upheld, but the decision had the effect of extending the scope of medicine to include mental, as well as physical, health, thereby broadening the range of abortions that could be performed legally, for reasons of medical necessity. Bourne’s trial was closely watched in Canada, which lacked the equivalent of Britain’s 1929 act. Although no legislative changes occurred at the federal level, the case provided an opening for the argument that abortion should be legal when performed as a medical necessity, that is, when a woman’s life or health was endangered by a continued pregnancy. It thus contributed to a growing recognition that abortion should be permitted under certain circumstances.

It is impossible to know what the rate of abortion was before contraception became legal, relatively accessible, and reasonably reliable. As long as abortion itself remained illegal, the fact that one had occurred was generally discovered only when something went wrong. In piecing together the history of abortion, we are thus dependent largely on vital statistics compiled by governments and on legal and medical records, supplemented by stray anecdotal information—sources that, together, provide only a partial picture. In an analysis of maternal mortality statistics in Ontario, historian George Emery, who specializes in interpreting vital statistics, points to several factors that complicate efforts to trace the actual number of deaths from abortion. Whether to protect the woman’s reputation or their own, physicians filling out a death certificate might deliberately suppress any reference to abortion—or their diagnostic skills might be inadequate to the task of establishing that abortion was the underlying cause of death. The information they provided was also influenced by the design of the death certificate form, while the resulting statistics depended to some degree on the way that government administrators interpreted this information. As a result, historical estimates vary widely and are inevitably imprecise. While additional research may help to provide us with a clearer sense of how pervasive illegal abortions were, we will never be absolutely certain. It is here that turning to the testimonies of women and physicians makes sense. In the end, the experience of abortion—that is, the motivations for seeking one and for aiding a woman who is looking for one—is perhaps more important than the number that were actually performed.
The Journey to Halfway: The 1969 Amendments to the Criminal Code

From the time of its founding, in 1867, the Canadian Medical Association (CMA) exercised a great deal of influence on Canadian abortion law. During the first half of the twentieth century, maternal and child welfare garnered increasing attention from the medical profession. In the 1950s, the Canadian Medical Association (CMA) established the Maternal Welfare Committee to study issues of maternal health and mortality, including their links to abortion. In August 1961, the BC branch of the CMA began to call for abortion law reform. In 1962, the CMA discussed the issue at its General Council meeting, and, in early 1964, the Maternal Welfare Committee openly raised the issue of legal protection for physicians who performed abortions. At least initially, internal strife over the form that abortion regulations should take frustrated efforts to arrive at a consensus. Alongside these debates within the CMA, the Canadian Bar Association (CBA) began to deliberate on the issue at its annual meetings. At the same time, Canadian churches also began to discuss the place of abortion in a modernizing society. By 1966, both the CMA and the CBA had managed to overcome internal divisions and adopted statements calling for the reform of the abortion law to allow for abortion under certain circumstances. By the end of the decade, several churches had followed their lead. As is important to recognize, although reducing maternal mortality was certainly a concern, all these organizations founded their support for abortion law reform primarily on fears about the potential prosecution of doctors who were willing to risk performing therapeutic abortions, rather than on sympathy for the situation of women who sought abortions for reasons other than medical.

At the same time that physicians, lawyers, clergy, and politicians were growing increasingly concerned about the illegality of abortion regardless of the circumstances, public attitudes also began to shift. In 1957, the British government released the Report of the Departmental Committee on Homosexual Offences and Prostitution (the Wolfenden Report), which recommended that both be decriminalized. Historians view this report as a key moment in the movement away from state regulation of sexual behaviour. Public discussions on issues related to a person's private sexual life took place in Canada in various popular print vehicles, including Chatelaine magazine, the United Church Observer, and newspapers like the Toronto Star and the Globe and Mail, through letters to the editors.
Women took an active part in these discussions, with many of them voicing support for the reform of the existing abortion law to make it more responsive to women’s needs.

In January 1966, in response to growing concerns from the medical community and the perceived need to clarify the abortion law so as to protect doctors from prosecution, four private member’s bills were introduced into the House of Commons. These bills sought to amend the Criminal Code in relation to birth control, with one seeking to modify the abortion law as well, and were duly referred for consideration to the House of Commons Standing Committee on Health and Welfare. The Standing Committee, chaired by Liberal member Dr. Harry C. Harley, sat at different times in 1966, 1967, and 1968 to study contraception and abortion-related issues. In addition to hearing from the members who had proposed the bills, the committee reviewed briefs submitted by individuals and organizations representing a broad spectrum of public opinion. Notable presenters included the CMA, the CBA, the Family Planning Federation of Canada, the Canadian Welfare Council, the Canadian Council of Churches, and the Anglican, United, Lutheran, and Roman Catholic churches. Individual doctors, including Henry Morgentaler, also spoke. Among the women’s groups that made presentations were the Voice of Women, the National Council of Women, the Young Women’s Christian Association, and the Women’s Liberation Group. In December 1967, the committee submitted an interim report to the House of Commons, advocating that the law should be amended to “allow therapeutic abortion under appropriate medical safeguards where a pregnancy will seriously endanger the life or health of the mother.”

In the meanwhile, in February 1967, Lester Pearson’s Liberal government had established the ground-breaking Royal Commission on the Status of Women (RCSW). According to the official Terms of Reference, the commission was appointed to “inquire into and report on the status of women in Canada, and to recommend what steps might be taken to ensure for women equal opportunities with men in all aspects of Canadian society.” The RCSW held public hearings across Canada throughout 1968. Women’s letters to the commission and their testimony at public hearings include important examples of how women were affected by the illegal status of abortion (and contraception). One woman, who signed her letter “Desperate,” wrote: “I asked my doctor for an operation [sterilization] and he treated me like I had asked for an abortion! I did not! . . . I was . . . terrified that
I would have another baby. I only wanted to be sterilized. . . . Isn't that a better solution than the wish for an abortion and the pressure that comes with too many children?"[48] Another woman, a mother of five children, supported legalizing abortion on request, stating, “I think the only person that is affected is the woman with the problem. It is her problem only, and she is the one who should decide what she is going to do with her body, a simple matter of—the woman’s body, her problem, her decision, her life. She should be able to go to any qualified doctor and have an abortion if she desires."[49]

Dozens of women told similar stories about their desire to control their own fertility and the difficulty they encountered in attempting to do so, including their experiences with illegal abortions. These testimonies were relayed to the public through print and television coverage of the RCSW hearings, and they undoubtedly contributed to public support for some degree of abortion law reform, however limited.

