Abortion Rights Coalition of Canada

Your Voice for Choice

Canada's only national political pro-choice advocacy group

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Position Paper #1

Abortion Is a "Medically Necessary" Service and Cannot Be Delisted

The following arguments explain why all abortions are medically required and must be fully funded by provinces under the *Canada Health Act*. More details can be found here.

What does "medically necessary" mean?

The term "medically necessary" has been defined by the Supreme Court of BC to mean a "medical service that is essential to the health and medical treatment of an individual." The *Canada Health Act* does not define "medically necessary" but conflates it with "insured services", which means "hospital services, physician services and surgical-dental services provided to insured persons." The provinces decide what is medically necessary under the Act, by creating a list of insured services, which are then automatically deemed medically necessary. In practice, however, politicians alone do not decide what is medically necessary; listed services must be negotiated between physicians and government. So even if a province wanted to delist abortion, it would have to get the cooperation of a medical organization such as the College of Physicians and Surgeons.

Women's lives and health are at stake

Abortion services are a critical component of public health programs, since many women will otherwise risk their lives to obtain unsafe, illegal abortions. Legal abortion literally saves women's lives and protects their health, making the service an integral part of women's reproductive health care, as well as transgender people who can get pregnant. The fact that abortion service provision varies widely across the provinces remains an issue of critical importance in supporting the health of women and transgender people nationally.

Abortion is not an elective procedure

Pregnancy outcomes are inescapable and time-sensitive. Neither childbirth nor abortion is "elective" because unlike elective procedures, a pregnant person cannot simply cancel the outcome, or wait till next year. Once you are pregnant, you must decide relatively quickly to either give birth or have an abortion. Abortion in particular is very time-sensitive. Even waiting a few weeks increases the medical risk of the procedure. Dr. Henry Morgentaler said: "Every week of delay increases the medical risks to women by 20 percent."

A 2014 factsheet published by the Guttmacher Institute reported that "A first-trimester abortion is one of the safest medical procedures, with minimal risk—less than 0.05%—of major complications that might need hospital care."[1] Conversely, "the risk of death associated with abortion increases with the length of pregnancy, from one death for every one million abortions at or before eight weeks to one per 29,000 at 16–20 weeks—and one per 11,000 at 21 weeks or later.[2]

Access to abortion is a constitutional right

Abortion is unlike any other medical procedure—legal, accessible abortion is also a Charter right because without it, women's right to bodily security, liberty, equality, conscience, and privacy are violated, as per the Supreme Court's Morgentaler decision in 1988, which struck down Canada's old abortion law. Not funding abortions would also infringe on that right and impair access. This is precisely why the court threw out the old law, because it obstructed access and treated women unfairly. Although the court did not address the funding of abortion specifically, if it ever becomes necessary, a strong legal argument can be made that defunding abortion would have the same effect and therefore the same constitutional problems as the old abortion law.

Significantly, the Charter guarantees gender equality, and this clause has played a role in several court decisions that have upheld the right to abortion. A look at what happened in Saskatchewan in 1991 is also instructive. The province held a referendum on abortion funding during the provincial election, and 63% voted to de-insure abortion services. The conservative government lost the election, however, and when the victorious NDP stepped in, it commissioned lawyers to review the referendum results and offer advice. The lawyers decided that defunding abortion would probably not survive a Charter challenge because it would discriminate on the basis of sex. That's because only women (and some transgender people) can get pregnant and only they need abortions. The Saskatchewan government never acted on the referendum.

Defunding abortion discriminates against low-income women

Anti-choice people claim that if abortion services were defunded, it would not discriminate against poor women. They say that most women will find the money anyway, as has been shown in the United States, which banned Medicaid funding for low-income women in 1976 with the Hyde Amendment. But research in the U.S. shows that up to one-third of poor American women who want an abortion don't actually get one because of lack of funding.

This discriminatory and tragic U.S. policy cannot be held up as a model for Canada. Women's equality rights are enshrined in our constitution, unlike in the U.S. Plus, the values embodied in Canada's universal healthcare system are very different from the U.S.'s profit-driven system. In Canada, funded healthcare is a right, not a privilege. And under the 1988 Morgentaler decision, all people—not just the well-off—must have the right to access abortion services in a fair and equitable manner.

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[1] Weitz TA et al., Safety of aspiration abortion performed by nurse practitioners, certified nurse midwives, and physician assistants under a California legal waiver, *American Journal of Public Health*, 2013, 103(3):454–461.

[2] Bartlett LA et al., Risk factors for legal induced abortion-related mortality in the United States, *Obstetrics & Gynecology*, 2004, 103(4):729–737.

