



Canada

Submission to the United Nations Universal Periodic Review

By: Canadians for Choice

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1. Canadians for Choice (herein CFC) was established in 2002, and is a national pro-choice, non-profit charitable organization dedicated to ensuring reproductive choices for all Canadians. We envisage a world where individuals – regardless of age, ability, race, gender, sexual orientation, place of residence, or socio-economic and other status- have access to the information, resources and services required to make and exercise informed choices on all aspects of their sexual and reproductive health and rights and thus believe that these rights are an explicit part of the Human Rights Council's (herein HRC) mandate.
2. In conformance with HRC Resolution 5/1, we submit the following report for your review. Most of the information contained in this document is taken from a report entitled "Reality Check: a close look at accessing abortion services in Canadian hospitals" published in 2006 by CFC, which looks at the real accessibility of hospital abortion services in Canada by focusing on the collection of data in every province from the perspective of a pregnant woman in search of an abortion. The report, which contains a more thorough analysis and detailed statistics, is appended to this document.
3. This report will focus on Canada's fulfillment of its commitments to human rights specifically in relation to sexual and reproductive rights in the issue of abortion and the lack of accessibility to this service; therefore demonstrating that Canada's implementation of its commitments remains unfulfilled as abortion services remain inaccessible in many parts of the country, contrary to Paragraph 63(iii) of *Key Actions for the Further Implementation of the Programme of Action of the International Conference on Population and Development* and contrary to domestic law.

National Legal Framework

Reproductive Rights

Abortion

4. In accordance to the 1988 Supreme Court of Canada decision *R. v. Morgentaler*, abortion in Canada is not limited by the law. In other words, there exist no legal restrictions on abortion in Canada. Abortion is deemed as a criminal law matter that is regulated within Federal jurisdiction and thus provincial legislatures should have very little power to either directly or indirectly regulate abortion.
5. The 1988 Supreme Court decision was based on the argument that the current legislation surrounding the regulation of abortion in Canada was violating section 7 of the Canadian Charter of Rights and Freedoms, where a woman's right to security of the person was being infringed upon. The decision did not however go as far as

implying that there existed a right to abortion and hence it should be noted that Parliament is still able to impose some restrictions on abortion within the present jurisprudence.

6. It is important to also recognize the decision taken in 1989 by the Supreme Court of Canada in the case of Tremblay v. Daigle where it was ruled that the only individual that could make the choice of terminating the pregnancy was the woman in question and that no other individual had a legal say in a woman's choice to either carry the pregnancy to completion or to have an abortion.
7. The Canada Health Act is federal legislation passed in 1984 that regulates the conditions upon which provincial and territorial health insurance programs must adhere to in order to receive the full amount of the Canada Health Transfer (herein CHT) cash contribution¹ and if any of the provinces fails to meet any one of the criteria set out in section 13 of the Act, or if the province allows extra billing by medical practitioners or permits user charges for insured health services; it will face as the penalty a reduction or withholding of the cash contribution. Furthermore it states that as part of its criteria it requires a universal coverage for all insured persons for all medically necessary hospital and physician services, without co-payments, and as stated in section 7 of the act "the health care insurance plan of the province must, throughout the fiscal year, satisfy the criteria described in sections 8-12 respecting the following matters: (a) public administration, (b) comprehensiveness, (c) universality, (d) portability, and (e) accessibility."²
8. In 1995, Diane Marleau, the Canadian Health Minister at the time, deemed that due to the fact that pregnancy and childbirth affects the health and lives of women, abortion was to be seen as a medically necessary procedure, requiring provincial and territorial health insurance plans to fully cover the costs related to abortion services. Thus in line with the provisions of the Canada Health Act, abortion services would have to be fully accessible and financially covered by provincial and territorial health insurance plans when performed both in hospitals and in clinics.