In October 1967, the British Parliament passed the Abortion Act, which greatly liberalized the circumstances under which an abortion could be legally performed. In December of that same year, shortly after the Standing Committee on Health and Welfare tabled its interim report, Pierre Trudeau, then Canada’s minister of Justice, introduced an omnibus bill (C-195) that contained various amendments to the Criminal Code, including the decriminalization of both homosexuality and therapeutic abortion. Trudeau echoed the sentiments expressed in the Wolfenden Report when he famously stated, in defence of this bill, that “the state has no place in the bedrooms of the nation.”[50] After he became prime minister in April 1968, Trudeau continued to advocate for reforms to the Criminal Code. In December of that year, Trudeau’s minister of Justice, John Turner, introduced Bill C-150, a revised version of Trudeau’s earlier bill, which was passed into law by Parliament in May 1969 by a vote of 149 to 55. The Criminal Law Amendment Act, 1968–69, legalized contraception and also revised section 251 of the Criminal Code so as to partially decriminalize abortion. Under the revised law, the procedure became legal, but only when it was performed in an accredited hospital by a licensed physician and only after a Therapeutic Abortion Committee consisting of at least three doctors had determined that the pregnancy endangered either the life or the health of the pregnant woman.[51]

As noted earlier, despite women’s active investment in legal changes, much of the impetus behind the 1969 amendments arose from a desire to clarify the circumstances under which physicians could legally perform an abortion.
While the amendments to the Criminal Code did liberalize the existing law, from the standpoint of women access to abortion was still quite restricted. The new law also did nothing to end the public discussion of abortion. If anything, the law was a turning point that initiated the deepening polarization of those for and against the legalization of abortion.

The New Law: Ideological Divides and Practical Difficulties

Although the new law may have satisfied politicians and physicians, Canadians who supported either greater access or no access to abortion were unhappy with the changes. Those who found the new abortion law to be inadequate responded quickly to Bill C-150. The May 1970 Abortion Caravan, the first national pro-choice protest in the country, clearly demonstrated many women’s rejection of the 1969 law. Originating in Vancouver under the direction of the Vancouver Women’s Caucus, the Abortion Caravan travelled across the country to Ottawa, stopping in eleven cities along the way to connect with other women’s groups, engage in public education and outreach, and gather supporters for the Ottawa protests. The Caravan culminated in two protests on 11 May 1970 on Parliament Hill—one outside the House, in which protesters circled the centennial flame, and another inside the House, during which thirty-six women, many of whom had chained themselves to their seats in the galleries, shouted “Free abortion on demand!” and ultimately succeeded in causing a temporary adjournment of House proceedings.52

During that weekend of protest, Margo Dunn, a Caravan participant, made a speech about the tools of the illegal abortionist and how each one contributed to the death of Canadian women:

There are garbage bags on top of that coffin. These are used to pack the uterus to induce labor. Since they are not sterile, they often cause massive infection, resulting in sterilization, permanent disability, or death. . . . There are knitting needles on top of that coffin. These are used to put in the vagina in order to pierce the uterus. Severe bleeding results. . . . There is a bottle which is a container of Lysol, on top of that coffin. When used for cleaning, it is in solution. Women seeking to abort themselves inject it full strength into their vaginas. This results in severe burning of tissues, haemorrhage, and shock. Death comes within a matter of minutes. Intense, agonizing pain is suffered until the time of death. . . . There is part of a vacuum cleaner on top of that
coffin. The hose is placed in the vagina in order to extract the fetus, but results in the whole uterus being sucked from the pelvic cavity.\textsuperscript{53}

Dunn’s speech highlighted the fact that the liberalization of the abortion laws did not end illegal abortions. Women wishing to abort for non-medical reasons were still left with little recourse. Some women could afford to travel to the United States, where abortion was already legal in many states (and, after 1973, with \textit{Roe v. Wade}, would be so throughout the country), others were left with no choice but to seek an illegal abortion in Canada.\textsuperscript{54}

At the same time, many were staunchly opposed to any liberalization of the abortion law. In the years leading up to and following the 1969 changes, several anti-abortion organizations came into existence. Many of these groups, which divide their focus between political and educational goals, are still operating: Alliance for Life Canada (ALC), founded in 1968; Toronto Right to Life (TRL), founded in 1971; Campaign Life Coalition (CLC), formed in 1978; and REAL (Realistic, Equal, Active, for Life) Women of Canada, founded in 1983, among others. Although REAL Women has a broader mandate than abortion, the “right to life” position is fundamental to the organization: one of its founders, Gwen Landolt, also founded the TRL and was involved in the creation of the Coalition for Life as well. In 1973 and 1975, national anti-abortion groups petitioned the Canadian Parliament, having collected more than one million signatures opposing the 1969 liberalization of the abortion law. The political silence with which the 1975 anti-abortion petition was received was, in the words of Michael Cuneo, “a watershed in the movement’s history, setting the stage for disillusionment, the growth of extremism, and heightened organizational panic.”\textsuperscript{55} By the early 1980s, Canada’s anti-abortion movement had become a part of a larger “pro-family” movement, which offered deeply conservative critiques of issues such as sex education, feminism, pornography, gay rights, and, especially, abortion.\textsuperscript{56}

Opposition notwithstanding, in the period following the 1969 amendments, it rapidly became evident that “gross inequities existed in the availability of therapeutic abortion to the women of Canada.”\textsuperscript{57} In 1975, following widespread complaints, the federal government established the Committee on the Operation of the Abortion Law, with the goal of determining whether the abortion law was being equitably applied throughout the country. The three-member committee, chaired by University of Toronto professor Robin F. Badgley, tabled its report in January 1977. It found that many hospitals, especially those with religious affiliations, had not established Therapeutic
Abortion Committees at all, and, when such committees did exist, they varied widely in their procedures and overall approach. In particular, in deciding whether continuing a pregnancy posed a threat to a woman's health, committees were left to decide for themselves how to interpret the term health. In short, Canadian women were not guaranteed equal access to abortion, with women living in rural parts of the country especially likely to encounter obstacles because they did not have local access to accredited hospitals.\textsuperscript{58} In addition, significant numbers of women were still leaving Canada to obtain an abortion. Despite the fact that 49,300 abortions were performed in Canadian hospitals in 1975, another 9,700 women travelled to the United States for the procedure.\textsuperscript{59} To make matters worse, the waiting period in Canada for a legal abortion was averaging eight weeks.\textsuperscript{60} Clearly, in both its scope and its application, the new law was failing to address women's needs.