All abortions are "medically required," not just some

All abortions are medically required because health is defined broadly in our society. It encompasses not just physical health, but mental and emotional health as well. Besides, it is impossible in practice to split abortion into two categories of medically required or not, based on peoples' reasons for abortion. Anti-choice people want to limit funding to abortions performed to save the woman's life or in cases of rape/incest, but the doctors who actually perform abortions would attest that *all* abortions are medically necessary.

The government and medical profession cannot bridge this gap and reach a "compromise." In fact, the lesson learned in Alberta in 1995 was that these groups refuse to go along with the government when it tries to delist some or all abortions. Physician groups do not want to formally define any categories, because they believe such things should be left to the discretion of individual doctors. It's a matter of professional medical judgment, based on the patient's particular circumstances and needs.

Further, in its 2007 review of its policy on induced abortion (now withdrawn), the Canadian Medical Association stated that the decision to perform an abortion is the result of a confidential decision made "between a patient and her physician within the confines of existing Canadian law … Induced abortion requires medical and surgical expertise and is a medical act. It should be performed only in a facility that meets approved medical standards, not necessarily a hospital".

All pregnancy outcomes must be funded equally

Anti-choice people often say that pregnancy is not a disease and that abortion is a "lifestyle choice"—therefore, it is not medically required. However, the same arguments can be made for childbirth. There are no medical reasons for a woman to get pregnant and have a baby. She does so because she chooses to, often for socio-economic reasons. Anti-choice people might protest that there are "two patients" in a pregnancy and that abortion harms at least one of them. But Canadian courts have ruled decisively that fetuses are not legal persons with rights. Also, if the government were to de-insure abortion without also de-insuring childbirth, it would in effect be making the "lifestyle choice" for women. But such a move would bring us right back to the 1988 Morgentaler decision and the issues of unequal access, arbitrary obstacles, and discrimination against women and gender minorities.

Also, the co-opting of the word "choice" by anti-abortionists to marginalize the medical necessity of abortion is inappropriate and irrelevant. "Choice" rhetoric around pregnancy issues is purely political, and has nothing to do with the medical aspects of pregnancy. Besides, one could say that every medical procedure is essentially a "choice" since people have the right to ask for, or refuse any treatment.

Unwanted pregnancies are costly

If abortion were de-funded, more women would be forced to carry to term. But the medical costs of childbirth are at least three times higher than the medical costs of abortion, and the social costs of raising unwanted children are prohibitive. According to U.S. figures, for every $1 spent by government to pay for abortions for poor women, about $4 is saved in public medical and welfare expenditures resulting from the unintended birth.

Known risks of unintended birth include inadequate prenatal care, smoking and drinking during pregnancy, low birth-weight babies, and increased medical risks and poor social outcomes for pregnant adolescents and their babies. Compared to wanted children, unwanted children are up to four times more likely to have an adult criminal record, and up to six times more likely to receive welfare between ages 16 and 21.

Of course, as Alexander McKay notes in the *Canadian Journal of Human Sexuality* in 2013: "not all teen pregnancies are unwanted and…teenage women who choose to become mothers are capable of raising healthy children and doing well in life (Best Start, 2007, 2008; Bissell, 2000)." However, it is also important to recognize that having access to medical abortions allows young people to exercise control over their future socio-economic conditions. McKay observes that "[F]rom an examination of the evidence on the association between teenage childbearing and low economic status, Kearney and Levine (2012) concluded that becoming a teen mother does not, in-and-of-itself, lead to lower economic outcomes. Rather, their research suggests that young women on a low economic trajectory are more likely to have children than young women who perceive that they will be able to advance economically. In other words, according to this perspective, rising teen birth rates may be a marker for a growing number of young women perceiving a lack of economic opportunity".

In the U.S., the Turnaway Study has shown that women who were denied abortions (because they were over the time limit) were three times more likely than women who obtained an abortion to be living below the poverty level two years later.

Opinion polls are not relevant to the abortion funding issue

Some opinion polls commissioned by anti-abortion groups have purportedly shown that a majority of voters do not want to pay for abortion procedures. But if equitable access to legal, safe abortion is a constitutional right for women, and if provinces and medical groups are responsible for deciding which treatments will be funded as medically necessary, that means the public has no business voting to defund abortion. Basic rights and freedoms must not be subjected to a vote by the electorate.

Further, even if these polls are accurate, and a majority of taxpayers really don't want to fund abortion, that may just indicate a misunderstanding of the issue by the public, rather than an informed and reasonable perspective. The public has been subjected to relentless anti-choice propaganda for years. As a result, many misconceptions about abortion have made their way into the mainstream, such as the notion that women who have abortions are irresponsible and promiscuous. Such misconceptions contribute to the belief that abortion should not be funded.