Comparative Analysis of Crisis Pregnancy Centres – Canada and International

Brianne Upshaw, 1L Student at the University of New Brunswick Faculty of Law

March 16, 2022

Memo Prepared for Abortion Rights Coalition of Canada Through PBSC-UNB

Disclaimer: This report was created by a Pro Bono Students Canada student volunteer, Brianne Upshaw, from the UNB Law Chapter and approved by a lawyer supervisor. The student's work embodies objective legal information and is not legal advice tailored to ARCC's advocacy initiatives. ARCC received permission from the student to use this work to support ARCC's advocacy initiatives.

Table of Contents

INTRODUCTION....2
- Abortion Rights Coalition of Canada....2
- What are Crisis Pregnancy Centres?....2

CPC TACTICS AND THE CURRENT STATE OF CPCs IN CANADA....3
JURISDICTION....4
OUTSIDE JURISDICTIONS (EXCLUDING U.S.)....4
- United Kingdom....4
- Ireland....5
- New Zealand....6
- Australia....6
- Relevance to Canadian Context....7

CPC ACTIVITY IN THE UNITED STATES....8
- United States Case Law Overview....8
- Comparison Between Canada and the U.S.' Handling of CPCs....12

SIMILAR LEGISLATION PASSED IN CANADA....13
CONCLUSION....15

INTRODUCTION

Abortion Rights Coalition of Canada

Formed in 2005, the Abortion Rights Coalition of Canada (ARCC) is the only nation-wide political pro-choice group that is dedicated to protecting abortion rights and access to abortion for people capable of pregnancy. They need to have control over their own fertility to be able to achieve full autonomy and play an equal role in society.1 ARCC's primary mandate is to carry out both political and educational work on reproductive rights and health. This includes advocating for laws and regulations that support these rights.

What are Crisis Pregnancy Centres?

Anti-abortion counselling centres, often referred to as Crisis Pregnancy Centres ("CPCs"), are currently a threat to this autonomy of choice in Canada. These anti-choice facilities are often Christian ministries that present as medical clinics or counselling centres with the purpose of preventing people from attaining abortion care.[2] CPCs spread misleading and incorrect information about both the services they offer and abortion care in general. This may include concealing their religious agendas, avoiding disclaimers that they do not provide nor refer for abortion care or contraception, and providing medically and scientifically inaccurate information to those seeking abortion.[3]

It is difficult for people to have full freedom of choice when they are subject to outside influences. People have a constitutionally-based right to having unrestricted and fully-funded abortion care without barriers or discrimination – a right that is being interfered with by CPCs.[4] For these reasons, ARCC argues that CPCs across Canada should be regulated to protect the freedom of choice and bodily autonomy for those seeking abortion care. Cities and provinces should take action to pass bylaws regulating the activities of CPCs and their conduct. CPCs can affect the physical and mental well-being of people who are pregnant by convincing them that their choice for abortion is morally wrong and that alternative options are in their best interest. For this reason, it is crucial to act now to prevent CPCs from operating as they have been.

---

[1] "About Us" (last visited 24 Feb 2022), online: *Abortion Rights Coalition of Canada* <www.arcc-cdac.ca/about-us/>.

[2] Joyce Arthur, "Exposing Crisis Pregnancy Centres in British Columbia" (Jan 2009) at 3, online (pdf): *Pro Choice Action Network* <www.prochoiceactionnetwork-canada.org/Exposing-CPCs-in-BC.pdf> [Arthur, "Exposing Crisis Pregnancy Centres in British Columbia"].

[3] *Ibid* at 13–16.

[4] Abortion Rights Coalition of Canada, *supra* note 1.

CPC TACTICS AND THE CURRENT STATE OF CPCs IN CANADA

There are currently more CPCs across Canada than abortion clinics.[5] As well, no regulations to date are in place for CPCs in Canada. Therefore, nothing prevents CPCs from employing unethical tactics in an attempt to prevent pregnant people from having an abortion. Some common CPC tactics include spreading misinformation about abortion care (e.g., claiming abortion increases the chance of subsequent miscarriage), failing to disclose they are not medical facilities and have no medically trained personnel on staff, failing to be transparent about their religious and anti-abortion agendas, and instilling negative emotions surrounding abortion.[6] CPCs will sometimes situate themselves next to abortion clinics in an attempt to confuse and lure people into their facilities. An example is in Esquimalt, a municipality in Vancouver BC, where a CPC was located right beside a walk-in clinic that would refer pregnant clients to the CPC. The CPC also used the same signage for their unit as the walk-in clinic, presenting itself as having the same medical authority.[7]

In addition to their in-person tactics, many CPCs across Canada operate websites that further provide misinformation about their facilities and about abortion care in general. In 2016, ARCC completed a study of 166 different CPC websites across Canada highlighting these online tactics.[8] Some discoveries included that 60% of CPCs did not disclose on their websites that they do not refer for abortions or contraception, about 48% claimed that abortion leads to psychological consequences that have not been medically proven, and about 96% of the CPCs had a religious affiliation and/or agenda while only 24% actually disclosed this on their website.[9] Similar to their in-person tactics, their online platforms tend to guilt, confuse and scare those seeking abortion into "choosing" alternative options by essentially taking away people's choice.