The same year that the Badgley Committee submitted its report, another development occurred that would have a lasting effect on abortion politics in the country. In 1977, the Established Programs Financing Act (EPF) altered the arrangement whereby the federal government transferred funds to provinces to help cover the cost of both health care and post-secondary education (the “established programs” referred to in the act), responsibility for which lay with individual provinces. Formerly, funding had been provided on a cost-sharing basis, with certain conditions attached to the award of federal funds. The EPF instead introduced a set formula, which operated on a per capita basis: provinces would receive a standard amount of funding (in the form of a percentage of federal tax revenues, supplemented by cash grants) for each resident of the province. This funding was, moreover, unconditional: no mechanism existed whereby the government could withhold funds should a province fail to provide specific services. In other words, the EPF represented a move toward decentralization, in which the provinces were allowed considerable latitude in the delivery of health services. Thus, while the new funding model guaranteed provinces a steady supply of federal funds, it also aggravated the problem of procedural inconsistencies and inequities in access.

The Canada Health Act (CHA), passed in 1984, was intended, in part, to address this problem, by imposing some degree of uniformity on the health care plans offered by individual provinces. According to section 3 of the CHA, Canadian health care policy has as its primary goal “to protect,
promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers.” To this end, the act specified five criteria that provincial health plans must meet in order to be eligible for federal funding.61 In the words of a subsequent parliamentary report, the CHA sought to ensure that “every Canadian has timely access to all medically necessary health services regardless of his or her ability to pay for those services.”62 The act does not, however, explicitly define what constitutes a “medically necessary” health service; rather, provinces are left to decide precisely which health services will be insured.63 Given that, in 1984, abortions could legally be performed only in a hospital, after a Therapeutic Abortion Committee had certified that the procedure was necessary to preserve the life or health of the mother, any legal abortion would, by definition, be medically necessary. This situation would change, however, only four years later.

“Fighting for Fundamental Justice”: Dr. Henry Morgentaler

One of the voices advocating for reform of the abortion law during the 1960s was that of Dr. Henry Morgentaler. Like many others, Morgentaler was dissatisfied with the restrictions imposed by the 1969 amendments to section 251 of the Criminal Code. In response, he began publicly defying that law in order to underscore the need for further liberalization. Morgentaler was by no means the only physician who was willing to perform abortions during the time that they were illegal. What separated Morgentaler from other physicians, at least during the 1960s and 1970s, was his openness about his illegal activities.

Morgentaler began his career in medicine in Montréal in 1953 as a general practitioner, but he focused increasingly on the reproductive health needs of his patients. He was a member of the Humanist Association of Canada, and it was as a representative of that organization that he first spoke out publicly about abortion, before the Standing Committee on Health and Welfare on 19 October 1967. Born in Poland in 1923, Morgentaler survived imprisonment in Auschwitz and Dachau, an experience, he said, that led to his later advocacy for women’s right to an abortion: “I was sensitized to injustice and when I was in a position to do something about it, I felt it was a duty to do so, at whatever risk there was. I had a feeling I was fighting for fundamental justice.”64 After his speech in front of the Standing Committee, he was increasingly contacted by women across Canada in search of a safe abortion.
In 1968, Morgentaler abandoned his general practice and instead focused on abortion provision at his private clinic in Montréal. The police arrested him for the first time on 1 June 1970. In December 1973, in an article published in the *Canadian Medical Association Journal*, Morgentaler reported on the more than five thousand abortions he had performed using vacuum suction curettage—a technique, he argued, that could replace the traditional method of dilation and curettage used in most hospitals. Whereas dilation and curettage required general anesthesia, vacuum suction curettage could be performed under local anesthesia, which meant that abortions could be performed in clinics or doctors’ offices, thereby freeing up hospital beds.65

In the period from 1973 to 1976, Morgentaler was tried on three separate occasions; each time he was acquitted by a jury. Following his first acquittal, the Province of Québec appealed the decision, and, in 1974, the Québec Court of Appeal went so far as to overturn a decision made by a jury and substitute a guilty verdict. After an unsuccessful appeal to the Supreme Court of Canada, Morgentaler began serving an eighteen-month prison term. However, in response to the unprecedented action taken by the Québec Court of Appeal, in 1975, the Government of Canada passed the so-called Morgentaler Amendment, which states that a court of appeal cannot substitute a conviction for a jury acquittal; rather, if the appeal court overturns a jury acquittal, the case must be returned to trial court. At two subsequent trials, the first in 1975 (while he was still in jail) and the second in 1976, Morgentaler was again acquitted by juries.66

This series of acquittals strongly suggests the degree to which the abortion law was out of touch with social attitudes in Québec, which had been transformed by the Quiet Revolution of the 1960s—a decade that, among other things, saw the founding of family planning associations in the province. In the early 1970s, however, despite the recent amendments to the federal law, access to abortion remained scarce in Québec, with the vast majority of legal abortions performed in anglophone hospitals, and a full four out of five taking place at Montreal General.67 Almost immediately after the federal law was amended, numerous groups throughout the province began agitating for improved access to abortion. These included the Fédération du Québec pour le planning des naissances, founded in 1972, which joined in the protests against Morgentaler’s 1974 conviction. In November 1976 (roughly two months after Morgentaler’s third acquittal), the Parti Québécois came to power. In defiance of federal law, the new government quickly granted
immunity from prosecution to all doctors qualified to perform abortions, regardless of the circumstances under which the procedure was carried out. Although abortions continued to be performed in hospitals in accordance with federal law, legal action could no longer be brought against physicians, such as Morgentaler, who provided abortions in clinics or private offices and without the prior approval of a Therapeutic Abortion Committee.68

