

# Access to abortion services

## Background information

In accordance with the 1988 Supreme Court of Canada decision *Canada v. Morgentaler*, there are no criminal laws restricting access to abortion in Canada. In Canada, the provincial governments are responsible for the administration, organization and delivery of health care. The federal government has constitutional spending power, which enables it to fund the health systems under provincial jurisdiction, subject to provincial compliance with certain requirements set out in the 1984 Canada Health Act. It regulates the conditions to which provincial and territorial health insurance programs must adhere in order to receive the full amount of the Canada Health Transfer cash contribution. The Act states that provinces and territories must provide universal coverage for all insured persons for all medically necessary hospital and physician services, which abortion is considered to be.

Still, the lack of access to safe abortion services is an ongoing obstacle and barrier for those who choose to terminate their pregnancies, particularly for individuals living in rural or remote areas. A 2006 study found that only 1 in 6 hospitals provide abortion services in Canada, the majority of which, like free standing sexual health clinics, are disproportionately dispersed across Canada, with most located in urban areas.<sup>1</sup> The overall limited availability of abortion services through clinics and hospitals is compounded by other barriers related to wait times, age, financial resources and geographic location, migration status,<sup>2</sup> and physicians refusing to provide the services on moral and religious grounds,<sup>3</sup> among others.

Unexpected travel time is a significant factor for individuals having to travel out of town or province, especially for later term abortions, delaying access to abortion services. Unforeseen monetary expenses such as travel, accommodation, lost wages, childcare, eldercare and possible procedural costs (in cases where no reciprocal billing agreement within the provincial or territorial health systems exists) disproportionately impact low-income individuals. Young people may also face disproportionate barriers in accessing abortion services due to limited access to resources and ability to travel independently, among other factors. They may also choose to delay or choose not to seek abortion services due to social stigma or concerns over violations of privacy or confidentiality by health professionals or their staff. In some provinces, adolescents are not able to obtain an abortion without parental consent, adding yet another requirement that restricts their autonomy in accessing services they might need.

The low number of abortion providers in Canada contributes to the poor availability of services adding to barriers related to geographic location. According to Medical Students for Choice, 40% of schools surveyed *did not teach any aspect of abortion in preclinical years*; abortion and counselling on pregnancy options is not included as a standard component of preclinical education.<sup>4</sup> Adding to this, there are many doctors who refuse to provide the service on moral or religious grounds or who cannot add abortion services to their practice for other reasons including workload and quotas. Another challenge is the reality that the vast majority of current abortion providers across Canada are over 50 years of age; many of whom will retire in the coming years. Recognizing these challenges, the Government is required to take active steps in working with the provinces and territories to ensure access to this essential medical procedure.

**Reciprocal billing agreements require that individuals who are outside their province or territory of residence (either travelling, studying or changing their residence) and who need a specific medically necessary service or procedure are to be either covered or reimbursed in full for the monetary costs by their provincial or territorial health system. In the case that an individual decides to change their provincial or territorial residence, reciprocal billing will cover their costs for up to three months before bureaucratic changes have**



been completed and the new provincial or territorial healthcare plan comes into function. Abortion is included on the List of Excluded Services under the Reciprocal Billing Agreement.<sup>5</sup> While some provinces have developed bilateral agreements allowing abortion services to be covered under reciprocal billing, five provinces and one territory continue to exclude abortion from their list of services to be covered under reciprocal billing.<sup>6</sup> Individuals coming from such provinces or territories who are in need of an abortion have to incur the expense of paying up front for the procedure, without an opportunity for reimbursement. This disproportionately impacts low-income individuals.

## Discrepancies across provinces

Despite having the necessary power, responsibility and authority to ensure that abortion services are provided without financial or other barriers, the Government of Canada has not taken any action to address the discriminatory abortion policies of provinces that contravene the Act. No other medically necessary service faces these administrative restrictions.

