



**Abortion Rights  
Coalition of Canada**

**Coalition pour le droit à  
l'avortement au Canada**

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## ***Position Paper # 56***

# **Fetal Insurance Law - Alberta's 'Rowega' Law**

*Should children be able to sue their mothers for injuries they suffered in the womb?*

## **Background**

The Alberta government has just passed a law that will allow lawsuits to be filed for injuries a fetus suffered in a car crash. The law is a result of lobbying efforts by the family of Brooklyn Rowega, a 4-year old girl from Rainbow Lake, Alberta, who is blind and suffers from brain damage and cerebral palsy. Her disabilities are a probable result of injuries from an accident four months before her birth. Her mother Lisa lost control of her car and was thrown through the windshield. Lisa Rowega cannot claim compensation from her insurance company for the costs of Brooklyn's care because of a previous 1999 Supreme Court decision that prohibits children from suing their mothers for injuries suffered while in the womb.

In that case, Cynthia Dobson of Moncton, New Brunswick wanted her insurance company to provide financial compensation for her son Ryan, who was born prematurely after his mother was involved in a car accident, and now suffers from cerebral palsy. The insurance company would not compensate her for his injuries, so the family arranged for Ryan to sue his mother and her insurance company for damages. However, in 1999, the Supreme Court of Canada ruled 7-2 that Ryan could not sue Cynthia Dobson for injuries he sustained while in her womb, citing concerns about restricting the lives of pregnant women. An abortion rights group that intervened in that case argued that women would risk lawsuits for any activity that resulted in injury to a fetus, including working or engaging in sports.

## **Position**

This issue revolves around human rights and equality for pregnant women, as well as the lack of governmental support for disabled persons.

The Alberta law risks turning pregnant women into a separate class of persons with lesser or restricted rights. Because only women get pregnant, women cannot participate as equals in society unless they can control their reproductive capacity and are not disadvantaged by it

through law or policy. That means that any kind of law or public policy that regulates or handicaps pregnancy amounts to discrimination against women, a violation of their equality rights under the *Canadian Charter of Rights and Freedoms*. Similarly, deficiencies in law or public policy should not place extra burdens on pregnant women that are not experienced by others—that is why, for example, all pregnancy-related care including abortions must be accessible and fully funded by Medicare.

The Alberta law may open the door to other types of claims, even though the law is narrowly drawn. Once a claim is successful under the new law, precedence is set, and others will likely try this course of legal action. It will encourage lawyers to apply the law to other circumstances—i.e., other actions or behaviours by pregnant women that might be seen as harmful to their fetuses. Also, the anti-abortion movement may exploit it by trying to recognize fetal personhood in law and using that to restrict abortion.

Persons are not allowed to sue themselves, and this law allows the equivalent of that. The fetus is part of a pregnant woman and belongs to her (previous court precedent has held that a woman and her fetus are “one”) and an injury to the fetus is an injury to the woman personally. Since a fetus does not have legal standing or legal personhood, it cannot be treated as a different person under the law, even after its birth. Doing so creates a kind of “retroactive” personhood for fetuses that violates women’s equality rights under the Charter, by limiting her rights in favour of fetal rights. You cannot have two competing sets of rights in one body.

This issue also highlights the lack of disability supports in our society for families and persons with disabilities. The current lack of services and supports precludes the ability of disabled persons to enjoy equality and a full life as citizens, and directly leads to situations such as the Rowega and Dobson cases. The provinces and territories must ensure that Canadians with disabilities have the supports they need throughout their lives to secure their equality and inclusion into society.<sup>1</sup>

Hard cases make bad law – rare tragedies like this should not be resolved by a specific law, which then applies to everybody. Unfortunately, tragedies happen every day, and most of them are not actionable under law, especially if they are our own fault. The law cannot be the catch-all solution to fix everyone’s problems. In this particular case, the answer is that federal and provincial governments should do much more to help parents raise disabled children, as well as fuller supports for disabled people. As well, perhaps insurance companies can modify their policies to accommodate this particular circumstance, so that pregnant women are not unintentionally discriminated against.

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<sup>1</sup> See open letter from Council Of Canadians With Disabilities, to: F/P/T Ministers of Social Services: <http://cacl.ca/english/mediaroom/pressrelease/2005/OpenLetterToMinisterOfSocialService.html>