International Responsibilities

9. In 1999, by consensus the international community, including Canada, approved the ICPD+5 Review of Progress document; therefore voluntarily committing itself to its implementation. In direct relation to Canada's legal framework in the matter of abortion paragraph 63 section iii states that " ... in circumstances where abortion is not against the law, health systems should train and equip health-service providers and should take other measures to ensure that such abortion is safe and accessible. Additional measures should be taken to safeguard women's health".³ Thus Canada's implementation of the ICPD +5 outcomes is an appropriate matter for consideration during the Universal Periodic Review as a document to which Canada has made a voluntary commitment, pursuant to HRC Resolution 5/1, Annex Para 1(d).

¹ Canada Health Act Annual Report 2006-2007, online http://www.hc-sc.gc.ca/hcs-sss/pubs/cha-lcs/2006-cha-lcs-ar-ra/chap_2-eng.php

² Canada Health Act (R.S., 1985, c. C-6), online http://laws.justice.gc.ca/en/showdoc/cs/C-6/bo-ga:s_3::bo-ga:s_4?page=3

Access to Abortion in Canada

10. Regardless of the fact that as of 1988 there are no legal restrictions to abortion in Canada, lack of accessibility continues to be an obstacle and a barrier for women who choose to terminate their pregnancies, in what has been determined to be by both federal and provincial governments of Canada as a medically necessary procedure.
11. As of 2006, only 15.9% of hospitals offer abortion services in Canada. This means that only one in every six hospitals offers abortion services. The fact that there are not enough abortion providers in the country prevents many women from being able to fully exercise their right to proper sexual and reproductive healthcare. It has been noted that from the above-mentioned percentage, the majority of these facilities are poorly dispersed across Canada since most of them are located in urban areas and within 150 kilometres of the United States border, posing an obstacle to the large amount of women who live further north of the border.
12. Women who live in an area where there are no facilities that provide access to abortion services are required to seek such services outside of their area or residence and thus face additional barriers. Unexpected travel time is a factor that has to be taken into account, since some of the abortion providers put a gestational limit to the termination of the pregnancy. In addition, these women face unforeseen monetary expenses such as travel, accommodation, and possibly procedural costs (in the case where there is a lack of reciprocal billing within their provincial health systems).
13. Reciprocal Billing states that individuals who are not present (either travelling or changing their residence) within their province of residence at the time of need of a specific medically necessary service or procedure are to be either covered or reimbursed in full of the monetary costs by their provincial health system. In the case that an individual decides to change their provincial residence, reciprocal billing will cover their costs for up to three months before bureaucratic changes have been completed and the new provincial healthcare plan comes into function. Hence this allows Canadians to still have full healthcare coverage when they travel or move between provinces. However, currently some provinces have not yet removed abortion from their lists of services to be excluded from reciprocal billing. As a result, if a woman who comes from such province is travelling or changing her provincial residence and is in need of an abortion, she will have to incur in the expense of paying up-front for the procedure, without an opportunity of being reimbursed.
14. Another factor which affects women from accessing appropriate information, care, and services in relation to abortion, is unknowledgeable and/or judgemental hospital staff members. In many hospitals staff members are not properly trained and as a result are unaware of their institution's policy on abortion, and thus are unable to refer women to a relevant and accurate source of information. Our research has shown that there are instances in which hospital staff are judgmental and treat women who are seeking information on abortion services with disrespect and as a result give them bad referrals, and/or direct them to anti-choice organizations, or in other instances provide no information at all.
15. Currently, regulations and accessibility to abortion varies between provinces and territories. Therefore it is important to analyze the accessibility to abortion in each individual province and territory. The following sections will look at the situation

within three different provinces as more specific case studies that will demonstrate the lack of accessibility to abortion that women in Canada face.