Considering the number of CPCs across Canada as well as the tactics they frequently employ, this suggests the need for regulation of some sort for Canadian CPCs. Access to abortion care is a constitutional and basic right, as it protects a person's bodily autonomy and integrity, and in many cases their health and safety. Provincial governments' and/or municipal governments' failure to regulate CPCs interferes with this right, as a person's freedom of choice and security of the person may be compromised if they are tricked and guilted into not having an abortion when this was their intention. The next section discusses the current law empowering municipalities to pass bylaws regarding health.

---

[5] "Anti-Choice and Pro-Choice Groups in Canada – a Comparison" (21 Feb 2021), online (pdf): *Abortion Rights Coalition of Canada* <www.arcc-cdac.ca/wp-content/uploads/2020/06/Anti-choice-pro-choice-groups-charities.pdf>.

[6] Arthur, "Exposing Crisis Pregnancy Centres in British Columbia", *supra* note 2 at 13–14.

[7] Arthur, "Exposing Crisis Pregnancy Centres in British Columbia", *supra* note 2 at 12.

[8] As of Feb 2022, ARCC counts 148 CPCs in Canada: "List of Anti-choice Groups in Canada" (21 Feb 2022), online (pdf): *Abortion Rights Coalition of Canada* <www.arcc-cdac.ca/wp-content/uploads/2021/09/list-anti-choice-groups-CPCs-only.pdf>.

[9] Joyce Arthur, "Review of 'Crisis Pregnancy Centre' Websites in Canada" (May 2016) at 2, online (pdf): *Abortion Rights Coalition of Canada* <www.arcc-cdac.ca/wp-content/uploads/2020/06/CPC-Website-Study-ARCC-2016.pdf>.

JURISDICTION

ARCC proposes that municipalities are empowered under municipal and provincial statutes to pass bylaws that could regulate CPC behaviour. For instance, in New Brunswick, under section 10(1)(a) of the *Local Governance Act*, local governments have the ability to make bylaws respecting "the safety, health and welfare of people and the protection of people and property."[10] Further, under section 57(b) of the *Public Health Act*, the Minister of Health in New Brunswick can protect the health and well-being of people living in New Brunswick in any way they see fit, which includes "pursuing policies that promote and support the health of the population."[11] In this way, both at a municipal and provincial level, governments are empowered to make bylaws regarding the operation of CPCs if these laws support the health of citizens, including those seeking abortion care.

Other provinces have similar laws that empower local governments to act. In Nova Scotia, under section 172(1)(a) of the *Municipal Government Act*, a municipal council has the ability to make bylaws for the "health, well being, safety and protection of persons."[12] In Prince Edward Island, section 180(a) of the *Municipal Government Act* empowers the mayor and other council members to pass bylaws for the "safety, health and welfare of people and the protection of persons and property."[13] In Ontario, under section 10(2)(6) of the *Municipal Act*, *2001*, a municipality can pass bylaws respecting the "health, safety and well-being of persons."[14] In British Columbia, under section 304(1)(a) of the *Local Government Act*, the board of directors in a regional district may pass bylaws to "regulate and prohibit for the purposes of maintaining, promoting or preserving public health (…)."[15] Each of these laws are similar and can empower municipal governments to regulate CPC behaviour as it relates to the health and well-being of Canadians.[16]

OUTSIDE JURISDICTIONS (EXCLUDING U.S.)

In addition to Canada, CPCs exist in many other western countries, including Ireland, the UK, New Zealand, and Australia. Most of these countries are similar to Canada in that CPCs are not regulated. However, CPCs have less of a presence in some jurisdictions than they do in Canada. The United States, which has the largest number of CPCs, will be discussed individually in a subsequent section.

United Kingdom

Even though the UK currently has no regulations for CPCs, they can be found in every county in the UK. Many CPCs are also a part of respectable professional organizations, such as the British Association for Counseling and Psychotherapy, giving CPCs credibility even though these

---

[10] *Local Governance Act*, SNB 2017, c 18, s 10(1)(a).
[11] *Public Health Act*, SNB 1998, c P-22.4, s 57(b).
[12] *Municipal Government Act*, SNS 1998, c 18, s 172(1)(a).
[13] *Municipal Government Act*, RSPEI 1988, c M-12.1, s 180(a).
[14] *Municipal Act, 2001*, SO 2001, c 25, s 10(2)(6).
[15] *Local Government Act*, RSBC 2015, c 1, s 304(1)(a).
[16] No similar law empowering officials to pass bylaws for health could be found for Newfoundland.

corporations lack any means of monitoring their members' practices. Further, CPCs have been considered by some as filling a gap in counselling services regarding abortion care that are not administered by abortion providers.[17]

