



Position Paper # 3

Clinic Funding – Overview of Political Situation

Although the Supreme Court of Canada struck down restrictions against abortion in 1988, Canadian women and transgender people still confront barriers to access. While the legality of abortion is determined by the federal government, provinces and territories are responsible for administering and funding abortion services, resulting in discrepancies in funding.

Abortion has been deemed to be a medically necessary procedure under the federal *Canada Health Act*. This means it should be available in every province and territory, and paid for by provincial health care, regardless of whether the abortion is performed in a clinic or a hospital. In 1995, the federal government required provinces to fund private clinics doing medically necessary procedures, designating them as “hospitals” under the Act.

However, the pro-choice movement has had to fight battles in almost every province over the last two decades to obtain funding for private clinics:

- BC, Alberta, and Newfoundland complied with funding requirements for private clinics in the early to mid 1990’s (due to the Morgentaler decision and/or the 1995 federal directive to fund private clinics).
- New Brunswick is still a hold out, and Ontario does not fully fund some clinics (see below for more info).
- Nova Scotia and Manitoba experienced funding battles but no longer have private clinics. The NS clinic funding battle was lost and the clinic closed, but MB began funding a clinic in 2004, which later closed.
- Saskatchewan and the territories never had private clinics. In these areas, abortions are still only available to women in a limited number of hospital-based clinics, although some doctors and medical clinics are increasingly providing medical abortion.
- Quebec finally started funding private clinics in 2006 after a court challenge.
- Prince Edward Island (PEI) had no services at all until January 2017, which are now funded as part of a new women’s health centre at the Summerside hospital, created after the province was threatened with a lawsuit.

The failure of New Brunswick and Ontario to pay or fully pay for the procedure in clinics contravenes the *Canada Health Act*. (To learn more about why abortions performed at private clinics must be funded under the Act, see our Position Paper #2, *Abortion Clinics Must Be Fully Funded under the Canada Health Act*).

Ontario

Some clinics in Ontario are fully funded, while others are not. The previous NDP Bob Rae government only funded the five Toronto clinics that existed around 1990, as well as the Ottawa Morgentaler Clinic. They were funded as “Independent Health Facilities,” a Liberal program that was completed by Rae’s NDP government. Since then, several more abortion clinics have opened, but as they fell outside the IHF program, they weren’t funded. These non-funded clinics include the Brampton Women’s Clinic, Mississauga Women’s Clinic, and Women’s Care Clinic in Toronto. However, patients pay only the costs that are apart from the doctor’s fee, which is paid by OHIP.

But the Ontario clinics **should be fully funded** by the Ontario Ministry of Health. The 1995 clarification to the *Canada Health Act* by Health Canada instructed all provincial/territorial Health Ministers to fully fund any private clinic doing medically required procedures, and that user fees charged directly to the patient were illegal. The Progressive Conservative government under Mike Harris did not abide by these requirements, and Ontario has been violating the *Canada Health Act* ever since.

The rest of this paper gives a timeline of events in Canada related to funding abortion clinics in New Brunswick, Quebec, and Prince Edward Island.

New Brunswick

June 1994 - Dr. Henry Morgentaler opens his clinic in Fredericton, New Brunswick. The province immediately invokes legislation that prohibits doctors from performing abortions outside an approved medical facility, and decrees that abortions will only be covered under Medicare if they are done at hospitals with the written approval of two doctors (*Regulation 84-20, Schedule 2 (a.1) of the Medical Services Payment Act*). The NB College of Physicians and Surgeons restricts Dr. Morgentaler's license.

Sept 1994 - NB's Court of Queen’s Bench rules that the province has no right to restrict abortions to hospitals. NB appeals, and in Jan 1995, the NB Court of Appeal upholds the lower court ruling. In August, the Supreme Court refuses to hear NB's further appeal.

July 1999 - New premier Bernard Lord denies funding for the Morgentaler clinic, after a request from Dr. Morgentaler for the premier to uphold the *Canada Health Act*.

Sep 2002 - Dr. Henry Morgentaler announces plans to sue New Brunswick for not funding abortions at his clinic. Dr. Morgentaler criticizes federal Health Minister Anne McLellan for not using federal funding power to force the provinces into line.

Oct 2002 - MacLellan announces that the federal government is prepared to withhold transfer payments to New Brunswick if it continues to refuse to fund abortions at the Fredericton clinic.

Jul 2003 - Dr. Henry Morgentaler launches a lawsuit against New Brunswick, claiming that women are being denied fair access to abortions because the province only pays for abortions in hospitals with the approval of two doctors.

Aug 2003 - The government files a statement of defense, saying funding abortions in private clinics would create an "unnecessary financial burden;" that medically necessary, Medicare-funded abortions are provided at several hospitals in the province; and that access would not be "meaningfully enhanced" by extending funding to abortions at the Morgentaler clinic. (But only one hospital in NB provides the bulk of funded abortions in the province, with no access at all in the eastern part of the province.)

Oct 2004 - Federal Health Minister Ujjal Dosanjh launches new talks with New Brunswick to enforce the *Canada Health Act*. Dosanjh said that New Brunswick is consistently ranked among the most difficult provinces for a woman to get an abortion, and that NB has a responsibility to cover the cost of all abortions performed by doctors in the province. The media reports that 602 women paid between \$500 and \$750 to have an abortion at the Fredericton clinic in 2003.

Apr 2005 - Dosanjh sends a letter to New Brunswick's provincial Department of Health and Wellness, initiating an official dispute avoidance resolution process to attempt to settle the issue of the province not funding the Fredericton Morgentaler clinic.

