

PEI abortion challenge shows service not universally available



The fact that a lobby group is taking the Prince Edward Island government to court to force the province to provide fully funded and unrestricted access to abortion highlights that access to the procedure is not universal throughout the country, Toronto civil litigator [Sarah O'Connor](#) says.

"Depending on where you live, the access can be very different. The coverage varies depending on where the procedure is performed (hospital versus private clinic) and in what province," she says.

Abortion Access Now PEI has said it notified the provincial deputy attorney general that it plans to file a notice of application in the Supreme Court of P.E.I. in 90 days arguing that requiring women to travel to other provinces to undergo the procedure is discriminatory, the [Canadian Press](#) reports. The group says the province is violating the Charter of Rights and Freedoms and its own health policies, by refusing to provide surgical abortions on the Island, says the article.

"The group argues in a 25-page draft of its legal application that the province's policy of not offering abortions on the Island contravenes the Charter because it discriminates on the basis of gender and takes away their right to equality. It says the Liberal government is not following its own health plan to provide abortions on the Island and that residents are only to be sent out of province to receive 'highly specialized in-patient and out-patient treatments,' unlike abortion," the wire service says.

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), says the P.E.I. matter raises important legal questions, including whether the province is in violation of the Canada Health Act and whether it violates other provisions under the Charter.

"It will be interesting to see what Charter grounds the Abortion Access Now PEI argue," she tells [AdvocateDaily.com](#). "The possibilities include: s. 7 – the right to life, liberty and security of the person; not having access would affect a woman's right to life, liberty and security of her own person; s. 12 – the right not to be subjected to cruel and unusual treatment or punishment; is it unusual treatment to force a woman to travel to another province to receive this service; and s.15 – equality under the law without discrimination based on sex.

O'Connor notes how the 1960s saw the start of partial easing of the abortion laws in Canada. Abortion has been legally unrestricted in Canada since 1988 (the Dr. Henry Morgentaler Decision) but no formal abortion law was enacted by Parliament (unlike in the United Kingdom with the Abortion Act, 1967.) Abortions are governed by the same legislation as other medical procedures in Canada and access to health services is guaranteed by The Canada Health Act, she explains.

"The procedure should be available in P.E.I.," she tells the online legal newspaper. "The burden is only on women and it is an unnecessary burden if they have to travel to another province for the procedure. Women may face limitations regarding financial ability to travel, ease of travel, the delay in accessing treatment and financial ability to pay for the treatment if treated out of province.

"If men had to travel out of province for a Viagra prescription or a vasectomy, it would immediately be made available."

O'Connor points to how some hospitals refuse to perform the procedure on out-of-province patients contrary to the portability requirement of the Canada Health Act, which would also affect the women of P.E.I. if they travel out of province and then have to pay out of pocket.

She notes there have been previous legal fights in Manitoba and Quebec about the funding available for the procedure.

New Brunswick had required women seeking a hospital abortion to have two doctors certify it as medically necessary until Premier Brian Gallant announced in November 2014 that the province would lift the restriction. Many argued this rule had restricted access to abortion services in that province for two decades. Read [CBC](#)

"It is harder to get this procedure in rural areas compared with metropolitan areas," O'Connor says. "Women still have to travel to major cities at their own expense throughout the country and their travel companion's own expense."

She ponders whether the P.E.I. challenge will trigger pro-life protests there and in other areas of the country and whether that will re-open the abortion debate.

"Or, will this be incentive for the federal government to enact an abortion law," O'Connor asks.