



West Coast LEAF Position Paper: Access to Abortion and Contraception

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- 1. Women's equality rights under the *Canadian Charter of Rights and Freedoms* cannot be realized without access to safe, legal and publicly funded abortion care. Women's autonomy over their bodies and freedom to choose if and when to have children is paramount. The state has no role limiting women's reproductive choices or compelling women to have children against their will, either through legislative measures or by failing to ensure equal and adequate access to reproductive health care, including abortions.**

Access to abortion care is a fundamental issue of women's equality. Only women become pregnant, bear children, breastfeed, and are disproportionately responsible for child care. The decision whether and when to become pregnant and bear children impacts on women's autonomy, privacy, economic security, health and safety.

Women's reproductive rights include the right to control their own fertility and the right to be free from coercion in their reproductive choices. Women's reproductive rights also include the right to make informed decisions and to give informed consent to any medical intervention affecting them.

Barriers to accessing abortion care undermine women's equality rights. Denied the ability to make their own reproductive choices, women do not have autonomy over their own lives and are prevented from full and equal participation in Canadian society. Women cannot truly exercise their constitutional and fundamental human rights without accessible, safe, and publicly funded abortion care that is available to all women, without restriction or barriers.

The Supreme Court of Canada made clear in 1988 that the criminalization of abortion is a violation of a woman's right to security of the person, protected by section 7 of the *Canadian Charter of Rights and Freedoms*.¹ Safe, legal and publicly funded abortion care is also guaranteed under the *Canada Health Act*.

¹ *R. v. Morgentaler*, [1988] 1 S.C.R. 30.

Women's reproductive choices are not made in isolation, but are rooted in a social context in which women and girls continue to face barriers to achieving political, economic and social equality. Despite law that is meant to protect women's rights to make reproductive choices and obtain adequate abortion care, women across Canada continue to face barriers to accessing safe and publicly funded abortion care. Many women, particularly marginalized women, are therefore unable to truly make their own reproductive choices and exercise their reproductive rights.

2. West Coast LEAF agrees with the statement of law made by the Supreme Court of Canada in numerous cases: a fetus is not a "person" in law while it remains a part of the mother. An unborn fetus has no legal rights separate from its mother in Canadian law. Birth as the defining moment of legal personhood is the only position consistent with women's equality rights.

The Supreme Court of Canada has ruled that a fetus is not a legal "person" under Canadian law, and does not possess legal rights separate from its mother.² This acknowledges the impossibility of having two separate rights holders – whose rights may at times be in conflict – within one woman's body. Attempts to re-open the question of "legal personhood" are thinly veiled attempts to re-open the entire issue of women's right to abortion care.

3. Every woman, everywhere in Canada should have access to free and timely abortion care.

Abortion is heavily restricted in New Brunswick and unavailable in PEI. Women in rural and remote communities may have to travel long distances in order to obtain an abortion, requiring them to pay for travel, find accommodation and child care, negotiate time off of work, etc. These barriers disproportionately impact women who have low incomes or receive social assistance.

Despite the fact that abortion is a legal and insured service in every Canadian province, abortion is included on a list of "excluded services" in reciprocal provincial billing agreements. This means that women temporarily living outside of their home province, such as students, rural women whose nearest facility for accessing an abortion is across a provincial border, or women who have recently moved to a new province and do not yet qualify for that province's insurance scheme, do not have access to publicly funded abortion care. Abortion is a time-sensitive procedure. Waiting for provincial health insurance coverage to take effect or paying for the procedure themselves is not a realistic option for many women. Abortion must be removed from the list of "excluded

² See e.g. *Winnipeg Child and Family Services v. G.(D.F.)*, [1997] 3 S.C.R. 925.

services” in reciprocal provincial billing agreements in fulfillment of the portability guarantees in the *Canada Health Act* and the equality rights of women.

Women’s equality and security of the person rights demand that all women have access to abortion care, regardless of their economic situation or location. Governments must ensure that women are not barred from accessing abortions due to their socio-economic status, and should make funding available for low-income women who must travel and incur other expenses to access abortion care. Provinces and territories must increase the number of hospitals providing abortion care, particularly in rural and remote communities.

Abortion is a medically required service and must be fully funded by provinces under the *Canada Health Act*, whether performed in hospitals or clinics.

4. Women have a right to access abortion care free from harassment, intimidation and abuse. Bubble zone legislation should be strictly enforced.

BC’s “bubble zone” legislation prohibits protests within a certain radius of places where abortions are performed. These minor limits on protesters’ freedom of expression rights are justified in order to ensure equal, safe and dignified access to abortion services for women, as affirmed by the BC Court of Appeal.³

5. “Crisis pregnancy centres” should be required to disclose their religious affiliations, anti-abortion positions, and credentials of their staff in their advertising and promotional materials. They should not receive government funding.