Despite the newly supportive environment in Québec, Morgentaler was not finished challenging Canada’s abortion law. In 1983, along with two colleagues, Dr. Robert Scott and Dr. Leslie Frank Smoling, Morgentaler opened an abortion clinic in Toronto with the intention of challenging the abortion law in Ontario. That same year, the Toronto police raided the clinic and charged the doctors with illegally providing abortions. When, in 1984, a jury acquitted the doctors, the Ontario government appealed the decision. The Ontario Court of Appeals ordered a retrial, and Morgentaler appealed that decision to the Supreme Court of Canada. In 1982, however, just a few years before this case began its journey through the court system, the Canadian Charter of Rights and Freedoms had been adopted, providing crucial support for Morgentaler’s fight and, more importantly, for Canadian women generally. According to section 7 of the Charter, “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” In January 1988, the Supreme Court of Canada declared, in R. v. Morgentaler ([1988] 1 S.C.R. 30), that section 251 of the Criminal Code violated section 7 of the Charter, arguing that the law infringed upon a woman’s right to security of the person and that the procedures whereby women were deprived of this right did not accord with fundamental justice. The Court further argued that the infringement of this right could not be justified under section 1 of the Charter, which guarantees that the rights it lays out will be “subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.” By striking down the 1969 law, the Supreme Court created an opening for new abortion legislation.69

Although Morgentaler’s name stands out in history, it is important to remember that he was far from alone in his struggles. During the 1970s and early 1980s, a number of abortion rights groups fought, often alongside Morgentaler, to have abortion fully legalized. The Canadian Association for Repeal of the Abortion Law (CARAL), founded in 1974 to protest Dr. Morgentaler’s incarceration for performing abortions, focused its efforts
on overturning the abortion law, providing both political and fundraising support to Morgentaler’s own efforts. In 1980, the organization adopted a new name, the Canadian Abortion Rights Action League, and, two years later, narrowed its mission to political activism, moving its educational and research activities into a separate organization, the Childbirth by Choice Trust. Provincial and local chapters of CARAL quickly spread across the country. Similarly, the Ontario Coalition for Abortion Clinics (OCAC) was established, in 1982, with the specific goal of helping Morgentaler fight for legal abortion in the province. In addition to raising funds to aid Morgentaler’s legal challenges to the abortion law, both CARAL and OCAC worked to shift public opinion so as to broaden support for the unconditional decriminalization of abortion. For example, OCAC organized a number of “abortion tribunals” throughout the 1970s and 1980s to highlight the ways in which the law was unresponsive to women’s needs. Through petitions, protests, and public education campaigns, the women in these organizations—women like Judy Rebick, Carolyn Egan, and Norma Scarborough—contributed to a greater awareness of the issues at stake in the struggle for access to abortion. While, until 1988, legal and political challenges to the law remained the primary focus of activism, these same women, and others, would go on to speak out against efforts to recriminalize abortion and to defend women’s right to control their reproductive lives.

Retrenchment: The Reaction from the Right

Canada has been without an abortion law since the Supreme Court’s 1988 decision, yet women continue to struggle for accessible, affordable, and safe abortions. Although a province cannot outlaw abortion, it can, under the Canada Health Act, refuse to fund it by arguing that it is not a medically necessary service unless certain conditions are met. Thus, in response to the Supreme Court’s ruling, a number of provinces quickly moved to limit access to abortion. While the legal backlash was by no means limited to the Maritimes, it was especially evident there. In 1989, the Nova Scotia government passed a regulation that prohibited abortions unless they were performed in a hospital, although the regulation was subsequently struck down on the grounds that the province was attempting to legislate in the area of criminal law (a federal domain). That same year, New Brunswick amended its Medical Services Payment Act so as to exclude abortion from coverage except when the procedure was performed by a specialist in obstetrics and
gynecology, at an approved hospital, and only after two physicians had certified, in writing, that the abortion was medically necessary. At the time, Newfoundland was home to only a single doctor willing to perform abortions (who later retired), and although a Morgentaler clinic opened in St. John’s in 1990, abortion was not covered by provincial health insurance until 1998. Abortion services had not been available in Prince Edward Island since 1982, and this situation remained in place, with the provincial government signing a resolution, in the wake of the Supreme Court’s ruling, urging the federal government to enact a new abortion law.

Quite apart from the response of individual provinces, attempts have repeatedly been made at the federal level to introduce new legislation limiting access to abortion. In November 1989, less than two years after the Supreme Court’s ruling, Brian Mulroney’s Conservative government introduced Bill C-43, which would have recriminalized abortion except when performed by or under the direction of a physician in whose opinion the woman’s health or life might otherwise be endangered. By substituting the opinion of a single doctor for the earlier review by a Therapeutic Abortion Committee, the bill attempted to circumvent the legal grounds on which the Supreme Court had struck down the 1969 law. Although, in May 1990, the bill managed to pass in the House of Commons, it was ultimately defeated in the Senate, albeit only by a tie vote. In addition, the years since 1988 have witnessed a steady stream of private member’s bills and motions introduced into Parliament, all seeking in some way to curtail access to abortion—the first of them a motion, in June 1987, to amend section 7 of the Canadian Charter of Rights and Freedoms itself.

In addition to legislative challenges, the anti-abortion movement has exerted a significant influence on the political and social landscape surrounding access to and discussions about abortion. One early and continuing manifestation of anti-abortion organizing is the development of crisis pregnancy centres (CPCs), which purport to offer women professional counselling about how to cope with an unplanned pregnancy. Their overriding goal, however, is to deter women from having an abortion. Such centres were first established in Canada in the 1960s as a response by opponents of abortion to the growing public conversation about the need to liberalize abortion laws. One of the first CPCs in Canada was Birthright, founded in Toronto in 1968 by Louise Summerhill. As the mother of seven children herself, Summerhill believed that women needed support with unplanned pregnancies.

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as an alternative to abortion. Although Birthright, which is now an international organization, seeks to adopt “a non-moralistic, non-judgmental approach toward helping women through their pregnancy dilemmas,” and although the organization has no formal religious affiliations and always avoided political engagement with the abortion issue, its “pro-life” orientation is clear from its very name.

In contrast to Birthright, many (and possibly most) CPCs are funded by religious groups that are directly involved with anti-abortion activism. Many CPCs are affiliated with the Canadian Association for Pregnancy Support Services, which describes itself as a “Christ-centered national ministry dedicated to providing support for life and sexual health by partnering with Pregnancy Centres across Canada.” Nor do most CPCs adopt an approach that could reasonably be described as nonjudgmental. For the most part, those who volunteer at CPCs have no formal medical or mental health training, and investigations into such centres reveal that they offer disturbingly inaccurate information about abortion in an effort to steer women away from the idea of terminating an unwanted pregnancy. Such misinformation includes claims for which no scientific support exists, such as the notion that abortion is linked to breast cancer, to a higher risk of miscarriage in future pregnancies, and even to infertility.

