



Abortion Rights
Coalition of Canada

Coalition pour le droit à
l'avortement au Canada

Safe Access Zone Laws and Court Injunctions in Canada

Protecting facilities that provide abortions, abortion providers' homes, doctors' offices, and patients.

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Safe Access Zone Laws

Also called "bubble zone laws" or "buffer zone laws".

British Columbia

The *Access to Abortion Services Act* was passed in 1995 after years of heavy and aggressive protesting at two clinics, especially Everywoman's Health Centre, and also in response to the shooting of provider Dr. Gary Romalis in November 1995.

The Act creates "access" zones around facilities that provide abortion services, the homes and offices of doctors who provide abortion services, and the homes of other abortion service providers (e.g., clinic staff). The dimensions of these zones are calculated from the edge of the lot on which the home or facility is located and are set at:

- 160 metres for a doctor's or service provider's home
- 10 metres for a doctor's office (which can be extended up to a maximum of 20 metres through an Order in Council)

- up to a maximum of 50 metres for a facility (the distance to be determined by Cabinet; facilities must apply for a zone so it can be customized)

Within those access zones, it is an offence to engage in any of the following activities:

- sidewalk interference
- protesting
- besetting
- physical interference with, or attempted interference with, a patient, doctor, or abortion service provider
- intimidation of a patient, doctor, or abortion service provider

Homes and offices of abortion providers are automatically protected, while facilities must apply for a zone. Currently, only three clinics are protected by the bubble zone (no hospitals): Everywoman's Health Centre, Elizabeth Bagshaw Women's Clinic, and Vancouver Island Women's Clinic.

Links:

Law: http://www.bclaws.ca/civix/document/id/complete/statreg/96001_01

Pro-Choice Press, Winter 95-96. See first four stories: <http://www.prochoiceactionnetwork-canada.org/prochoicepress/9596win.shtml>

Convicted anti-abortion protesters challenge clinic access zone (and lose). by Joyce Arthur, Pro-Choice Action Network. Sept 2007, revised Jan 2009. This is an account of the final appeal by protesters. They lost this case and appealed to the Supreme Court of Canada, which declined to hear the appeal. This means the Act stands as constitutional. <http://www.prochoiceactionnetwork-canada.org/articles/bubble-zone-case.html>

Alberta

Alberta Health Minister Sarah Hoffman announced on April 5, 2018 that the NDP government would introduce a bill to establish safe access zones outside the two clinics in Calgary and Edmonton. The two clinics perform more than 75 per cent of abortions in the province and are regular targets for protesters.

The clinics said that protests and disruptions have increased, and the court injunctions currently in use do not work as protesters frequently violate the injunctions, which have no enforcement power. In Edmonton, the injunction didn't apply to the sidewalk, so protesters would block the sidewalk and force patients to walk around them.

Bill 9 — the *Protecting Choice for Women Accessing Health Care Act* — was passed on May 30, 2018. The law bans protesters within 50 metres of the Women's Health Options clinic in Edmonton and the Kensington Clinic in Calgary. The clinics can also ask for the zones to be extended to 150 metres, if required. Protesters are prohibited from taking video or photographs or making audio recordings of patients, doctors and staff entering or exiting the clinic. Doctors and other service providers may apply for a zone of up to 20 metres around their offices and 160 metres around their homes. It carries the following penalties for protesters who violate the safe zones: first offence: \$5,000 or a maximum jail term of six months. Repeat offence: Maximum fine of \$10,000 and/or one year in jail. The fines for

corporations caught violating the act is \$25,000 for a first offence, and a maximum \$100,000 fine for subsequent convictions.

Links:

Law: <https://www.alberta.ca/protecting-choice-for-women.aspx>

Opinion: Safe-access zones at abortion clinics are constitutional, by Joyce Arthur, Edmonton Journal, May 31, 2018: <https://edmontonjournal.com/opinion/columnists/opinion-safe-access-zones-at-abortion-clinics-are-constitutional>

Alberta passes bill legislating 'safe zones' around abortion clinics, CBC News, May 30, 2018: <https://www.cbc.ca/news/canada/edmonton/alberta-abortion-safe-zones-1.4684773>

Proposed buffer zones for abortion clinics needed to protect staff, clients: director, Calgary Herald, April 25, 2018: <http://calgaryherald.com/news/politics/proposed-buffer-zones-for-abortion-clinics-needed-to-protect-staff-clients-director>

Ontario

Ontario Attorney General Yasir Naqvi passed a safe access zone law on Oct 25, 2017, after first announcing he planned to introduce one on May 29. The trigger was increasingly aggressive protests at the Ottawa Morgentaler Clinic.

