

1 R. v. Morgentaler {1988, SCC}:

On January 28, 1988, the Supreme Court of Canada ruled on procedural grounds that Canada's criminal abortion law violated the Canadian Charter of Rights and Freedoms. Specifically, a majority of the court held that certain procedural requirements of the old law violated the Charter, including aspects of the therapeutic abortion committees and the requirement that all abortions be procured in hospitals, not clinics. A majority of the court also considered the substance of the former abortion legislation, and arrived at these conclusions:

- (a) protection of unborn human beings from abortion is a valid legislative objective;
- (b) Parliament is within its constitutional jurisdiction to enact a Criminal Code abortion law;
- (c) the Charter of Rights does not prohibit Parliament from passing a procedurally fair abortion law that restricts abortion to cases where the pregnancy threatens maternal life or health, with "health" defined as relating solely to therapeutic grounds, i.e., grounds related to physical and psychiatric health but not including matters of a socio-economic nature; and
- (d) a federal abortion law may validly require independent medical confirmation of the genuine threat to maternal life or health before permitting an abortion, given society's compelling interest in the protection of the fetus.

The court did not consider in any manner whether or not abortions should or must be publicly funded.

2 B.C. Civil Liberties Association v. B.C. (A.G.) {1988, BCSC}:

The Vander Zalm cabinet reacted to the Morgentaler decision with great haste, passing a regulation on February 10, 1988 that categorized abortion procedures as not insured and not medically required. Less than two weeks later, the BC Civil Liberties Association appeared in Justice Chambers to challenge the regulation. The learned chambers judge held that cabinet may have been within its authority had it merely de-insured abortions. But the impugned regulation went further, stipulating that certain services including abortions would not be considered medically required. The problem with that was that the governing statute, BC's Medical Services Act, did not expressly give cabinet the authority to state that in a regulation. The judge thus struck down the regulation on very narrow grounds.

3 Borowski v. Canada (A.G.) {1989, SCC}:

Borowski argued that the old federal abortion law violated fetal rights. The Supreme Court declined to rule on Borowski's contention because the case was based on legislation that was no longer in force (due to the Morgentaler decision). In essence, the court held that Borowski's case was moot. The issue of provincial funding of abortions was not addressed.

4 Tremblay v. Daigle {1989, SCC}:

In this case, the Supreme Court lifted an injunction obtained by Mr. Tremblay barring Ms. Daigle from aborting their child. The injunction had been based primarily on a Quebec law respecting human rights that did not explicitly include fetal rights. The Supreme Court implicitly affirmed the ability of provincial legislatures to protect the unborn in human rights or child welfare statutes, but tended toward the view that such protection would have to be expressed in the statute rather than implied. As with its earlier Morgentaler and Borowski rulings, again the court did not address the issue of abortion funding.

5 Lexogest Inc. v. Manitoba (A.G.) {1993, Man. CA}:

Manitoba's government enacted a regulation in 1988 insuring hospital abortions but not clinic abortions. The Morgentaler clinic in Winnipeg challenged the regulation. By the narrowest of margins (3 judges to 2, dissent penned by Manitoba's Chief Justice), the Court of Appeal struck down the regulation, primarily on the ground that the governing statute, Manitoba's Health Services Insurance Act, does not expressly authorize cabinet or the Health Services Commission to base entitlement to insurance coverage on the location (hospital vs. clinic) where the health service is provided. One judge mused that it probably would make more fiscal sense to cover clinic abortions and not hospital abortions. Notably, all five Justices were unanimous that the provincial government has full administrative authority under the Act to pass a regulation de-insuring all hospital and clinic abortions.

6 R. v. Morgentaler {1993, SCC}:

In 1989, Nova Scotia's government enacted legislation providing for severe penal sanctions for anyone performing abortions outside hospitals, and further indicating that clinic abortions would not be publicly funded. The Supreme Court held that Nova Scotia's attempt to prohibit clinic abortions under threat of penal sanction was, in effect, an attempt to pass criminal law, and thus constitutionally beyond provincial legislative jurisdiction. The Supreme Court found it noteworthy that Morgentaler's counsel put to the court no argument whatsoever against Nova Scotia's decision to de-insure clinic abortions. It was the prohibition of clinic abortions with penal sanctions for violation that Morgentaler felt was within federal, not provincial, jurisdiction, and the court agreed.