The turn toward radicalism of the anti-abortion movement in the United States also had an impact in Canada, especially during the 1990s. Following the Supreme Court’s 1988 decision, the tactics of Operation Rescue, a pro-life organization founded in the United States in 1986, began to be employed in Canada. These tactics included aggressive picketing campaigns outside abortion clinics and an escalation in violence against abortion providers. In May 1992, Morgentaler’s Toronto clinic was fire-bombed, and the 1990s brought several further attacks on abortion providers. On 8 November 1994, Dr. Garson Romalis was shot through a window in his Vancouver home and seriously wounded. A year later, on 10 November 1995, Dr. Hugh Short, of Ancaster, Ontario, was likewise shot and wounded in his home, and, two years after that, on 11 November 1997, a similar attack was made on Dr. Jack Fainman, in Winnipeg. In July 2000, Dr. Romalis was attacked again, this time stabbed and wounded in the lobby of his Vancouver clinic. An American, James Kopp, was convicted in 2003 of the October 1998 murder of Dr. Barnett Slepian—who was also shot through a window in his home, in a suburb of Buffalo, New York—is strongly suspected in the shootings.
of Romalis, Short, and Fainman as well. Although violence has subsided in recent years, abortion opponents persist in their efforts to recriminalize abortion through such events as the annual national pro-life march in Ottawa, media and poster campaigns, and the continued picketing of clinics.

A Precarious Victory: Abortion Rights Today

What does abortion in Canada look like today? Statistics provide some idea of the frequency of abortion and also hint at certain patterns surrounding access to abortion services. Even though about 80 percent of Canadian women use contraception of some sort, a significant proportion (perhaps somewhere around 40 percent) of all pregnancies in Canada are unplanned, with the annual abortion rate estimated to range between 12 and 16 abortions per 1,000 women of reproductive age. According to data compiled by the Canadian Institute for Health Information, 81,897 abortions were performed in Canada in 2014, although this number includes only those performed at hospitals and clinics (and thus omits abortions carried out in a doctor’s office). Of these 81,897 women, three in five were under the age of thirty: 11.1 percent were 19 years old or younger; 27.9 percent were aged 20 to 24 years; and 22.5 percent were 25 to 29 years. Of the remainder, 17.0 percent were 30 to 34 years, and 15.3 percent were 35 or older, with the age of the other 6.2 percent unknown. Abortion is not only a commonplace medical procedure but a remarkably safe one, with 97.7 percent of women reporting no complications. In Canada, roughly three-quarters of all abortions are performed during the first trimester; only a very small percentage occur after twenty-one weeks and always in response to significant genetic or health concerns. Statistics like these are illuminating, but they tell us little about the women who are choosing abortion or about how they arrive at the decision to terminate a pregnancy. This gap in our knowledge is one of the reasons why it is so important for women to share their abortion stories. And yet, while we may not know the individual stories, we do know that, in 2014, there were at least 81,897 reasons not to recriminalize abortion.

At the same time, access to abortion services continues to vary widely across the country and is especially poor in rural areas, in the Atlantic provinces, and in Northern communities. And, of course, the anti-abortion movement remains a source of concern. In recent years, the movement has developed new strategies, which have included an unapologetic effort to appropriate the history of the abortion rights movement for their own...
purposes. The 2012 “New Abortion Caravan,” orchestrated by the Canadian Centre for Bio-ethical Reform (CCBR), sought to mimic the 1970 Abortion Caravan that challenged the restrictions imposed by the 1969 amendments to the abortion law. The CCBR expressed the goals of the New Abortion Caravan in this way: “The New Abortion Caravan will signal the beginning of the end of Canada’s greatest human rights violation: the wholesale, state-funded slaughter of the youngest members of our society.” Retracing the steps of the original Caravan, the group sought to make “the victims of Canada’s abortion holocaust visible to the entire country” by displaying graphic images of the alleged victims of abortion at stops throughout its cross-country tour.

Unsurprisingly, the New Abortion Caravan garnered much attention from the media—and, as many observers have noted, anti-abortion extremists, despite reflecting the views of a minority, arguably receive a disproportionate share of media coverage. They also appear to be well funded, and not only by religious organizations within Canada. According to one report, “Research on tax filings and joint ventures of charitable organizations show support for Canada’s pro-life movement from Catholic groups in the United States, as well as increasing support for the cause among MPs aligned with religious organizations.”

From 2006 until 2015, anti-abortion advocates hoped to find legislative support from the Conservative government of Stephen Harper. The election of the Conservative Party in February 2006, after more than a dozen years of Liberal rule, was a cause for great concern among abortion rights supporters. Although Harper had vowed not to reopen the abortion debate, it was not long before new private member bills were put forward in Parliament. Among the more notable of these were Bill C-338, first introduced in June 2006, which would have criminalized abortion after twenty weeks of gestation, and Bill C-484, the “Unborn Victims of Crime Act,” introduced in November 2007, which sought to criminalize any attempt to “injure, cause the death of or attempt to cause the death of a child before or during its birth while committing or attempting to commit an offence against the mother.”

Harper reiterated his promise not to reopen the abortion debate in April 2011, not long before the federal election, when his party was still a minority government. That situation changed the following month, when the Conservatives won a majority in the House of Commons. On 6 February 2012, the Conservative MP for Kitchener, Ontario, Stephen Woodworth, introduced Motion 312, which called for the creation of a House committee
“to review the declaration in Subsection 223(1) of the Criminal Code which states that a child becomes a human being only at the moment of complete birth.” Pro-choice Canadians were quick to respond to the bill with a coordinated campaign, spearheaded by the Abortion Rights Coalition of Canada; the campaign included petitions, postcards, and protests against reopening any discussions on abortion. On 26 September 2012, Motion 312 was defeated by a vote of 202 to 91.

Although that bill died, Conservative MP Mark Warawa introduced a new anti-abortion bill, Motion 408, the very next day. Motion 408, which sought to outlaw sex-selective abortion, illustrates another recent tactic of those who would recriminalize abortion: the attempt to portray themselves as champions of women—and, more generally, to temper their language and style of argument in order to appear more moderate. Supporters of Motion 408 thus claimed that their main interest lay in preventing discrimination against females—meaning, of course, female fetuses. In fact, such legislation would have the effect of targeting women in certain ethnic groups, thereby promoting discrimination, an issue that H. Bindy K. Kang explores later in this collection. In short, despite their consistent lack of legislative success, those in the anti-abortion movement are not likely to abandon their efforts to sway public opinion, in hopes of tipping the balance.