Prince Edward Island

16. There is a complete lack of accessibility to abortion services in the province of Prince Edward Island (herein PEI); this is the only province in Canada that is still refusing to offer abortion services, therefore violating the obligations set by the Canada Health Act.
17. Women who are residents of PEI, and choose to terminate their pregnancies, must travel to another province in order to obtain access to abortion services. The only province to which they can travel to, funded by their provincial government, is Nova Scotia. In order to access a funded abortion the woman must be referred by both a PEI doctor and the Department of Health and Social Services. The doctor must first submit a referral to the Department of Health and Social Services deeming the termination of the pregnancy as medically necessary.
18. Due to existing negative social attitudes towards abortion there is a lack of doctors on the island who are willing to make the required referrals and requests for funding. In addition healthcare providers are unwilling to provide accurate data to women who are seeking information on the procedure itself, where to obtain referrals for an abortion, as well as where they can obtain this medical service.
19. Monetary costs are a major barrier for women in PEI, since they have to take into account expensive travel costs, such as transportation and accommodation, and also ultrasound fees, lost wages, childcare, and eldercare. Since the hospital in Halifax does not offer abortion services after 16 weeks of gestation, women who are past this time period must self-fund their travel to Montreal (which is twelve hours away by automobile), in order to access abortion services.

New Brunswick

20. New Brunswick has a 4% access rate with only one hospital in the entire province that will affirm that they are providing abortion services. There is currently one other hospital that will offer abortion services, but the contact information of this institution is not being made available to the public because of fear of harassment and anti-abortion violence.
21. In contravention to the Canada Health Act, the province of New Brunswick is the only province in Canada that refuses to pay for, or reimburse women for, abortion services performed outside of the hospital; hence this province refuses to fund clinical abortions. Furthermore New Brunswick also refuses to provide for reciprocal billing for women that require abortion services outside of the province.
22. In addition New Brunswick has the most restrictive sexual health policies in the country. In order for a woman to be able to access safe and timely abortion care within the province, she requires the authorization of two doctors as well as the consent of the gynaecologist who will accept to perform the procedure, before she can be fully funded to receive an abortion at any of the two designated (above-mentioned) hospitals in the province.
23. This policy poses an extremely difficult obstacle for women in New Brunswick, since due to negative social attitudes and anti-abortion sentiments by healthcare providers,

not many medical doctors are either willing to give authorization or provide their services for the procedure. This policy can be especially difficult for women in small towns and for women who do not have a family doctor. If a woman is unable to find the required authorization, she may either be forced to travel out-of-province in order to obtain abortion care, pay over \$500 to have the abortion in a private clinic, or to continue with the pregnancy and birth.

24. In the case that a woman decides to travel out-of-province to terminate the pregnancy, and due to the fact that New Brunswick violates reciprocal billing, she will have to incur in all the financial aspects of the procedure; facing a monetary barrier where she is expected to cover the transportation, accommodation, and procedural costs.

Québec

25. Québec is the second province in Canada apart from New Brunswick to contravene the Canada Health Act by not adopting a reciprocal billing agreement with other provinces in regards to abortion services. Women, who are outside of the province, will not be refunded for whatever costs they incur in relation to medical services provided to terminate a pregnancy.

Actions Taken by the Federal Canadian Government

26. In 2001, then Federal Health Minister Alan Rock warned four provinces, Quebec, Manitoba, New Brunswick and Prince Edward Island, that their failure to cover fees charges at private abortion clinics constituted violation of the Canada Health Act.⁴ In 2005, then federal Health Minister Ujjal Dosanjh commenced proceedings using a dispute avoidance and resolution process to urge New Brunswick to comply with the *Canada Health Act* by funding abortions carried out in private clinics. In August 2006, the court ordered Quebec to refund fees paid by women for abortions in private clinics between 1999 and 2006.
27. Deductions have been made from cash contributions to Newfoundland and Labrador in 1998 and to Nova Scotia in 2003 based on charges made to patients for facility fees at private abortion clinics. The conclusion is inescapable that abortion is therefore considered by the federal government to be an insured service under the *Canada Health Act*.

Responsibilities and Obligations of the Federal Canadian Government

28. The Canadian government has the necessary power and authority to ensure that abortion services are provided without financial or other barriers in conformance with the *Canada Health Act* and that the principles of comprehensiveness and accessibility are respected by taking whatever means it has to ensure that where abortion services are provided, they are provided without fees, and where unavailable, that reasonable measures be taken to ensure that women do not have to face barriers, including out of province travel, or travel of long distances within provinces, in order to obtain abortion services.

⁴ Kondro, W., "Medically necessary" abortions in Canada to be covered by insurance, *The Lancet*, 2001 Ja. 20; 357(9251):208.