In terms of access to abortion care, Lisa Hallgarten, Head of Policy and Public Affairs of the charity Brook in the UK, confirmed that about 96% of abortions in the UK are free and are available for anyone entitled to National Health Services. In England, abortion clinics can be found in most urban areas, and it is not likely that someone seeking care will have to travel far to access early medical and surgical abortions. However, the farther along in gestation, the more difficult it becomes to access abortion care and the more likely people will have to travel. In Scotland, abortion access is less attainable, as they do not offer surgical abortions at nearly the same level as England, and thus people might be forced to travel to England for care. In Northern Ireland, abortions were only decriminalized in 2019,[18] and it is very difficult to access care after 12 weeks. Similar to Scotland, many people from Northern Ireland are forced to still travel to England to access abortion. Lastly, the situation in Wales is more similar to that in England; however, many people live in rural areas where access to abortion in clinics is sparser. Lack of substantial access to abortion clinics may be a reason why someone seeks out alternative resources, such as a CPC, as they may feel they have no other choice or may believe they are getting the same care.[19]

Only one case has attempted to regulate CPC behaviour in the UK, in 2013. A website for a CPC, Central London Women's Centre, had language that gave readers the impression that it was an abortion clinic.[20] Rule 12.24 of the Committees of Advertising Practice (CAP) code in the UK was updated in 2012 to include a clause that states: "marketing communications for services offering advice on unplanned pregnancy must make clear if the service does not refer women directly for a termination."[21] The CAP therefore ruled that the CPC's website had to be immediately updated to reflect language that was not misleading to those seeking abortion care. This is a step in the right direction that we might be able to consider with regard to Canadian law.

Ireland

In Ireland, no regulations currently govern CPCs. A bill was introduced about five years ago that attempted to regulate CPCs but did not make it beyond the initial stages.[22] Ireland's prior ban on abortion has created a culture of silence and confusion, which CPCs have been able to capitalize on.[23]

---

[17] Lisa Hallgarten, Head of Policy and Public Affairs at Brook.

[18] "Abortion decriminalized in Northern Ireland" (last visited 24 Feb 2022), online: *Amnesty International UK* <https://www.amnesty.org.uk/abortion-rights-northern-ireland-timeline>.

[19] Lisa Hallgarten, Head of Policy and Public Affairs at Brook.

[20] "Post Conception Advice Services (PCAS)" (8 Dec 2014), online: *Advertising Standards Authority* <www.asa.org.uk/advice-online/post-conception-advice-services-pcas.html>.

[21] Ibid.

[22] Goretti Horgan, activist for Alliance for Choice in Northern Ireland, and lecturer in social policy at Ulster University.

[23] "Rogue Crisis Pregnancy Agencies in Ireland – Anti Choice and Anti Women" (last visited 24 Feb 2022) at 3, online (pdf): *Irish Family Planning Association* <www.ifpa.ie/sites/default/files/documents/media/publications/rogue_agency_factsheet.pdf>.

Considering the lack of regulations and the current access to abortion in Ireland, Goretti Horgan and Emma Campbell, activists with Alliance for Choice in Northern Ireland, commented on how easy it is for most people who are pregnant to seek abortion care in Ireland. Similar to the UK, there is no cost at all for most abortion health care. However, some access gaps still exist, especially for people in Western Ireland and for those who seek abortion services beyond twelve weeks. For this reason, people will often pay to access telemedicine through either Women on Web or Women Help Women (both will waive the fees if people are not able to pay).[24]

In 2021, the Abortion Rights Campaign (ARC) called on the government to regulate CPCs. This campaign recognized that the majority of people who are pregnant do not know where to go to access abortion care, and this gap is abused by CPCs who showcase themselves as centres that provide options for those seeking care.[25] The government and Department of Health failed to act, and thus changes are needed to protect those vulnerable to being misled by CPCs.

New Zealand

Like the other jurisdictions reviewed, New Zealand has no regulations for CPCs. Terry Bellamak, President of ALRANZ Abortion Rights Aotearoa, commented on the current state of CPCs in New Zealand, especially in light of the recent law reform allowing people to have access to abortions up to 20 weeks. Bellamak notes that New Zealand law does not protect against defrauding people unless it is done for pecuniary gain. Therefore, the law does not recognize the gains that a fraudster can obtain that are intangible, as seen with CPCs. For example, many CPCs in New Zealand have a large focus on post-abortion counselling in addition to counselling to initially prevent abortions. This post-abortion counselling has the goal of reinterpreting a person's experience with abortion, casting them as being a victim of the "abortion industry." This pushes forward the agendas of CPCs, but because it is not done for monetary gain, this injustice goes unregulated.[26]

CPCs do not have a large presence in New Zealand. Abortion care is free under the New Zealand health system, so people do not need to access CPCs for services such as pregnancy tests. Further, people are likely to be wary of places that are not real medical clinics. Regardless, the centres that do exist should still be regulated, especially considering the lack of comprehensive understanding of CPCs in New Zealand and the size of their influence.[27]

Australia

In Australia, CPCs are not regulated, although this could be due to the small CPC presence, if any. Rachael Smith, Project Officer with Children by Choice in Australia, explains that abortion is legal across all states, and some states have excellent access for abortion care through the public hospital system, giving people access to medication or surgical abortions at no cost. It is also

---

[24] Goretti Horgan and Emma Campbell, activists with Alliance for Choice in Northern Ireland. Goretti Horgan is also a lecturer in social policy at Ulster University.

