

“What feminists do in the legal system is to expose its previously unseen maleness and attempt to deconstruct it, in order to make room for the viewpoints, the concerns and the experience of women.”

— Mary Eberts, constitutional lawyer

# Reproductive Rights



Women's Legal  
Education and  
Action Fund

Fonds d'action et  
d'éducation juridiques  
pour les femmes

## Reproductive rights include:

- Rights of individuals to reproductive self-determination
- Rights to determine the nature and size of their families
- Rights to access medical care for female reproductive health
- Rights to information, education and service for family planning
- Rights to control and decide freely and responsibly, on matters related to sexual orientation and sexual and reproductive health, in a manner that is free of coercion, discrimination, or violence.<sup>1</sup>

## How are reproductive rights an equality issue under section 15 of the *Charter of Rights and Freedoms*?

Women cannot always control the conditions under which they become pregnant or raise their families due to:

- Socialization, social pressure or custom,
- Lack of information,
- Inadequate access to or unsafe contraceptive technology,
- Poverty or enforced economic dependence,
- Sexual coercion or violence,
- Societal pressures, economic circumstances or lack of adequate day care.

Discrimination and disadvantage violates the equality provisions of the *Charter* because women are affected due to their gender. Raising children is primarily a woman's responsibility due to conditions of social inequality and entrenched gender roles. Women require full reproductive health and freedom to fully exercise their fundamental human rights including education and employment.<sup>2</sup>

## What are some of the relevant issues impacting reproductive rights in Canada today?

- Reproductive technologies, assisted reproduction and fertility treatment
- Alternative family definitions including LGBT families
- More women choosing to have children later in life
- Access to abortion services

## Is access to abortion still a relevant issue in Canada?

- Abortion is one of the few means that women have to control their reproductive capacities. The Supreme Court of Canada struck down the criminalization of abortion as a violation of a woman's right to security of the person under section 7 of the *Charter of Rights and Freedoms* in 1988. Although abortion is a safe, legal, insured and funded service under the *Canada Health Act*, access to abortion services still varies greatly across Canada.

<sup>1</sup> United Nations, *Convention on the Elimination of All Forms of Discrimination Against Women*, adopted by the General Assembly in 1979.

<sup>2</sup> [www.un.org/ecosocdev/geninfo/women/womrepro.html](http://www.un.org/ecosocdev/geninfo/women/womrepro.html)



- Only 20% of general hospitals in Canada provide access to and/or the provision of abortion services. There are no abortion services in Prince Edward Island. Women in New Brunswick must obtain approval by two doctors before they can have an abortion and abortion services are not covered by the provincial health plan. Costs for abortion services vary across the country from \$0 to \$750.
- Only one province – British Columbia – has legislation protecting women seeking abortion services from protestors. This is known as “bubble zone” or abortion protest legislation.
- As recently as 2008, a Private Member’s Bill called The “Unborn Victims of Crime Act” (C-484), was introduced in Parliament allowing for separate criminal charges to be laid in the death of a fetus when a pregnant woman is attacked. This potentially could have been an unconstitutional infringement of women’s rights and led to the re-criminalization of abortion. The attempt to pass Bill C-484 shows that there is still a movement to threaten women’s right to choose and to access to abortion services.

### What are some court cases related to reproductive rights that LEAF has been involved in?

- Legal status of the fetus – *Borowski v. The Attorney General of Canada* was one of the first cases in which LEAF became involved to defend women’s right to control their own bodies and to have the choice of whether or not to have a child. LEAF intervened at the Supreme Court of Canada to argue that the woman and the fetus are not

separate entities and the legal personhood of the woman must be protected in *Sullivan and Lemay*, LEAF sought to both advance women’s reproductive freedom and focus on the woman’s relationship to her fetus, rather than placing the woman’s and her fetus’ rights in opposition.

- Equality – In *Daigle v. Tremblay*, the Supreme Court of Canada agreed with LEAF that it violated a woman’s right to equality under the *Charter* to be prevented from having an abortion by the father of the fetus.
- “Bubble zones” and access to abortion services – In *Watson v. R., Spratt v. R.* West Coast LEAF on behalf of LEAF, as part of a coalition of women’s organizations, argued that freedom of expression should be contained in order to guarantee the right to unimpeded access to abortion service. The Access Coalition made similar arguments in *R v. Demers* and *R. v. Lewis*. Courts held that the limits on freedom of expression were reasonable to protect the rights of women seeking access to abortion services. The “bubble zone” legislation in BC was upheld.

### Where can I get more information about reproductive rights?

- Women’s Legal Education and Action Fund website: [www.leaf.ca](http://www.leaf.ca)
- Abortion Rights Coalition of Canada [www.arcc-cdac.ca/home.html](http://www.arcc-cdac.ca/home.html)
- National Abortion Federal [www.prochoice.org](http://www.prochoice.org)
- Prochoice Action Network [www.prochoiceactionnetwork-canada.org/index.shtml](http://www.prochoiceactionnetwork-canada.org/index.shtml)