



Safe access zones at abortion clinics are constitutional and ensure privacy and safety

Statement by Joyce Arthur and Paige Mason, Abortion Rights Coalition of Canada*

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Bill 207, the proposed safe access zone law¹ to protect Manitobans' access to abortion care, is constitutional. Similar laws already exist in six provinces and Manitoba would simply be following in their footsteps.

This is the third time the bill has been introduced by Nahanni Fontaine (NDP MLA for St. Johns). The safe access zone bill failed the previous two times due to misinformation spouted by the opposition around freedom of expression and the right to protest – unfortunately, the same thing is happening again now.

In a March 8 debate on the bill in Parliament, Manitoba Health Minister Heather Stefanson claimed: “We respect the freedom of speech of those individuals out there to have the opportunity to have legal protests. They have to abide by the rules, the laws of our province. We will continue to stand by those who are holding protests in a legal fashion.”²

But the Manitoba legislature can simply make a small adjustment to what is considered “legal” in this context. While a safe access zone law does infringe on free speech, it is not a blanket restriction, which is why it's constitutional. Protesters are free to protest anywhere except within a narrow zone around facilities that provide abortion. This is called a “time, place and manner restriction.” A key part of our *Charter of Rights and Freedoms*, Section 1, allows fundamental rights like freedom of expression to be limited in a reasonable manner to protect other rights.

Fontaine's Bill 207 is very similar to Ontario's 2017 law³ protecting individuals and facilities that provide abortion. Ontario's law in turn was based on British Columbia's 1995 law,⁴ which was upheld as constitutional in 2008⁵ because it only minimally impaired freedom of speech and the right to pretest. In fact, the legal soundness of the BC law was the inspiration for laws passed in recent years not just in Ontario, but also Newfoundland/Labrador, Quebec, Alberta, and Nova Scotia.⁶

British Columbia's Court of Appeal ruled in 2008 that the province's *Access to Abortion Services Act* is constitutional⁷ because a patient's right to access a necessary medical treatment in an atmosphere of privacy, safety, and dignity takes precedence over freedom of expression in that specific context. When the protesters appealed to the Supreme Court of Canada, it declined to take the case, meaning the law stands as constitutional.

The BC law has successfully deterred protesters and protected people at clinics for 25 years, and other provinces are seeing similar positive results.^{8,9} Safe access zones not only ensure the privacy and safety of providers, staff, and patients as they come and go from the facility, but also protect the right to access essential healthcare services. In addition, they safeguard patients' health by reducing the risk of complications¹⁰ from emotional distress (caused by the protesters) just before undergoing a medical procedure. Further, the zones foster community peace by reducing neighbourhood nuisance and noise and other hazards, and limiting the risk of violence and vandalism.

Facilities that provide abortion in Manitoba have seen protests that are triggering and cause harm for many patients, according to a doctor who works at one facility but wishes to remain anonymous. Sadness, guilt, and anger are common emotions that people have expressed as a reaction to the protesters. The doctor said that for patients going through what can be an emotionally vulnerable time, further judgement from protesters is not necessary.

Manitoba's bill also provides protection to school students from harassment by anti-choice protesters, a much welcome addition that also has a legal precedent. Too often, protesters deliberately display upsetting graphic imagery of alleged aborted fetuses outside high schools – this has happened across Canada in at least a dozen municipalities. In response, the City of Calgary passed an amendment¹¹ in Oct 2020 to its *Temporary Signs on Highways* bylaw,¹² limiting signs with advocacy messaging to just 5" x 3.5" within 150 metres of any Calgary school during school hours. The city designed the restriction to be justifiable under the *Charter*.

We congratulate Nahanni Fontaine for her courage in bringing forward this valuable bill, despite the misinformation from people who oppose abortion rights and want to make access as difficult as possible. The Abortion Rights Coalition of Canada urges all Manitoba MLAs to support Bill 207 to protect Manitobans' access to health care and freedom from harassment. The bill is constitutional, follows similar legislation in other provinces and cities, and is the right thing to do.

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- 1 The Abortion Protest Buffer Zone Act: <https://web2.gov.mb.ca/bills/42-3/b207e.php>
 - 2 <https://www.facebook.com/nahanni.fontaine/posts/10159495011013784>
 - 3 The Safe Access to Abortion Services Act, 2017: <https://www.ontario.ca/laws/statute/17s19>
 - 4 Access to Abortion Services Act, 1995: http://www.bclaws.ca/civix/document/id/complete/statreg/96001_01
 - 5 R. v. Spratt, 2008 BCCA 340. Summary: <http://www.westcoastleaf.org/wp-content/uploads/2014/11/CASES-2008-R-V-WATSON-SPRATT-Case-Summary.pdf>
 - 6 <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/Bubble-Zones-Court-Injunctions-in-Canada.pdf>
 - 7 R. v. Spratt, 2008 BCCA 340. Summary: <http://www.westcoastleaf.org/wp-content/uploads/2014/11/CASES-2008-R-V-WATSON-SPRATT-Case-Summary.pdf>
 - 8 <https://www.cbc.ca/news/canada/newfoundland-labrador/anti-abortion-protesters-bubble-stjohns-court-order-1.3677269>
 - 9 <https://www.nationalobserver.com/2018/02/06/opinion/safe-zones-outside-abortion-clinics-are-not-violation-free-speech>
 - 10 <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/protesters-increase-risk-of-medical-complications.pdf>
 - 11 www.cbc.ca/news/canada/calgary/calgary-abortion-safe-zone-protest-bubble-school-1.5359050
 - 12 <http://publicaccess.calgary.ca/lldm01/livelink.exe?func=ccpa.general&msgID=VyATqgTTeT&msgAction=Download>