In PEI, there are no abortion providers.<sup>7</sup> This is the only province in Canada that is still refusing to offer abortion services, in turn violating its obligations set by the Act. The only provinces to which they can travel, funded by their provincial government, are Nova Scotia and New Brunswick. In order to access a funded abortion in Nova Scotia,<sup>8</sup> individuals must be referred by both a PEI physician and the Department of Health and Social Services, and the abortion procedure must be done in a hospital (clinic abortion services are not eligible for funding in PEI). This process must also be completed within 16 gestational weeks. Due to stigma related to abortion, there is a lack of physicians in PEI who are willing to make the referrals and requests for funding.<sup>9</sup> In addition, healthcare providers are often unwilling to provide accurate information to individuals 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.<sup>10</sup>

As of January 2015, New Brunswick has reversed a regulation requiring individuals to obtain the authorization of two physicians in order for the procedure to be fully funded. Still, only three out of 23 hospitals in New Brunswick provide abortion services (two of which are in Moncton) and clinic abortions are not funded by the government. In some cases, individuals are required to make multiple visits before the procedure, which can result in delays, stigma and ultimately, barriers in access to abortion services. In contravention of the Act, New Brunswick is the only province that refuses to pay for, or reimburse individuals for, abortion services performed outside of hospitals. The province also refuses to provide reciprocal billing for individuals that require abortion services outside of the province. This policy can be especially difficult for individuals in small towns and for individuals who do not have a family physician. If an individual is unable to travel to one of the two hospitals, or fears stigma and discrimination in accessing services in such environments, they may either be forced to travel out-of-province in order to obtain abortion care, pay between \$700.00 to \$850.00 to have the abortion in province<sup>11</sup> or continue with the pregnancy and birth against their will. With such limited access, it has been reported that individuals are increasingly seeking abortion services out of country, and in some cases, engaging in unsafe practices to terminate unwanted pregnancies.<sup>12</sup>

## Increasing access

One strategy to overcome challenges in access to abortion services is through increased access to medication abortions. It is widely accepted that medication abortion is more easily administered by family physicians, midwives and nurse practitioners,<sup>13</sup> which would greatly increase the availability of the services in rural and remote areas, as well as provinces and territories with few surgical abortion providers. The drug *Mifepristone* (RU-486) is the form of medication abortion recommended by the World Health Organization (WHO), used in combination with misoprostol.



RU-486 has been pending approval by Health Canada since 2012, despite its being widely accepted as the most effective non-surgical option for abortion, listed as an essential drug by the WHO and currently administered in 57 countries.<sup>14</sup> In January 2015, Health Canada requested additional information from the drug producers and is expected to release its decision by September 2015.<sup>15</sup>

International law guarantees all people the right to life and the right to the highest attainable standard of physical and mental health, which includes sexual and reproductive health.<sup>16</sup> International law also guarantees all people the right to liberty and security of person. Control over one's own body, including the decision whether to terminate a pregnancy or carry it to term, is an essential element of liberty. A person cannot enjoy personal security when such decisions are imposed onto their body or when they lack the means to carry out their reproductive decisions. Embedded in the right to liberty and to security, therefore, is the right to bodily autonomy: the ability to make sexual and reproductive decisions free of coercion and violence.<sup>17</sup> Undue restrictions on abortion detract from an individual's autonomy to determine her life's course, and thus to enjoy equal citizenship stature.<sup>18</sup>

The right to health obliges governments to ensure the availability, accessibility, acceptability and quality of comprehensive and integrated sexual and reproductive health information and services, including abortion, and to remove any barriers that impede access to such services. To be available, services must be provided in functioning and adequately-supplied facilities that are sufficient in number and appropriately distributed within a geographic territory so as to mitigate barriers related to physical location. To be accessible, barriers to accessing services must be removed, including financial costs and other barriers related to stigma and discrimination based on age, gender, economic status, ability, religion and marital status, among others. To be acceptable to the populations for whom they are intended, services and information must be gender-sensitive and youth-friendly. To be of the highest quality, they must be in line with quality of care standards.<sup>19</sup>

Action Canada for Sexual Health and Rights runs a Canada-wide toll-free 24-hour access line that provides information on reproductive and sexual health and referrals on pregnancy options. The line, often operated by volunteers, receives over 1,900 calls per year from individuals seeking support around accessing abortion services, who have questions about the procedure itself and who are seeking options counselling. Calls come from across the country, including both rural and urban centres. There is a clear need to ensure such information is available to all individuals across the country. While there are a number of civil society organizations and volunteer organizations that provide such services, Governments are responsible for ensuring all individuals have the information and resources available to access a range of sexual and reproductive health services and information. This includes prevention, counselling, treatment, care and referral.