[25] "Press Release: Police Rogue Crisis Pregnancy Agencies – not Pregnant People's Choices" (24 Sept 2021), online: *Abortion Rights Campaign* <abortionrightscampaign.ie/2021/09/24/press-release-police-rogue-crisis-pregnancy-agencies-not-pregnant-peoples-choices/>.

[26] Terry Bellamak, President of ALRANZ Abortion Rights Aotearoa.

[27] Ibid.

generally free for later gestation in case of foetal abnormalities. But accessing free abortion care for other reasons depends on location and availability of doctors (e.g., some take advantage of "conscientious objection" clauses). In some locations, people often have to pay out of pocket. For this reason, abortion care is not easily accessible, especially for those in more rural or remote areas or those without access to Medicare. Arguably, Australia does not have enough abortion care providers.[28]

When comparing the topic of abortion in Australia with other jurisdictions such as the United States or Canada, abortion care is not as frequently and openly debated in Australia. The cultural differences between these jurisdictions may be a reason why CPCs have much less presence in Australia, as CPCs are often run with the goal of wanting to prevent people from accessing abortion care.[29] It is interesting to consider that if Australia were more openly divided on abortion care, or if it was more openly discussed, or even if access to abortion care improved for those needing it, whether CPCs would inevitably grow in number in Australia.

Relevance to Canadian Context

These other jurisdictions, while also not having any regulations for CPCs, shed more light on the reach of CPCs and possible consequences that may arise from not regulating them. Similar to Canada, some jurisdictions have a stronger presence of CPCs, allowing them to spread their influence in different ways (such as by working with respected organizations). In these jurisdictions, there have been calls and attempts to regulate CPCs, without success at this point. In other jurisdictions, however, there is less or no CPC presence. This may be because abortion care is free and accessible in these places, or due to cultural differences. Regardless of the presence of CPCs in these jurisdictions, however, the consensus across each place is that CPCs employ harmful tactics and should be regulated.

In contrast to Australia, abortion is a much more debated topic in Canada. As mentioned, this could be why CPCs are virtually non-existent in Australia and why there may be less need for regulation. Where access to abortion care is more heavily challenged, it is more important for the government to act to protect people's freedom of choice in their health care. At present, no government in Canada is taking action to protect this right by regulating CPCs. Further, in contrast to New Zealand where abortion care may be more accessible, many Canadians seeking abortion must travel distances well over 50 kilometers,[30] and some clinics offering abortion services today are not fully funded.[31] This may push those most vulnerable and needing services while pregnant to turn to CPCs instead of licensed medical clinics, if they are not able to access abortion care easily due to lack of proximity and out-of-pocket costs. This issue was showcased in Ireland, as people may visit CPCs when they are unsure of where to go and believe CPCs to be centres that provide options for people who are pregnant.

---

[28] Rachael Smith, Project Officer at Children by Choice.

[29] Ibid.

[30] "The Canadian Abortion Provider Shortage: Now and Tomorrow" (May 2020) at 1, online (pdf): *Abortion Rights Coalition of Canada* <www.arcc-cdac.ca/wp-content/uploads/2020/06/05-Abortion-Provider-Shortage.pdf>.

[31] "Clinic Funding – Overview of Political Situation" (March 2021), online (pdf): *Abortion Rights Coalition of Canada* <www.arcc-cdac.ca/wp-content/uploads/2020/06/03-Clinic-Funding-Overview.pdf>.

Jurisdictions outside of Canada have recognized the harms that arise from CPCs. It is time that municipal and/or provincial governments in Canada recognize this too by implementing bylaws that will help protect people's right to abortion care. A possible takeaway that could be relevant for implementing bylaws in Canada is regarding the UK case that set the standard of advertising for CPCs. Namely, that it must be clear on a CPC's website whether they refer for abortion. Canada also has an industry code for advertising, the Canadian Code of Advertising Standards, a voluntary but widely followed Code that sets out numerous requirements that advertisers should follow when placing ads. For instance, advertisements cannot contain inaccurate or deceptive claims, nor omit relevant information that makes the advertisement deceptive or misleading.[32] Along with looking at bylaws regarding health care, looking at advertising standards to critique how CPCs present themselves in person and online may be helpful for determining appropriate bylaws.

In addition to these jurisdictions, CPCs are also found in the United States. However, there have been many attempts to regulate CPCs in the U.S., some successful, some not. The resulting case law is reviewed next.

CPC ACTIVITY IN THE UNITED STATES

United States Case Law Overview

CPCs are very common in the United States. Over primarily the last decade, numerous attempts have been made to regulate and restrict the abilities of CPCs in different states. These examples are useful to review when considering possible bylaws and regulations for Canada, as they show which types of regulations have been upheld and struck down in a jurisdiction similar to Canada. Therefore, they may shed some light on how these regulations would fare in Canadian courts.