May 2005 - Dr. Henry Morgentaler sends an open letter to Premier Bernard Lord offering to end his lawsuit against the government if it buys his private clinic and continues offering abortions there.

Jun 2005 - Dosanjh says New Brunswick has ignored a 60-day process of fact finding and negotiations to solve the long-standing dispute over whether NB must pay for abortions at the clinic. He says he will appoint a three-member panel to hear the two sides' arguments and render a ruling within another 60 days.

Feb 2006 – New federal Conservative Health Minister Tony Clement appears reluctant to continue dispute resolution process with New Brunswick, and no progress has been made (as of June 2006). New NB provincial Health Minister Brad Green continues to defend NB's existing policy.

Dec 2006 - Federal Health Minister Tony Clement says the federal government does not intend to pursue the matter of abortion funding at the NB clinic and says the issue is "off the radar." Meanwhile, access deteriorates. Only two doctors are available to do abortions at hospitals.

Jan 2007 - A group of pro-choice activists and attorneys led by lawyer Michelle Caron announce they are preparing a lawsuit against New Brunswick because of its restrictive law. The group includes ARCC, NAF, and the NB Advisory Council on Status of Women.

Aug 2007 - Dr. Morgentaler's lawsuit is ongoing, but progress is slow. Currently before the court is the issue of whether Dr. Morgentaler has "standing" since he is not a woman who had to pay for abortion services at the clinic. In 2009, he wins standing, but decides not to pursue the case due to exhausted financial resources and advancing age.

May 2013 - Dr. Morgentaler's lawsuit is officially dropped by his family after his death on May 29.

July 2014 - The Morgentaler Clinic in Fredericton, the only facility that provided unrestricted access to abortion services in the province, closes after 20 years of operation. The private clinic helped subsidize abortions for women who were unable to pay the full cost, resulting in financial insolvency (due to lack of provincial funding).

Jan 2015 - The Gallant Government repeals the regulation mandating that women receive the approval of two doctors in order to have an abortion covered by provincial health funds. However, abortions still must be performed in hospitals in order to be covered by the provincial government. Only three hospitals in the New Brunswick currently perform abortions: two located in Moncton, and one in Bathurst, NB.

Jan 2015 - In Fredericton, Clinic 554 opens at the location of the former Morgentaler clinic. Clinic 554 is the only privately-funded clinic that provides abortions in New Brunswick. The clinic was established and funded through crowdsourcing donations, and provides a range of reproductive health services. The province funds all services at the clinic except for abortion, in violation of federal law.

Apr 2017 - New Brunswick announces it will be the first province in Canada to fully fund the "abortion pill" Mifegymiso (RU-486) for women. With a valid provincial health card, women will be able to access the pill free of charge, at up to 49 days of gestation.

Quebec

Jan 2001 - Allan Rock, Minister of Health, warns Quebec (and other provinces) that it must pay in full for abortions at private clinics, because it is violating the *Canada Health Act*.

Jan 2002 - Dr. Henry Morgentaler writes new federal Minister of Health, Anne McLellan, urging her to force Quebec (and other provinces) to fund abortions in clinics.

Apr 2002 - Federal Health Minister Anne McLellan proposes a three-member panel to adjudicate disputes over the *Canada Health Act*. One member will be selected by Ottawa, one by the provinces, and the two will select a third by mutual agreement. All provinces except Quebec accept the arrangement.

Jul 2002 - An anonymous woman files a class-action suit against the province of Quebec for failing to fund her abortion at a private clinic. A coalition of four private abortion clinics in Montreal, the Association for Access to Abortion, are helping her with the lawsuit. They first had to go before a judge to guarantee her anonymity, lost that, appealed, then won.

Jan 2006 - The class-action case by the Association for Access to Abortion is heard by Quebec Superior Court. The Quebec government defended its policy by arguing that by offering abortions free in hospital and publicly run clinics the procedure is accessible.

Dec 2006 – Quebec health minister Philippe Couillard announces an amendment to a Quebec law to allow abortions to be funded at private clinics. However, women would have to go to a hospital, CLSC, or public women's health centre first, and if they can't get a timely abortion there, then go to one of the private clinics and have it funded.

Feb 2008 - The Quebec government agrees to begin paying the cost of facility fees in private abortion clinics, without restrictions. This reduces the cost of an abortion procedure for a patient at the Morgentaler Clinic in Montreal from \$350 to \$0.

Feb 2016 - Quebec now has 47 clinics that provide provincially-funded abortions, half of which are in rural communities (as well as a number of hospitals). Because the province's health policy mandates that every health region have a minimum of one clinic that provides abortions, Quebec residents arguably have better access to the procedure than anywhere else in Canada.

Prince Edward Island

1988 - After the Supreme Court of Canada struck down a criminal law against abortion, PEI passed a provincial resolution restricting publicly-funded access to abortion services in the province. There were no abortion procedures performed on the Island for the next several decades. Further, an unwritten 'Abortion Policy' stemming from around 1982 says that abortions will not be performed in PEI.

Jan 2016 - Abortion Access Now PEI launches a legal challenge against PEI's ban on abortion services, arguing this restriction violates women's rights under the Charter of Rights and Freedoms.

Mar 2016 - At the end of the 90-day response period for Charter challenges, Premier Wade MacLauchlan announced that the government would now allow funded abortion services in PEI.

Jan 2017 - Women can now access fully-funded abortions (up to 12 weeks gestation) through the Women's Wellness Program at Prince County Hospital in Summerside.