The face of pro-choice organizing has also changed significantly since the turn of the twenty-first century. In 2004, CARAL disbanded, and a new organization, Canadians for Choice, was launched, with a focus not on political activism but on education and research. The following year saw the founding of a new national activist organization, the Abortion Rights Coalition of Canada / Coalition pour le droit à l’avortement au Canada, which has taken over where CARAL left off. In 2014, Canadians for Choice joined forces with two other reproductive rights groups to form Action Canada for Sexual Health and Rights / Action Canada pour la santé et les droits sexuels, an organization that combines advocacy with education in all areas of reproductive health.

Canadian abortion rights organizations currently face several significant challenges, however. One is complacency. Canadians who favour abortion rights are, for the most part, not active in pro-choice organizing. Despite surveys suggesting that support for unrestricted access to abortion is not quite as overwhelming as we might like to believe, the assumption seems to be that the issue is resolved, perhaps because opponents of abortion have
(so far) failed in their efforts to recriminalize abortion. The activist base is therefore relatively small and tends to be reactive rather than proactive on the issue of abortion access, mobilizing more on an ad hoc basis, in response to threats. Another challenge is chronic underfunding, which may reflect the same assumption that the victory has already been won. In 2014, for example, lack of funding forced the Canadian Women’s Health Network to suspend its operations. In contrast, as noted above, the anti-abortion movement in Canada receives funding from various faith-based organizations, as well as from individual donors sympathetic to the cause and, at least to some extent, from groups in the United States. In addition, the abortion rights movement in Canada is in the process of shifting toward a reproductive justice framework, the meaning of which is very much a work in progress.

The movement has also had to contend with the death of Dr. Henry Morgentaler, on 29 May 2013. Although the role of Morgentaler as the face of the “pro-choice” movement has been overstated in the media, his death did have its impact, at least temporarily. In July 2014, the Morgentaler Clinic in Fredericton, New Brunswick, was forced to close because the province provided no funding for abortions performed at clinics, and, without contributions from Morgentaler himself, the clinic could not afford to stay open. Before it closed, the clinic was performing some 60 percent of the province’s abortions, approximately six hundred per year. Following a fundraising campaign by reproductive justice activists in the province, the clinic reopened as Clinic 554 in 2015, restoring clinic abortions to the province. These same reproductive justice activists made the issue of abortion access a central focus of the September 2014 provincial election. As noted earlier, New Brunswick had, in 1989, altered its health plan so as to place draconian restrictions on abortions eligible for provincial funding. Liberal leader Brian Gallant was elected on a promise that he would review that policy, with a view to removing barriers to access. As of January 2015, New Brunswick eliminated two of the three restrictions: the province no longer requires that two doctors provide prior certification that an abortion is medically necessary, and abortions can now be performed by doctors who are not specialists in obstetrics and gynecology. However, to qualify for provincial funding, an abortion must still be performed in a hospital, not in a clinic.

Two further developments should soon improve abortion access not only in PEI but across the nation as a whole. In July 2015, Health Canada finally
approved the use of the abortion drug RU-486 to terminate pregnancies, although only up to the end of the seventh week of gestation. The drug, to be sold in Canada under the name Mifegymiso, will be available by prescription only, at an estimated cost of $270, and will be administered under medical supervision. Despite these restrictions, the availability of the drug should improve access to abortion for those who live at some distance from a hospital or clinic that provides abortions. In addition, women using the drug will be spared the experience of having to cross anti-abortion pickets in order to enter a clinic. Additionally, in March 2016, in response to a legal challenge launched by an abortion rights group on the island, the PEI government announced that abortion services would be available on the island by the end of the year. The province was responding to a legal challenge launched by Abortion Access Now, which, two months earlier, had notified provincial authorities of its intention to file a lawsuit charging the PEI government with violating the Charter of Rights and Freedoms. Liberal Premier Wade MacLauchlan acknowledged that the PEI government would almost certainly have been unable to defend its prohibitive provincial legislation against such a charge. Abortion Access Now credits the work of abortion rights activists in helping to create an environment that made change a necessity, observing that “this outcome would not have been possible without the tremendous efforts of the activists in P.E.I. who have tirelessly advocated for abortion access in the province over the last three decades.”

The October 2015 federal election saw a majority win for Justin Trudeau’s Liberal Party. After assuming party leadership in 2013, Trudeau made it clear, in June 2014, that “every single Liberal MP will be expected to stand up for women’s rights to choose” and that those who had previously opposed abortion and were returned to office in the upcoming election would be obliged to vote pro-choice on any subsequent legislation concerning abortion. He has, since becoming prime minister, repeatedly referred to himself as a feminist. It remains to be seen, however, whether his political stance and self-identification will translate into ensuring that women not only have unfettered access to abortion but also the resources they need to make meaningful choices. Certainly, for those of us who advocate for reproductive rights and, indeed, for reproductive justice, the defeat of the Harper Conservatives was a welcome outcome—but a more sympathetic governing party does not automatically guarantee greater rights or improved conditions. It is not merely a matter of safeguarding the rights that we have: we must work to
improve access to abortion all across the country and to ameliorate the structural conditions that make genuine choice impossible.

Notes


6 On these legal developments, see Constance Backhouse, “Involuntary Motherhood: Abortion, Birth Control and the Law in Nineteenth-Century Canada,” 67–71. Prince Edward Island, however, retained its original law, which included both the quickening distinction and capital punishment, until 1877, when federal criminal law was extended to the island.

7 Backhouse, “Involuntary Motherhood,” 70. Courts were reluctant to trust a woman’s own testimony in this matter (assuming that she had survived the abortion), especially when the punishment for post-quickening abortions was death. Instead, early-nineteenth-century courts tended to rely on a “jury of matrons” consisting of twelve married women of good character to determine whether a woman had quickened, supplemented, as need be, by the opinion of a physician. See Gavigan, “Criminal Sanction,” 34–35; and Backhouse, “Involuntary Motherhood,” 67, 75.


12 See Canada, Criminal Code, 1892. Only in 1954 was section 273 amended such that charges could be laid against a woman only if the she had, in fact, been pregnant. McLellan, “Abortion Law in Canada,” 333–34.