Some of the earliest examples of ordinances passed in the U.S. were in Maryland. In 2009, the City of Baltimore passed an ordinance requiring pregnancy service centers that did not offer abortion nor refer for abortion care to disclose this to potential clients by posting signage in their waiting rooms.[33] This ordinance was challenged in 2011 in court by an Archbishop and a CPC, who claimed that the ordinance compelled their speech. After numerous appeals on both sides, in 2018 it was finally decided in *Greater Baltimore Center for Pregnancy Concerns, Incorporated v Mayor and City Council of Baltimore* ("*Greater Baltimore*") that the ordinance did compel speech, and thus violated the clinic's First Amendment right to free speech.[34]

Starting in the same year as *Greater Baltimore* in 2011, an ordinance in Montgomery County was also challenged in court in *Centro Tepeyac v Montgomery County* ("*Montgomery County*"). This ordinance required pregnancy service centers that did not have any licensed medical professionals on staff to post a sign stating that, and to advise potential clients that they should consult with their health care providers concerning their pregnancy.[35] Much like in *Greater*

---

[32] "The *Canadian Code of Advertising Standards*" (last modified July 2019), online: *Ad Standards* <adstandards.ca/code/the-code-online/>.

[33] O'Brien v Mayor and City Council of Baltimore, 768 F Supp (2d) 804 (Md Dist Ct 2011).

[34] Greater Baltimore Center for Pregnancy Concerns, Incorporated v Mayor and City Council of Baltimore, 879 F (3d) 101 (4th Cir 2018).

[35] *Centro Tepeyac v Montgomery County*, 722 F (3d) 184 (4th Cir 2013).

Baltimore, the Court in *Montgomery County* held that the requirement to post the disclaimer stating that the county recommended clients to consult with health care providers was against the CPC's First Amendment right.

However, the Court upheld the requirement that the pregnancy service centres, if they did not have any licensed medical professionals on staff, post a sign stating that. The Court explained that it upheld this requirement because it is "in neutral language and states the truth,"[36] but neglected to comment on what qualifies as "neutral language." Further, there were no specific reasons clarifying why the disclaimer that the CPC did not have any licensed medical professionals on staff was any more truthful than disclosing that the county encouraged pregnant people to consult with licensed health professionals. The only rationale given for the former requirement, for CPCs to disclose that they did not have medical professionals, was that it was in line with the county's objective of protecting the health of its residents.[37] It was not justified why the latter provision, that the county encourages pregnant people to see medical professionals, would not help protect the health of county residents. Selecting what people are allowed to hear in this context may disrespect the rights of those seeking abortion, as they may lack relevant information (i.e. health recommendations by the county) when making decisions about their health.

In *Austin Lifecare, Inc. v City of Austin* ("*Austin*"), the City of Austin, Texas was brought to court in 2014 for an ordinance similar to the one passed in Montgomery County. The ordinance in *Austin* required unlicensed pregnancy centres to post signs viewable to patients stating whether they provide medical services and were licensed to do such, and whether a full-time licensed medical professional was on staff to supervise.[38] This ordinance was struck down for violating the guarantee in the Fourteenth Amendment of due process.

The Due Process Clause requires that laws cannot be too vague to force people with ordinary knowledge to guess at their meaning, as this would disrupt the due process of law.[39] The court in *Austin* determined the City's laws to be too vague and lacked sufficient notice as to what kind of conduct would result in penalization.[40] Specifically, the terms "full-time" and "medical service" were too vague for CPCs to know without question what was required of them, and may allow the City to arbitrarily enforce these laws.[41] The City also proposed ways to interpret the meaning of the terms so that they were not vague, but these suggestions were likewise rejected by the court. Although it was argued by the City that the purpose of the ordinance was to protect pregnant people by helping ensure that medical services are only provided by professionals, this concern was not directly addressed by the court at all, let alone in relation to the Fourteenth Amendment. The ordinance was also challenged on the grounds of violating the First Amendment

---

[36] *Ibid* at 190.
[37] *Ibid* at 186.
[38] Austin Lifecare, Inc v City of Austin, 2014 WL 12774229 (Tex Dist Ct).
[39] *Ibid*.
[40] Ibid.
[41] *Ibid*.

right to free speech, however, the court noted that they did not need to address this challenge after finding the first violation.[42]

Also in 2014 was a case in New York City, *Evergreen Association, Inc. v City of New York* ("*Evergreen*"). The ordinance in question in this case, Local Law 17, had three disclosure requirements for CPCs: CPCs had to disclose that New York City recommends that those who are pregnant consult with their health care providers, disclose whether they provide referrals for abortion care, and disclose whether there is a licensed medical professional working in the pregnancy center who supervises all of the services.[43] While the first two disclosure requirements were struck down, again for compelled speech and for violating the First Amendment, the provision that required CPCs to disclose if they had a medical professional on staff was upheld.[44] The court found that this provision protected the health of citizens in New York City and helped prevent consumer deception in a minimally intrusive way.[45]