According to research conducted by the Pro-Choice Action Network, “crisis pregnancy centres” (CPCs) “are actually anti-choice Christian ministries, often pretending to be non-biased medical clinics or counselling centres. Their main goal is to stop women from having abortions and to convert women to Christianity.”⁴ Researchers discovered grossly inaccurate medical information, scientific distortions and unprofessional counselling methods being used in many of the CPCs and passed along to unsuspecting women. Most counsellors are volunteers without any recognized training in counselling. Women describe being harassed, bullied, and given blatantly false information. Many women say their confidentiality has been violated, and that mistreatment by CPCs has threatened their health.

³ *R. v. Spratt*, 2008 BCCA 340.

⁴ Joyce Arthur, “Exposing Crisis Pregnancy Centres in British Columbia” (Pro-Choice Action Network, January 2009), online: <<http://www.prochoiceactionnetwork-canada.org/Exposing-CPCs-in-BC.pdf>>.

CPCs do not disclose their religious affiliations or the fact that they will never, under any circumstances, refer a woman for abortion care.

The researchers determined that in 2002/3, one or more CPCs received a \$64,000 grant from the BC government's Ministry of Community, Aboriginal and Women's Services. At the same time, the government cut funding for women's centres across the province. The researchers were not able to confirm whether other CPCs have received government grants.

6. Doctors must be required to provide a referral to an alternative professional if they are unable or unwilling to provide abortion services. Women should be able to obtain emergency contraception at a pharmacy upon request and without delay or discrimination.

Women's access to abortion must not be compromised or unreasonably delayed by a doctor's unwillingness to perform an abortion. Doctors unwilling to perform abortions must advise women of this fact and refer them to another medical professional. Doctors should not be forced to perform abortions if they hold moral or religious beliefs that prevent them from doing so. However, any health care provider who fails to provide appropriate referrals, delays access, misdirects women or provides punitive treatment should face disciplinary proceedings.

Emergency contraception (often referred to as "Plan B") is available over the counter in BC. West Coast LEAF endorses the College of Pharmacists' professional practice policy,⁵ which appropriately balances patients' access rights with pharmacists' religious and freedom of conscience rights. Under the policy, a pharmacist's moral or religious objections to providing a product or service "should be conveyed to the pharmacy manager, not the prescriber or the patient", and alternative arrangements must be made to enable another pharmacist to provide the pharmacy product or service to the patient. Any alternate means must avoid unnecessary inconvenience or suffering to the patient. In the case that an alternative pharmacist is not available to dispense the products requested, "the pharmacist has a duty to the patient to provide the service or product" regardless of their personal objections.

⁵ College of Pharmacists of British Columbia, Professional Practice Policy 35: Pharmacists Refusal to Provide a Product or Service for Moral or Religious Reasons.

7. Contraceptives should be widely and freely available to everyone. Additionally, counselling and family planning services should also be widely and freely available.

Free and widely available contraceptives (condoms, birth control pills, emergency contraception, intra-uterine devices, etc.) would reduce unplanned pregnancies, save government money, and advance women's equality rights, particularly for women living in poverty. In June 2010, long-standing non-profit provider of sexual health services Options for Sexual Health proposed a five-year pilot project to implement a universal contraceptives coverage program in BC.⁶ Publicly funded access to contraception would reduce public expenditure, positively impact the private sector, and optimize the economic power of BC residents. The researchers estimate that the total economic impact of a publicly funded contraception plan would be at least \$95 million a year. West Coast LEAF supports and endorses this plan.

8. Sex-selective abortions are a manifestation of misogyny and women's unequal status. The practice of sex selective abortions will be overcome by efforts to challenge discrimination and inequality, not by removing women's right to choose.

Women in Canada do not have to provide a reason for having an abortion. The Supreme Court of Canada in *Morgentaler*⁷ rejected the use of "therapeutic abortion committees" with the power to decide whether a woman's reasons for seeking an abortion were sufficient to permit her to access an abortion. Inquiries into a woman's reasons for wanting an abortion are inappropriate invasions of her privacy and autonomy.

Attempts to criminalize "sex selective abortions" co-opt gender equality and anti-discrimination language in order to advance an anti-choice position. Restricting women's access to abortion decreases women's access to safe, quality healthcare and discriminates against women. Restricting abortion does not address the serious and complex concerns raised by the practice of sex selection. Nor does it address the reasons women may seek or be forced to seek abortions of female fetuses, which include the inferior status of girl children and property and inheritance laws that prioritize male children. The real problem that needs to be addressed is son preference – itself a complex manifestation of entrenched gender discrimination and inequality.

⁶ Options for Sexual Health, "Universal Access to Publicly Funded Contraception in British Columbia" (updated June 28, 2010).

⁷ Supra note 1.