The *Safe Access to Abortion Services Act, 2017* allows for safe access zones to be established around facilities that offer abortion services as well as the homes and offices of regulated abortion providers. It is based largely on BC's law and very similar to it, but with some additional features:

- Eight private abortion clinics in Ontario have automatic safe access zones of 50 metres, which can be decreased or increased up to 150 metres by regulation.
- Other facilities (hospitals, medical clinics, etc.) that offer abortion services can apply for safe access zones of up to 150 metres.
- Abortion providers have automatic safe access zones of 150 metres around their homes, including all staff at private clinics.
- Physicians who provide abortions have automatic safe access zones of 150 metres around their offices, regardless of whether they provide abortions at that location.
- Regulated health professionals who provide abortion services outside of clinics, including pharmacists (and midwives, nurse-practitioners etc.), will be able to apply for safe access zones of up to 150 metres around their pharmacies or offices.

Like BC's law, the Ontario legislation includes a general anti-harassment provision that protects clinic staff and abortion providers anywhere in Ontario.

Links:

The law: *The Safe Access to Abortion Services Act, 2017*: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=5135

Ontario A-G press release: <https://news.ontario.ca/mag/en/2017/10/ontario-passes-legislation-to-protect-womens-right-to-choose.html>

Abortion safe-zone bill passes third reading:

<https://www.thestar.com/news/queenspark/2017/10/25/abortion-safe-zone-bill-passes-third-reading.html>

ARCC's press release: "Abortion Rights Coalition of Canada Welcomes Bill to Protect Abortion Care Facilities in Ontario" <http://arcc-cdac.ca/press/ARCC-CDAC-release-oct4-17-english.pdf>

Newfoundland and Labrador

The Nfld/Labrador *Access to Abortion Services Act* was passed in November 2016. It is nearly identical to the BC Act. Athena Health Centre, the abortion clinic in St. Johns, had moved in 2015 and became besieged by protesters. The clinic began to collect evidence and do research, and met with government ministers to get support. The Justice Minister advocated the law in public, and in the meantime before it passed, the clinic was given an injunction to protect patients. The government adapted BC legislation because BC's law had already withstood constitutional scrutiny by the courts.

Links:

Law: <https://www.canlii.org/en/nl/laws/stat/snl-2016-c-a-1.02/latest/snl-2016-c-a-1.02.html>

Bubble Zone Gets Royal Assent: NL Becomes Second Canadian Province to Have Bubble Zone Law. The Overcast. By Elizabeth Whitten. December 28, 2016. <https://theovercast.ca/bubble-zone-gets-royal-assent-nl-becomes-second-canadian-province-to-have-bubble-zone-law/>

Anti-abortion protest 'bubble zone' law on the right side of Charter: lawyer. CBC News. Jun 20, 2016. <http://www.cbc.ca/news/canada/newfoundland-labrador/anti-abortion-protest-jonathan-mcdonald-bubble-zone-law-1.3643249>

Quebec

The Morgentaler Clinic in Montreal was protected by an injunction, but it needed regular renewal and the process was very costly. In 2015, the clinic moved to the same building as Clinique médicale Fémina, and the injunction then covered both clinics. Protesters openly said they would start picketing other clinics, so at least one other clinic went to court and got an injunction too. The Morgentaler Clinic then decided to pursue a provincial bubble zone law, and got the support of the Health Minister, who ended up adding the law to another law related to drug marketing. The National Assembly of Québec unanimously passed Bill 92 on Dec 7, 2016, without fanfare. The law was inspired by BC's law, but is not a copy of it.