Following the New York case, there was another successful case from 2017 in San Francisco, *First Resort, Inc. v Herrera*, for an ordinance passed in 2011 titled *Pregnancy Information Disclosure and Protection Ordinance*. This ordinance prohibits false and misleading advertising employed by CPCs regarding whether they offer abortion care or emergency contraception.[46] This ordinance was upheld in court on grounds that it only regulated commercial speech that was not protected and did not regulate protected speech under the First Amendment.[47] Instead of trying to compel speech, the law prohibited only certain speech that should not be protected (commercial speech that is false or misleading). Following from this ordinance, two other cities passed similar ordinances that have not yet been brought to court. In Oakland, California, an ordinance with the same name and provisions as the *Pregnancy Information Disclosure and Protection Ordinance* was passed in 2016 and is currently in effect.[48] Additionally, an ordinance again with the same name and similar wording was passed in Hartford, Connecticut in 2017. In addition to the prohibition against false and misleading advertising, the Hartford ordinance also has a required disclosure provision stipulating that CPCs must advise patients if they do not have licensed medical professionals on staff to supervise the services provided.[49] This provision appears to be similar to the ones upheld in New York City and Montgomery County.

Next in the timeline is *National Institute of Family and Life Advocates v Becerra*, a 2018 case that involved a law enacted by the California State Legislature to regulate CPCs. The law required licensed pregnancy clinics to provide information regarding the availability of public-funded family-planning services, including contraception and abortion care. Further, the law required unlicensed pregnancy centres to disclose to patients that they are not licensed to provide medical services.[50] This case made it all the way to the Supreme Court of the United States. The court

---

[42] Ibid.
[43] Evergreen Association, Inc v City of New York, 740 F (3d) 233 at 238 (2nd Cir 2014).
[44] Evergreen, supra note 43.
[45] *Ibid* at 247.
[46] Pregnancy Information Disclosure and Protection Ordinance, Chapter 93, San Francisco Administrative Code.
[47] *First Resort Inc v Herrera*, 860 F (3d) 1263 (9th Cir 2017).
[48] Pregnancy Information Disclosure and Protection Ordinance, s 5.06.110, Oakland Municipal Code.
[49] Pregnancy Information Disclosure and Protection Ordinance, Chapter 17, Article VI, Hartford Municipal Code.
[50] National Institute of Family and Life Advocates v Becerra, 86 USLW 4627 (US 26 June 2018).

determined that these requirements violated CPCs' First Amendment rights because they regulated the content of their speech (even though it was only regulating professional speech), and the requirement was thus unduly burdensome on clinics' protected speech, overturning the lower court ruling to the contrary.[51] Due to the Supreme Court's decision in *National Institute of Family and Life Advocates v Becerra*, two other lower court decisions in California with this same provision have been subsequently overruled. This California law was found to be in violation of the First Amendment right to free speech to both LivingWell Medical Clinic, Inc.[52] and A Woman's Friend Pregnancy Res. Clinic,[53] in addition to National Institute of Family and Life.

Increasing the number of cases wherein laws regulating CPCs were upheld is a case from Illinois, *National Institute of Family and Life Advocates v Schneider* ("*Schneider*"), heard in 2020. The case involved an amendment to the *Illinois Healthcare Right of Conscience Act* and impacted both CPCs and doctors. This amendment required health care providers (including CPCs) to discuss with patients their legal treatment options, as well as any risks and benefits of these options. Further, if the patient is seeking services that the professional will not provide due to "conscience" reasons, the provider must refer or transfer the patient to other providers that they believe will offer the treatment.[54] This amendment was made to ensure patients seeking particular medical services such as abortion were not prevented from doing so based on the "conscientious objections" of health care providers.[55] The CPCs' and doctors' motions challenging the law were dismissed, with the court finding that the law was regulating professional conduct with only an incidental burden on free speech.

This is in contrast to the Supreme Court's decision in *National Institute of Family and Life Advocates v Becerra*, which found that the professional speech requirements were unduly burdensome (i.e., more than an incidental burden). In distinguishing the Supreme Court's decision in *National Institute of Family and Life Advocates v Becerra*, the Illinois Court in *Schneider* explained that the ordinance in this case was regulating professional conduct (not speech), and only incidentally burdens speech. There were a few reasons for this determination, including that the information required in the Illinois ordinance was regarding the benefits of a medical procedure, whereas the Californian provision was requiring the disclosure of particular family-planning services outside of the center.[56] The former provision in *Schneider* was viewed as regulating professional conduct because it was in relation to a medical procedure and would be relevant to a person's decision to undergo the procedure[57]; speech was only regulated pursuant to the "practice" of medicine.[58]

Lastly, the most recent case involving CPCs was in 2021 in South Dakota, *Planned Parenthood Minnesota, North Dakota, South Dakota v Noem*. In this case, the court was to determine whether an earlier injunction of a law (i.e. an earlier court order preventing the law from taking