13 Backhouse, “Involuntary Motherhood,” 75.

14 See Backhouse, “Involuntary Motherhood,” 82–85. As Backhouse explains, “If the abortion laws were primarily considered to be a method of regulating the practice of medicine, it should not be surprising that they were predominantly enforced against the individuals who were providing the medical services, rather than against the patient, who was merely the recipient of the treatment” (85).

15 See Backhouse, “Involuntary Motherhood,” 76–82, and Petticoats and Prejudice, 142–43. On professionalization, see also Michael McCulloch, “Doctor Tumbltley, the Indian Herb Doctor: Politics, Professionalism, and Abortion in Mid-Nineteenth-Century Montreal.”

16 On the decline in fertility rates, see McLaren and McLaren, Bedroom and the State, 17–22.

17 Backhouse, “Involuntary Motherhood,” 76, 80. Although physicians spoke out vehemently against abortion, Backhouse found no evidence that they expressed similar outrage about a considerably more common occurrence, namely, infanticide. Unlike abortion, however, infanticide was practiced chiefly by lower-class women and thus “would not have fueled the doctors’ fears about the declining fertility rate of the ‘better classes.’” Moreover, given that women did not require medical assistance in order to kill an infant, doctors did not have to worry about competition from “irregular” practitioners. As considerations such as these illustrate, objections to abortion did not arise from concerns for the welfare of the fetus. See Backhouse, “Involuntary Motherhood,” 79.


20 Backhouse, Petticoats and Prejudice, 147. Backhouse argues that a woman would not so much have perceived herself as pregnant but would have noticed that her period was “irregular” and undertaken
various actions (pills, vigorous exercise, hot baths) to restore her period (146–47). For other historical accounts of abortion during its period of illegality, see Backhouse, “Physicians, Abortions, and the Law in Early Twentieth-Century Ontario,” and “The Celebrated Abortion Trial of Dr. Emily Stowe, Toronto, 1879.”


24 Penny, “Getting Rid of My Trouble,” 82. Herbs and drugs used included tansy, pennyroyal, cotton root, oil of cedar, and ergot of rye. See also McLaren and McLaren, Bedroom and the State, 34–35.


28 Klausen, “Doctors and Dying Declarations,” 60.


32 Penny, “Getting Rid of My Trouble,” 53–62. Examples of physicians performing abortions despite restrictive abortion laws can be found throughout the nineteenth and twentieth centuries. See, for example, Carole Joffe, Doctors of Conscience: The Struggle to Provide Abortion Before and After Roe v. Wade; and Childbirth by Choice Trust, No Choice: Canadian Women Tell Their Stories of Illegal Abortions.

33 Regarding the influence of Sanger and Stopes in Canada, see McLaren and McLaren, Bedroom and the State, 54–91. On eugenics, see Erika Dyck, Facing Eugenics: Reproduction, Sterilization, and the Politics of Choice.

35 For an account of the Palmer trial, see Gerald Stortz and Murray E. Eaton, “‘Pro Bono Publico’: The Eastview Birth Control Trial.”
37 Keown, Abortion, Doctors, and the Law, 53. As Keown goes on to argue, “That the defence was not raised until R. v. Bourne is due less to doubts as to its validity than to the reluctance of prosecutors to question medical discretion” (53).
39 On the Bourne precedent, see Jenson, Getting to Morgentaler, 24–25; and Gavigan, “On ‘Bringing on the Menses,’” 307. As Gavigan notes, Bourne charged no fee for performing the abortion, and he performed it openly, so as not to evade prosecution. As a result, he could not be accused of felonious intent. But prevailing social attitudes, influenced by notions grounded in eugenics, also played a part. Bourne believed the girl to be ordinary and decent: “Had she been ‘feebleminded’ or ‘of a prostitute mind,’” Gavigan argues, “her mental health, in Aleck Bourne’s judgment, would not have been adversely affected and she would not have been entitled to the abortion” (308). In other words, it was important that the young girl be the “right” kind of patient.
41 In 1970, the Royal Commission on the Status of Women in Canada reported that estimates of the number of illegal abortions in Canada ranged from 30,000 to 300,000 a year. Citing a Québec study, which put the figure at 10,000 to 25,000 annually in that province, the commissioners indicated that, for Canada overall, the figure would be 40,000 to 100,000 illegal abortions annually. If the latter figure were correct, this would mean that one in five pregnancies was ending in an illegal abortion. As

42 For an analysis of these developments, see Cynthia R. Comacchio, *Nations Are Built of Babies: Saving Ontario’s Mothers and Children, 1900–1940*. As Comacchio argues, seeking to address problems such as infant mortality and the risks associated with childbirth, the medical profession, with the backing of the state, promoted a “scientific” approach to motherhood that, among other things, effectively elevated (mostly male) doctors into the position of experts on mothering. On the evolution of physicians’ attitudes toward abortion in particular, see Tracy Penny Light, “Shifting Interests: The Medical Discourse on Abortion in English Canada, 1850–1969.”

43 See Brenda Margaret Appleby, *Responsible Parenthood: Decriminalizing Contraception in Canada*.

44 For further discussion, see Stettner, “Women and Abortion in English Canada,” 62–137.

45 See Appleby, *Responsible Parenthood*, 19–36, 201–21. The four bills were C-22 and C-64, which pertained to exemptions from prosecution for social workers and health care personnel who distributed contraceptives, and C-40 and C-71, which aimed to remove the words “preventing conception” from the relevant section of the Criminal Code. Bill C-40, introduced by Liberal Ian Wahn, additionally sought to liberalize the abortion laws.

46 Quoted in Melissa Haussman, “‘What Does Gender Have to Do with Abortion Law?’ Canadian Women’s Movement–Parliamentary Interactions on Reform Attempts, 1969–91,” 131.


48 Library and Archives Canada (hereafter LAC), Royal Commission on the Status of Women in Canada fonds, RG 33/89, vol. 8, file: Letters of Opinion—Alberta. See also Shannon Stettner, “‘He Is Still Unwanted’: Women’s Assertions of Authority over Abortion in Letters to the Royal Commission on the Status of Women in Canada.”


