

Memorandum of Law

TO: Kevin Zeiler

FROM:

RE: Canada's Abortion Law

DATE: December 5, 2011

Question Presented

- 1) Has the number of induced abortions in Canada decreased since repeal of their abortion law?
- 2) Does Canada's abortion policy encourage late-pregnancy abortions?

Short Answer

- 1) No, Canada's abortion rate has increased since the repeal of the abortion law based on abortion statistics.
- 2) No, Canada's abortion policy does not encourage late-pregnancy abortions based on abortion rates.

Statement of Facts

Statistics Canada (2008) reports that in 1976, the number of induced abortions was 52,435. This increased to 70,023 in 1987 before the repeal of the abortion laws. After 1988, this number increased to reach a peak of 111,709 in 1997. Since then, the number has steadily decreased to 96,814 in 2005 (Statistics Canada, 2008).

Sedgh , Singh, Henshaw, & Bankole (2011) indicate that the Canada's abortion rate decreased from 15 in 2003 to 14 2008 per 1000 women between the ages of 15–44. The United States experienced a decline of 21 to 20 abortions per 1000 women from 2003 to 2008 (Sedgh et al., 2011). The worldwide average for abortion rates is 29 per 1000 women (The Guttmacher Institute, 2011).

The following statistics, from the Abortion Rights Coalition of Canada (ARCC, 2005), show the rate of abortion at different gestational ages in 2003, 15 years after the repeal of the abortion laws:

- 5-12 weeks = 90.1%
- 13-16 weeks = 7.4%
- 17-20 weeks = 2.0%
- >20 weeks = 0.3%

Strauss et al. (2006) reports the following statistics for the rate of abortion of different gestational ages in the United States in 2003:

- 5-12 weeks = 87%
- 13-16 weeks = 6.1%
- 17-20 weeks = 4.1%
- >20 weeks = 1.4%

Discussion

History of Canadian Abortion Law

In 1869, Canada passed a strict anti-abortion law that made abortion illegal except when it would save the woman's life (Arthur, 2009). In 1969, a board of physicians were granted the power to approve the use of abortion when the life of a woman was in danger (Arthur, 2009). However, this did not allow for personal freedom of a woman to choose whether or not to go through with her pregnancy.

For 20 years, Dr. Henry Morgentaler operated clinics across Canada that performed illegal abortions (Arthur, 2009). All the controversy prompted the issue of abortions to reach Canada's Supreme Court. In 1988, a monumental decision was

made to repeal the entire abortion law (Arthur, 2009), which effectively made Canada lawless on the subject of abortion. In other words, there were no restrictions or additional regulations in place for abortion, similar to other medical procedures. Instead, the regulation of abortions was placed in the care of the provincial Colleges of Physicians and Surgeons (Arthur, 2009). These institutions ensure the quality of the procedures, yet again similar to other medical procedures.

Abortion Regulation in Canada

In Canada, there is a federal law in place, called the *Canada Health Act* (1985), which finances healthcare for Canadians. Abortions fall under the category of a service that is "medically required" (Arthur, 2009). In this way, abortions follow the same basic regulations as any other medical procedure in Canada. These include full funding, accessibility to the procedure, and it must be performed by a physician (Arthur, 2009). Due to this approach for abortions, they are no longer rare procedures that are completed by people who may not be properly trained on the particular procedures being used. Now, the procedure carries the same amount of preparation and training as any other.

After the legalization of abortions in Canada, regulations were set by the Canadian Medical Association (CMA), which include the gestation age of the fetus. Abortions can be performed before viability of the fetus, with viability being defined as, "The ability of the fetus to survive independently of the maternal environment" (CMA, 1988). Viability is determined by the gestation age, degree of development, and weight (CMA, 1988). Typically, 20 weeks is the age of viability, meaning that usually it is developed enough to survive outside of the womb after 20 weeks. After

viability, the physician can perform abortions in "exceptional circumstances" (CMA, 1988), such as a medical necessity.