---

[51] *Ibid* at 2378.
[52] LivingWell Medical Clinic, Inc v Becerra, 901 F (3d) 1168 (9th Cir 2018).
[53] A Woman's Friend Pregnancy Resource Clinic v Becerra, 901 F (3d) 1166 (9th Cir 2018).
[54] National Institute of Family and Life Advocates v Schneider, 484 F Supp (3d) 596 (Ill Dist Ct 2020).
[55] *Ibid* at 607.
[56] *Ibid* at 613.
[57] *Ibid* at 612.
[58] *Ibid* at 610.

effect) should be sustained or dissolved. The law in question would have required that before they can perform abortions, physicians must ensure that the person seeking abortion care has visited a pregnancy care center to inform them about education and counselling assistance available to them and their "unborn child", and counsel the person who is pregnant regarding any possible coercion or pressure in making their decision.[59] This case arose when a few State Officials, along with a couple CPCs, sought to dissolve the injunction. Planned Parenthood, North Dakota, South Dakota, and a physician opposed the State Officials' and CPCs' motion to dissolve the injunction. The court decided to maintain the injunction, explaining that the law would unduly burden a physician's and a woman's right to free speech – in this case, a woman's right to abstain from speaking as would be forced in counselling. Further, the court held the enforcement of the law would have risked irreversible harm to patients, and that it was therefore in the public interest for the injunction to stay in place.[60] State officials and CPCs in South Dakota have since filed an appeal. The appeal has not yet been heard.

Comparison Between Canada and the U.S.' Handling of CPCs

It is important at the outset to differentiate between the Canadian and the United States' Constitutions. In both jurisdictions, there is constitutional protection for freedom of speech/expression. In the U.S., this is in the Constitution as the First Amendment,[61] whereas in Canada, this is section 2(b) of the *Canadian Charter of Rights and Freedoms*.[62] However, in Canada, section 1 of the *Charter* confirms that "the rights and freedoms set out in [the *Charter* are] subject only to such reasonable limits prescribed by law as can be justified in a free and democratic society."[63] There is no equivalent or comparable provision in the U.S. Constitution. This, among many other differences between the Canadian and the U.S. constitutions and judicial interpretations thereof, mean direct comparisons between the U.S. and Canada are not possible. Nevertheless, the U.S. experience regarding the regulation of CPCs, and challenges to those regulations, may reveal some lessons for Canada.

Some common themes emerge when comparing legislation that has been upheld and legislation that has been struck down in the U.S. In most cases where legislation has been struck down, it was found that the laws were in violation of the United States' First Amendment right to freedom of speech. This is commonly seen with the "compelled speech" ordinances, where the law requires CPCs to disclose certain information to patients such as the availability of family-planning services in a city or that the CPC does not refer for abortion. This was also the case where physicians and patients had "compelled speech" requirements imposed on them,[64] as they

[59] Planned Parenthood Minnesota, North Dakota, South Dakota v Noem, 2021 WL 3711032 (S Dak Dist Ct).

[60] Ibid.

[61] US Const amend I.

[62] *Canadian Charter of Rights and Freedoms*, s 2(b), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24).

[63] Canadian Charter of Rights and Freedoms, s 1, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, s 91(24).

[64] Abortion providers in many U.S. States have had compelled speech ordinances imposed on them. Some provisions have been challenged, such as one in North Dakota in *American Medical Association v Stenehjem* (2019): Jessica Washington, "The Largest Doctors' Group in the Country is Heading to Court to Stop an Anti-Abortion Law" (26 June 2019), online: *Mother Jones* <https://www.motherjones.com/politics/2019/06/ama-doctors-abortion-compelled-speech-law-north-dakota-lawsuit/>. For a list of U.S. States that require individuals

found in South Dakota that requiring pregnant women to attend counselling at CPCs and their physicians to verify their attendance infringed on both women's and doctors' right to free speech.

However, not all "compelled speech" ordinances have been rejected; in Montgomery County and in New York City, the courts found that it was too important for patients to know whether there was a licensed medical professional on staff for the provision to be struck down in violation of a CPC's freedom of speech, as was done with other "compelled speech" ordinances. The courts distinguished this requirement from others by reasoning that states can create regulations to preserve the health and safety of their residents, and that fitting into this criteria is the requirement to disclose relevant and accurate information that citizens need to make serious medical decisions (which includes advising pregnant people of the qualifications of those counselling them in their decisions).[65] Similarly, the ordinance in Hartford also requires CPCs to disclose if they do not have licensed medical professionals on staff (but this has not yet been challenged in court). Further, Illinois patients are entitled to be told about all of their legal treatment options, as well as the risks and benefits of them (although this was considered a regulation on professional conduct and only an incidental burden on speech).

In addition to some "compelled speech" ordinances being upheld, there was also success with ordinances prohibiting unprotected speech such as false or misleading advertising. As seen in *First Resort, Inc. v Herrera*, the speech was unprotected because "the Constitution affords no protection to false or misleading commercial speech."[66] Thus, there has been success with different types of regulations across the States.

As stated, while the U.S. and Canadian legal landscape cannot be directly compared, it may be worth exploring how bylaws resembling those that have been upheld in the U.S. (for example, bylaws like the *Pregnancy Information Disclosure and Protection Ordinance*, which prohibits CPCs from spreading misinformation about their services and abortion care in general, and which was upheld in San Francisco in *First Resort, Inc. v Herrera*) might fare in Canada if challenged under the *Charter*.