The Act amends a number of statutes, including the *Health Services and Social Services Act*, to prohibit impeding access to a place where health or social services are provided, and demonstrations in the vicinity of places where voluntary abortion services are offered. It is forbidden for any person to "demonstrate, in any way, or perform any other form of intervention in an attempt to discourage a woman from obtaining [a voluntary abortion] or to contest or to condemn their choice of obtaining it

"within 50 meters of an abortion clinic in Quebec". Anti-abortion protesters who violate the "security perimeter" will be subject to a fine of \$250 to \$1,250. Those who, in addition, "threaten or intimidate a person who goes" to a clinic where abortions are practiced will incur a doubled fine of \$500 to \$2,500.

Links:

The links below are mostly in French. A Google Translate of the clinics' press release is also below.

Projet de loi no 92 (2016, chapitre 28) :

Note: The bubble zone law is one small part of the legislation, see Sections 75, 76, and 79.

English: *Chapter S-4.2, Act respecting health services and social services:*

<https://www.canlii.org/en/qc/laws/stat/cqlr-c-s-4.2/latest/cqlr-c-s-4.2.html>

Français: *Loi visant à accroître les pouvoirs de la Régie de l'assurance maladie du Québec, à encadrer les pratiques commerciales en matière de médicaments ainsi qu'à protéger l'accès aux services d'interruption volontaire de grossesse :*

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2016C28F.PDF>

Press release from Régie de l'assurance maladie du Québec :

<http://www.ramq.gouv.qc.ca/fr/regie/salle-presse/communiqués/2016/Pages/adoption-projet-loi-92.aspx>

History of law (government site): <http://www.assnat.qc.ca/fr/travaux-parlementaires/projets-loi/projet-loi-92-41-1.html>

FQPN report, Jan 18, 2017: <http://www.fqpn.qc.ca/actualites/zone-de-protection-autour-des-cliniques-d'avortement/>

FQPN press release: <http://www.fqpn.qc.ca/actualites-sujet/communiqués-de-presse/>

Press release from Quebec clinics, Nov 29, 2016: <http://www.newswire.ca/news-releases/creation-de-zones-de-protection-autour-des-cliniques-d'avortement---la-securite-et-l'accès-aux-cliniques-d'avortement-enfin-protégés-603671486.html>

English translation of clinics' press release:

Creation of protection zones around abortion clinics - Safety and access to abortion clinics finally protected

MONTREAL, Nov. 29, 2016 / CNW Telbec / - The Morgentaler Clinic, the Clinique médicale Fémina, and the Alternative Medical Clinic applaud the unanimous adoption of measures to protect women's privacy, security and access to clinics Planning and abortion. In the context of clause-by-clause consideration of Bill 92, An Act to increase the powers of the Régie de l'assurance maladie du Québec, to regulate drug marketing practices and to protect access Voluntary abortion services, the government is creating areas in which women can access clinics without fear of being harassed or harassed by activists who challenge the right to abortion.

"We demand that the government not wait for an unfortunate incident to legislate. We are

grateful that Minister Barrette has taken government leadership in these legislative changes. We also want to highlight the work of Carole Poirier, MP for Hochelaga-Maisonneuve, who was the first parliamentarian to table a bill to this effect last February, "said France Désilets, Executive Director of the Morgentaler Clinic.

With the creation of protection zones in the vicinity of family planning clinics, the government was able to protect women while preserving the freedom of expression of anti-choice activists. Thus, the government allows abortion-seeking women and health care professionals to do so safely and with respect for their right to privacy. Moreover, it does not ban the right to protest against abortion, but provides a framework for the places where such demonstrations can take place.

It should be noted that the three clinics had to multiply the interventions before the courts to keep away the demonstrators who were setting up at the very door of the clinics to discourage women who had chosen to interrupt their pregnancy. Nicknamed the "Pavement Shelters" and displaying placards and rosaries, they literally called on women. The Superior Court upheld the clinics and granted an interlocutory injunction delimiting a quadrilateral in order to keep the demonstrators at a distance who had declared in court that they could move in front of other clinics. Given the nature of the testimony presented by these groups, it is clear that their real wish is first and foremost to use the court as a forum to question the right to abortion.

Such legislation was demanded by many groups, which in February 2016 had signed a letter to the elected representatives.