The United Nations is in the process of crafting a universal framework for development for 2015-2030. A set of Sustainable Development Goals has been proposed as a way forward. The proposed goals are universal in nature and will apply to all countries, regardless of economic, social or political realities. The Government of Canada will need to take active steps to ensure access to abortion services, in order to achieve the following targets to which it has committed:

3.7 By 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies



and programmes

3.8 Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all

5.1 End all forms of discrimination against all individuals and girls everywhere

5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences

## We call on the Government to:

**Pending the Health Canada approval of Mifepristone, coordinate a range of stakeholders, including the CMA and relevant professional, training, certification and accreditation bodies to develop an effective implementation strategy**, which includes clinical guidelines, with a particular focus on ensuring access to medication abortion in rural and remote areas that would include, at a minimum, training for new and existing family physicians. Such a strategy would include efforts to maintain and improve access to a comprehensive and integrated package of sexual and reproductive health services, including both surgical and medication abortion. Such a strategy would also look at ways to ensure appropriate task-shifting in the provision of medication abortion allowing and training other health professionals, such as nurse practitioners and midwives, to provide these services.

**Request that Health Canada encourage the Interprovincial Health Insurance Agreements Coordinating Committee to remove abortion services from the list of Excluded Services under the Reciprocal Billing Agreement**

**Engage provincial and territorial governments in discussions** towards ensuring that access to abortion services in all jurisdictions complies with the requirements of international human rights law. Such discussions, which could also form part of a renewed federal-provincial-territorial health accord, would need to contain: mechanisms to ensure the accessibility, availability, acceptability and quality of abortion services across the country; guidelines for the implementation of appropriate monitoring and accountability mechanisms with respect to the accessibility of abortion services, in line with Canada's obligations under the right to health; and offer remedy and redress for violations of the right to health.

**Withhold Cash Contributions to the provinces and territories** when governments fail to ensure the availability and accessibility of abortion services and initiate dispute resolution procedures under sections 14-17 of the Canada Health Act as violations of the Accessibility or Universality program criteria established in sections 7, 10 and 12 of the Act.

**Establish a national protocol for individuals seeking abortion services post-24 weeks outside of Canada**, including funding to cover travel and accommodation costs prior to leaving the country.

**Mandate the Standing Committee on Health to undertake a study on Health Canada's procedures for the drug review and approval process** with a focus on sexual and reproductive health-related drugs.

**Mandate the Standing Committee on Health to undertake a study identifying the concrete strategies for the Government to meet its human rights obligations to ensure that abortion services are available, accessible, acceptable and of quality**, including strategies to ensure that the practice of conscientious objection by health profes-



sionals does not pose a barrier to abortion services. The study must also examine the non-provision of abortion services within hospitals, with a view to developing strategies to ensure that moral and religious considerations are not a part of a hospital's failure to provide abortion services.

**Ensure all individuals have access to abortion services, regardless of immigration status.** This include removing waiting periods for temporary and permanent residents to access health care, and the provision of health care to undocumented people.

*This brief was developed in consultation with*

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## Endnotes

<sup>1</sup> Sethna, C. 2012. "Travel to Access Abortion Services in Canada." University of Ottawa. [http://socialsciences.uottawa.ca/sites/default/files/public/research/eng/documents/CSethna\\_WorldIdeas.pdf](http://socialsciences.uottawa.ca/sites/default/files/public/research/eng/documents/CSethna_WorldIdeas.pdf)

<sup>2</sup> The Canada Health Act requires provinces and territories to limit waiting periods to establish eligibility for and entitlement to insured health services to three months. <http://www.hc-sc.gc.ca/hcs-sss/medi-assur/faq-eng.php>. Some provinces have identified groups of individuals who are exempt from the waiting period.

<sup>3</sup> For more information about conscientious objection, or the refusal of health professionals to perform particular services on the grounds of moral or religious beliefs, see the section on Conscientious Objection of this series, Canada Election 2015: A vote for sexual health and rights.

<sup>4</sup> Koyama, A. and Robin Willilams. 2005. « Abortion in Medical School Curricula. » Crossroads where medicine and humanities meet.