SIMILAR LEGISLATION PASSED IN CANADA

While there are currently no regulations for CPCs in Canada, many other examples of health-related bylaws and regulations are currently operational at both the provincial and federal levels. These examples could provide insight into how bylaws for CPCs would fare in Canada, as they could employ similar restrictions to other health-related bylaws and regulations.

Considering the provincial level first, one example of a regulation currently in place in Nova Scotia is the *Public Education about Fetal Alcohol Syndrome Regulations*, made under the *Liquor Control Act*. This law compels every government store in Nova Scotia that sells liquor to display a sign warning those who are pregnant that consuming alcohol during pregnancy may lead to fetal

---

seeking abortion care to first be given counselling, see here under "State Mandated Counselling": "An Overview of Abortion Laws" (1 Feb 2022), online: *Guttmacher Institute*, <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>.

[65] *Montgomery County*, *supra* note 35 at 193; *Evergreen*, *supra* note 43 at 248–249.

[66] *Supra* note 47 at 1271.

alcohol syndrome.[67] There are also requirements for the sign itself, such as the size and language(s) it can be displayed in.[68] In the context of the U.S. examples, this regulation is reminiscent of the ordinances that were struck down in Baltimore and Montgomery County as "compelled speech." A sign displayed in a CPC in Canada would have a similar objective as the signs required to be displayed in Nova Scotia: to protect people's autonomy and ability to access information relating to their health. Even though a somewhat analogous law was struck down in the U.S. as contrary to the First Amendment, similar regulations may fare differently in Canada under the *Charter*, especially when considered under s. 1 of the *Charter*.

Turning to the federal level, numerous requirements exist for pharmaceutical companies to meet certain standards for advertising, set out in the Pharmaceutical Advertising Advisory Board (PAAB) Code. The PAAB's code is private (i.e. not a government law or bylaw), however, PAAB does have a liaison with Health Canada concerning its regulation of advertising healthcare products.[69] An example of an advertising standard the PAAB Code maintains is that all advertising must be correct, complete, and clear to promote trust and credibility between companies and consumers.[70] Further, some content-based requirements are in force, such as the advertiser being required to present the product in a way that fairly discloses the risks and benefits, as well as to provide a representative analysis of a product's research findings.[71] The PAAB Code promotes the dissemination of accurate health product information in an ethical way,[72] something that could potentially be applied for CPCs as well. For example, a similar bylaw could be created requiring CPCs to disclose all relevant, accurate, and scientifically-backed information to patients, including a fair balance of risks and benefits that people who are pregnant will need to make decisions concerning their health. This would help ensure that people who are seeking abortions or who are wanting to hear about their options can do so without barriers.

Similar to the PAAB Code, two other pieces of federal legislation, the *Tobacco and Vaping Products Act* and the *Food and Drugs Act*, involve restrictions on information that can be disclosed to the public. The *Tobacco and Vaping Products Act* prohibits the promotion of tobacco in a way that is false or misleading with regard to any potential health effects or risks.[73] Likewise, the *Food and Drugs Act* prohibits the depiction of any food, drug, cosmetic or device as being a treatment or cure for certain diseases or disorders set out in the legislation, such as acute alcoholism or cancer.[74] Similar legislation for CPCs could parallel these laws as well; for example, legislation could require CPCs to provide a fair analysis of health benefits and risks for any service that patients ask about. Further, the legislation could prohibit CPCs from advertising information that is false or misleading. This again promotes a person's freedom of choice when it comes to decisions about their own body. It may be worth exploring how such regulation of CPCs, if implemented, might fare if constitutionally challenged.

---

[67] NS Reg 181/2005, s 2(1).
[68] *Ibid* at s 2(2).
[69] The Pharmaceutical Advertising Advisory Board, *PAAB Code of Advertising Acceptance*, online: PAAB, 2018, s 1.1.
[70] *Ibid* at s 2.1.
[71] *Ibid* at ss 2.1.2, 2.3.
[72] *Ibid* at s 1.2.
[73] Tobacco and Vaping Products Act, SC 1997, c 13, s 20(1).
[74] *Food and Drugs Act*, RSC 1985, c F-27, s 3(1).

CONCLUSION

Given the clear harms CPCs risk causing, including to the constitutionally protected right to abortion, bylaws regulating the behaviour of CPCs should be implemented across Canada. CPCs have currently been able to operate without fear of legal action, allowing them to trick and guilt unsuspecting people who are pregnant into making decisions that benefit the CPCs' agenda. This undermines people's bodily autonomy and health – rights that should be protected. ARCC proposes that municipal and/or provincial governments should take action to regulate CPCs so that they are unable to further limit people's freedom of choice. Lessens can be learned from other jurisdictions, including the United States. Further, existing health-related laws and regulations in Canada reveal the types of restrictions that could be explored when considering options for CPC regulation in Canada. Regulating CPCs is essential to ensure that every person's constitutional right to abortion care is preserved.