51 These changes were contained in sec. 16 of the Criminal Law Amendment Act, 1968–69 (S.C. 1968–69, c. 38), which amended section 237 of the 1953–54 version of the Criminal Code (which became section 251 in the 1970 version). On these amendments, see Appleby, *Responsible Parenthood*, 87–197.
For more on the Caravan, see Frances Wasserlein, “‘An Arrow Aimed at
the Heart’: The Vancouver Women’s Caucus and the Abortion Campaign,
Operations: The Vancouver Women’s Caucus, the Abortion Caravan, and
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complete report, see Robin F. Badgley, Report of the Committee on the
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PDF/C-6.pdf. The five criteria—public administration, comprehensiveness,
universality, portability, and accessibility—are described in sections 7 to 12
of the act. According to section 12 (1) (a), in order to satisfy the criterion
of accessibility, provinces must provide for insured health services on
uniform terms and conditions and on a basis that does not impede or preclude, either directly or indirectly whether by charges made to insured persons or otherwise, reasonable access to those services by insured persons.” The act offers no definition of “reasonable” access, however.


63 As defined in the act, neither “universality” nor “comprehensiveness” refers to the range of services offered by a given province. The former demands that provincial health plans cover everyone who lives in the province (section 10). The latter stipulates only that provincial health insurance plans “must insure all insured health services provided by hospitals, medical practitioners or dentists, and where the law of the province so permits, similar or additional services rendered by other health care practitioners” (section 9). In section 2, “insured health services” are defined simply as “hospital services, physician services and surgical-dental services provided to insured persons,” with these three sets of services then defined in terms of medical necessity. “Physician services” are, for example, “any medically required services rendered by medical practitioners.”

64 Henry Morgentaler, Sam Solomon, and Gillian Woodford, “The Interview: The Morgentaler Decision Turns Twenty.” Morgentaler’s father was killed by the Gestapo during the German occupation of Poland; his mother died in Auschwitz, and his sister at Treblinka.

65 Henry Morgentaler, “Report on 5,641 Outpatient Abortions by Vacuum Suction Curettage.” As Morgentaler noted, complication rates were extremely low, with only twenty-seven patients (0.48%) requiring hospitalization.

66 For a useful discussion of these cases, see McLellan, “Abortion Law in Canada,” 335–37.


68 Dunn et al., Focus on Abortion Services, 15.

69 For a discussion of the three majority opinions and one dissenting opinion in Morgentaler, see Karine Richer, “Abortion in Canada: Twenty Years After R. v. Morgentaler,” 2–4.

examination of the campaigns surrounding Morgentaler’s own activism, see Catherine Dunphy’s 1996 biography, *Morgentaler: A Difficult Hero.*

71 See Johnstone, “Politics of Abortion in Canada After Morgentaler,” 129–30. Morgentaler reacted to the Nova Scotia regulation by opening an abortion clinic in Halifax. He was duly charged by the province but acquitted, first by a provincial judge (in 1991) and, following a provincial appeal, ultimately by the Supreme Court (in 1993).

72 Ibid., 86 (and see 83–87 for the legal situation in New Brunswick at the time). The regulation remained in force until the start of 2015. A similar situation developed in British Columbia when, immediately following the Supreme Court’s ruling, Premier Bill Vander Zalm—a staunch “pro-lifer”—attempted to cut off funding for abortions. The reaction in BC was rather different, however, and Vander Zalm was obliged to back down. See Shelley A. M. Gavigan, “Morgentaler and Beyond: Abortion, Reproduction, and the Courts,” 141.

73 Gavigan, “Morgentaler and Beyond,” 140–45.


75 See Janine Brodie, “Choice and No Choice in the House,” 66–70. The bill passed in the House of Commons by fairly slim majority: 140 to 131. The Senate vote was 43 to 43.


77 Cuneo, *Catholics Against the Church,* 9–10.


80 Jessica Shaw, “Abortion as a Social Justice Issue in Contemporary Canada,” 11. Shaw reports having been told, for example, that if she had an abortion, she would be drawn to abusive men in the future, as she would subconsciously know that she deserves punishment, and would be likely to
turn to drugs or alcohol. See also Joyce Arthur, *Exposing Crisis Pregnancy Centres in British Columbia*, esp. 3–4; Joyce Arthur et al., *Review of “Crisis Pregnancy Centre” Websites in Canada*; and Shannon Stettner, “Crisis Pregnancy Centers.”


83 Canadian Institute for Health Information, *Induced Abortions Reported in Canada in 2014*, Table 1: Number of Induced Abortions Reported in Canada in 2014, by Province/Territory of Hospital or Clinic and Age Group. Percentages are calculated from the hard numbers.

84 Ibid., Table 8: Number and Percentage Distribution of Induced Abortions Reported by Canadian Hospitals (Excluding Quebec) in 2014, by Complication Within 28 Days of Initial Induced Abortion.

85 Ibid., Table 4: Number and Percentage Distribution of Induced Abortions Reported by Canadian Hospitals (Excluding Quebec) in 2014, by Gestational Age. According to these figures, 75.1% of abortions took place within the first sixteen weeks of pregnancy (29.2% under 8 weeks; 39.0% from 9 to 12 weeks; and 6.9% from 13 to 16 weeks). Only 3.4 percent occurred in the range of 17 to 20 weeks, and 2.4 percent at 21 weeks or beyond. (For the remaining 19.0 percent, the gestational age was unknown.) See also “Facts and Figures on Abortion in Canada.”

86 For an analysis of these inequities and the multiple burdens they place on women seeking abortions, see Christabelle Sethna and Marion Doull, “Spatial Disparities and Travel to Freestanding Abortion Clinics in Canada.” See also Howard A. Palley, “Canadian Abortion Policy: National Policy and the Impact of Federalism and Political Implementation on Access to Services.”


91 On the shift in discursive strategies evident in both Motion 408 and Motion 312, see Paul Saurette and Kelly Gordon, “Anti-abortion Movement Rebrands Itself,” Toronto Star, 12 January 2013. See also Jane Cawthorne’s chapter in this volume, for an examination of “third way” tactics in relation to the New Abortion Caravan.


93 An Ipsos poll, taken between 22 January and 5 February 2016, found that roughly six in ten Canadians (57%) feel that abortion should be permitted whenever a woman decides she wants one, while very few (3%) are opposed to abortion under any circumstances whatsoever. At the same time, 21 percent believe that abortion should be permitted only in certain situations (such as pregnancies resulting from rape), and another 8 percent believe abortion should not be permitted except to save the life of the mother. Although the poll rightly identified Canada as one of the “most


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