<sup>5</sup> Canadian Institute for Health Information. 2007. "Reciprocal Billing Report, Canada: 2004-2005, updated in 2007." [https://secure.cihi.ca/free\\_products/RB\\_report\\_2007\\_e.pdf](https://secure.cihi.ca/free_products/RB_report_2007_e.pdf)

<sup>6</sup> Canadians for Choice & Sexual Rights Initiative. 2014. Universal Periodic Review of Canada – 16th session – 2014: Joint submission on access to abortion in Canada." <http://sexualrightsinitiative.com/wp-content/uploads/Canada-UPR-16.pdf>

<sup>7</sup> "In some places medical abortions are available to women up to 9 weeks from their last period. In PEI access to a medical abortion is currently inconsistent, but it may be available." Abortion Rights Network. Prince Edward Island, Canada. [http://www.abortionrightspei.com/content/page/front\\_steps](http://www.abortionrightspei.com/content/page/front_steps)

<sup>8</sup> A referral is not necessary when travelling to New Brunswick to access the services. <http://www.healthpei.ca/abortionsservices>

<sup>9</sup> MacQuarrie, C. J. MacDonald and C. Chambers. 2014. "Trials and trails of accessing abortion in PEI: reporting on the impact of PEI's abortion policies on women." [http://projects.upei.ca/cmaccuarrie/files/2014/01/trials\\_and\\_trails\\_final.pdf](http://projects.upei.ca/cmaccuarrie/files/2014/01/trials_and_trails_final.pdf)

<sup>10</sup> MacQuarrie, C. J. MacDonald and C. Chambers. 2014. "Trials and trails of accessing abortion in PEI: reporting on the impact of PEI's abortion policies on women." [http://projects.upei.ca/cmaccuarrie/files/2014/01/trials\\_and\\_trails\\_final.pdf](http://projects.upei.ca/cmaccuarrie/files/2014/01/trials_and_trails_final.pdf)

<sup>11</sup> Clinic 554. July 2015. Abortions: Cost. [http://www.clinic554.ca/Reproductive\\_Health.html](http://www.clinic554.ca/Reproductive_Health.html)

<sup>12</sup> Allen, Tess. October 20 2014. 'Lacking access to abortion access, New Brunswick women head to Main abortion clinics.' <http://rabble.ca/news/2014/10/lacking-abortion-access-new-brunswick-women-head-main-abortion-clinics> and <http://rabble.ca/columnists/2014/05/new-brunswick-invites-return-unsafe-abortion>.

<sup>13</sup> Berer, M. 2007. "Provision of abortion by mid-level providers: international policy, practice and perspectives." Reproductive Health Matters, and Puri, M, Tamang, A, Shrestha, P, Joshi, D. 2015. "The role of auxiliary nurse-midwives and community health volunteers in expanding access to medical abortion in rural Nepal." Reproductive Health Matters, (22: 44).

<sup>14</sup> National Post. 2013. "Canadians should have access to abortion pill RU-486, leading medical journal argues." <http://news.nationalpost.com/2013/11/25/canadians-should-have-access-to-abortion-pill-ru-486-leading-medical-journal-argues/>

<sup>15</sup> Those following the process have expressed concern regarding the level of transparency of the Health Canada drug approval process. Concerns have also been raised regarding the possibility of political or other interference within the process. Globe and Mail. 2015. "Why so much secrecy when it comes to drug approval, Health Canada?" <http://www.theglobeandmail.com/life/health-and-fitness/health/why-so-much-secrecy-when-it-comes-to-drug-approval-health-canada/article22493060/>

<sup>16</sup> CESCR. 2000. General Comment No. 14. "The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), para 8.

<sup>17</sup> Shalev, Carmel. 1998. Rights to Sexual and Reproductive Health - the ICPD and the Convention on the Elimination of All Forms of Discrimination Against Individuals, p. 6.

<sup>18</sup> Gonzales v. Carhart. 2007. US Supreme Court. (Ginsburg, J., dissenting) p. 4 and Sexual Rights Initiative. 2013. The Decriminalization of Abortion: a human rights imperative.

<sup>19</sup> Hague Civil Society Call to Action on Human Rights and ICPD Beyond 2014, from the ICPD Beyond 2014 International Conference on Human Rights, held in July 2013, in The Netherlands.