Quebec joins two other provinces

Quebec therefore joined British Columbia, which passed an Access to Abortion Services Act in 1996 that defined a perimeter around abortion clinics where protesters can not demonstrate or question, Nor harass, nor photograph the women and doctors of the clinics. This legislation also passed the Charter test in *Oakes (R. v. Oakes, [1986] 1 R.C.S. 103)*. On November 21, Newfoundland and Labrador acted on a commitment and enacted similar legislation.

Court Injunctions

One clinic and one hospital are still protected by private injunctions, obtained by the facilities in court, which create a bubble zone area around the facility that prohibits or controls the presence of protesters.

Alberta

Until the province passed its safe access zone legislation in May 2018, the two clinics (Kensington Clinic, Calgary; and Woman's Health Options, Edmonton) were protected by injunctions. These injunctions could still be validly applied if Alberta's safe access zone law is ever repealed.

The Calgary clinic's injunction was obtained in the early 1990's. It divided areas around the clinic into zones – a maximum of four protestors were allowed in certain areas, and a maximum of 20 protestors were allowed to gather across the street.

In Edmonton, an injunction was obtained in 1993 that prohibited picketing along the entire back alley behind the clinic, and half a block along the side street.

Ontario's Dieleman Injunction

An injunction protecting the Cabbagetown Clinic in Toronto; and four Ontario hospitals was mistakenly dismissed by a court in January 2017, but the Ontario Liberal government brought an urgent motion in June 2017 to reinstate it. However, the judge declined to do so, saying the matter required a hearing. This did not occur. However, Ontario's *Safe Access to Abortion Services Act* passed in Oct 2017, automatically protecting the Cabbagetown clinic but not the hospitals. If the hospitals do not apply for an access zone, the injunction could still protect them if it is reinstated.

The injunction, called the "Dieleman injunction", was originally obtained in 1994 for three clinics in Toronto: Cabbagetown, Scott, and Choice in Health. The latter clinic was no longer protected after they moved to a new location about 10 years ago, and the Scott Clinic closed in 2016 due to owner/doctor retirement, leaving only the Cabbagetown Clinic protected.

The Dieleman injunction also protected four specific hospitals in the province:

- Victoria Hospital (Westminster Campus), London
- University Hospital, London
- North Bay Civic Hospital, North Bay
- Brantford General Hospital, Brantford

The injunction provided a 60-foot (18m) "no protest" zone around the hospitals, surrounded by a 100-foot (30m) "deep zone" of restricted access in which staff and patients had a 10-foot (3m) personal zone.

It also provided for a 500-foot zone (150m) around the homes of seven named doctors in the same cities plus Kingston, and a 15-foot zone (5m) around their office buildings. However, since 24 years have passed since the injunction was granted, it's likely that at least some of these doctors are no longer practicing, or no longer working/living at the addresses as recorded in the injunction. If not, they would no longer be protected by the injunction (if it comes back in force).

Morgentaler Clinic, Toronto

This private injunction specifies a 500-foot zone (150m) around the clinic. The injunction is not location-bound and can move with the clinic. It is enforced by the sheriff rather than the local police, so protestors sometimes come on Saturdays when the sheriff's office is closed.

The injunction remains valid and in force, even after the passage of Ontario's *Safe Access to Abortion Services Act* in October 2017 (which provides only 50m zones outside private clinics).

Chaleur Regional Hospital, Bathurst, NB

In May 2017, the Chaleur Regional Hospital in Bathurst New Brunswick was granted a permanent injunction against protesters, by Court of Queen's Bench Justice Reginald Leger. The injunction bans protesters from demonstrating anywhere on the hospital grounds. The judge said that anti-abortion picketers affiliated with the "40 Days for Life" campaign had put the safety of patients and employees at risk.

The hospital is operated by Vitalité Health Network. It applied for the injunction after the anti-abortion group obstructed traffic at the hospital and forced an ambulance to stop enroute to the emergency department in 2012. At the trial, the ambulance driver described having to brake "as fast as possible" because a picketer at the hospital had stepped off the sidewalk. His co-worker was tossed toward the back of the ambulance, causing the mask on a patient suffering from cardiac discomfort to be dislodged.

Link: *N.B. judge bans anti-abortion group from protesting outside Bathurst hospital.* Canadian Press. May 29, 2017. <http://www.cbc.ca/news/canada/new-brunswick/anti-abortion-injunction-bathurst-hospital-vitalite-1.4136390>