An Overview of the United States' Abortion Laws

Through the Supreme Court's ruling in *Roe v. Wade* in 1973, women in the United States are able to undergo abortion with certain restrictions that vary through the different states. There are regulations on physician and hospital requirements, gestational limits, partial-birth abortion procedures, public funding, coverage by private insurance, refusal, state-mandated counseling, waiting periods, and parental involvement (Guttmacher Institute, 2011). Typically, a licensed physician must perform the procedure, abortions are prohibited after fetal viability, physicians and hospital can refuse to be involved in the procedure, there is a necessary waiting period of 24 hours, and a parent must be involved in the instance of a minor deciding to have the procedure (Guttmacher Institute, 2011). While these are the regulations that the majority of the states share, there are still many variations of abortion policies across the United States.

Significance of Increased Abortion Rates

Since 1988, the number of abortions increased drastically. While this is not a favorable outcome at first glance, this could be a product of safe abortion practices. In addition, more abortions would be reported solely based on the fact that women could have abortions, and were not restricted by medical necessity, before 20 weeks.

While this paper is not attempting to argue the ethical views on abortion, the mention of anti-abortion support is essential. From this view, the increase is an

undesirable outcome of the legalization of abortions in Canada. One might argue that this increase is proof that legalizing abortion works against the preservation of life. However, countries with laws making abortion illegal still have instances of abortion. The difference is the way that the procedure takes place. Canada is able to regulate abortion just like it would any other medical procedure, which ensures the safety of the woman undergoing the procedure.

Furthermore, Canada's rate of 14 abortions per 1000 women is half of the worldwide average of 29 per 1000 women (Guttmacher Institute, 2011). The majority of the countries with higher abortion rates have banned abortion and lack access to methods of birth control. In fact, areas with few restrictions on abortion have the lowest incidence rates (Guttmacher Institute, 2011). This suggests that less political abortion regulation might actually work to decrease abortion rates.

Significance of Abortion Rates by Gestational Age

As demonstrated by ARCC (2005), the vast majority of abortions occurred in the first 12 weeks of pregnancy, with only a very small percent of them occurring after the age of viability. These instances were due to extreme social situations and "serious maternal health reasons or fetal anomalies" (ARCC, 2005). This indicates that the late-pregnancy abortions were necessary and rare in comparison to other times during the gestation period.

When compared to the rates in 2003 for the United States, one can see that in Canada a larger percentage occurred at earlier points in the gestational period. The women deciding to get an abortion typically did it earlier in the pregnancy, meaning that they did not wait as long. Women in the United States waited longer, which

could have been due to many reasons. A trend is that women in the United States wait two to three weeks longer to undergo the procedure as they try to gather the money needed (ARCC, 2005). Social influences may cause women in the United States to wait longer before deciding on a course of action. Because the procedure is fully covered in Canada and there are less anti-abortion influences, Canadian women tend to make a decision quicker and receive less abortions during later stages of pregnancy.

Because Canada does not have laws regulating abortion, anti-abortion activists may suggest that Canadian women have abortions during later stages of their pregnancy. On the contrary, they have lower rates of abortion in these stages than the United States, who does have legislation regulating abortion. In addition, the late stage abortions in Canada only occur in instances of medical necessity.

Conclusion

The fascinating part of comparing the regulation of abortion in Canada and the United States is how the specifications have been determined. With the repeal of the abortion laws in Canada, the procedure is now regulated by the Canadian Medical Association. This has removed politics and controversy from this procedure, allowing it to be treated just like any other medical procedure. In the United States, legislation controls the different aspects of it, which allows politics to influence medical decisions. The result is that the United States has many conflicting ideas from each side of the abortion issue that could work against the efforts that were made in the past. In Canada, they do not have the same problem, leaving them able to focus on political matters.

As the statistics illustrate, Canada has been able to maintain a low number of late-term abortions, and even these only occur in times of medical necessity. With how abortion is organized in Canada, the procedure is fully funded by the Canadian health care system, no matter the gestational age. Some may argue that women in Canada have abortions up to full-term. However, the regulations set by the Canadian Medical Association make it impossible to have an abortion after viability for any just any reason. It must be due to medical necessity, such as fetal anomalies and preservation of the woman's life. This decreases the number of unsafe abortions, because women have a way to get the procedure, rather than resorting to procedures performed by inexperienced people in hazardous situations.

In addition, the physicians who do perform abortions are fully trained in the proper procedures to be used in the different situations. When certain procedures are banned by legislation rather than monitored by a medical board, physicians may have to resort to procedures that are more dangerous to the life of the woman in lieu of the banned procedure. This is another demonstration on how the regulation of abortion in Canada has been able to provide safe practices for their female citizens.

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