



Mike Ellis  
Chair of the Standing Committee on Private Bills and Private Members' Public Bills  
MLA for Calgary-West  
[mike.ellis@assembly.ab.ca](mailto:mike.ellis@assembly.ab.ca)

**By email only**

November 15, 2019

Dear Mr. Ellis:

**RE: Bill 207, Conscience Rights (Health Care Providers) Protection Act**

I am writing on behalf of the Women's Legal Education and Action Fund ("LEAF") to express our preliminary concerns about Bill 207, which passed first reading last week and is scheduled to be considered by this Committee on Monday, November 18<sup>th</sup>. In addition to flagging some of our concerns with the proposed Bill in this letter, LEAF requests an opportunity to make more fulsome submissions to your Committee concerning the proposed legislation's serious constitutional infirmities.

LEAF is a national, non-profit organization founded in April 1985 to advance the equality rights of women and girls in Canada as guaranteed by the Charter. LEAF specifically seeks to advance those rights through litigation, law reform and public education. LEAF has intervened in over 100 cases before appellate courts (including the Supreme Court of Canada) and has regularly made submissions to legislative and Senate committees concerning the impact of proposed legislation on women's security and equality rights.

Of particular relevance to the discussion in relation to Bill 207, LEAF recently intervened at the Ontario Court of Appeal in *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*,<sup>1</sup> which involved a challenge to a policy that required physicians to provide an effective referral to another physician if unwilling to provide certain services based on religious grounds. The Court unanimously accepted that the "effective referral regime" was a justified limitation on the physicians' freedom of religion giving the pressing and substantial objective of the policy – namely facilitating equitable access for all patients to health care services – and the evidence that patients, particularly the most vulnerable, would suffer harm in the absence of an effective referral system.

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<sup>1</sup> 2019 ONCA 393 ["CPSO"].

Bill 207 proposes to negate the professional obligations of regulated health care professionals<sup>2</sup> to provide health care services – including referrals for such services – based on their conscientious beliefs.<sup>3</sup> The Bill would also prohibit the regulatory bodies of health care professionals from compelling health care professionals to provide the health care services (including referrals).<sup>4</sup> Moreover, the Bill would require regulatory bodies to dismiss any complaints received about a health care provider refusing to provide services based on their conscientious beliefs.<sup>5</sup> LEAF is very concerned that the proposed Bill, if passed, would leave patients facing discriminatory treatment with effectively no recourse or ability to have their complaints heard.

LEAF has significant concerns that, if enacted, Bill 207 would have harmful effects on women's access to important health care services, including reproductive health services. It would almost certainly have a disproportionate impact on women and other vulnerable groups living at multiple intersections of marginalization, such as Indigenous women, poor women, racialized women, women who wear religious attire, queer women, trans women, and women living in rural areas. This Bill raises the very real possibility that women and members of other marginalized communities may be unable to access the care they need – and to which they are entitled under the *Canadian Charter of Rights and Freedoms* (“Charter”).

LEAF is also very troubled that Bill 207 prioritizes the conscience rights of health care workers over the rights of Albertans to access health care services. Bill 207 elevates the conscience rights of health care workers into a trump card that cannot be subject to review by a regulatory body, or give rise to legal action. Such a review would not even be available where the failure to provide health care services interfered with the right to life, liberty or security of a person denied health services. Under the Bill, dismissal of the complaint would be “immediate” without an examination of the sincerity of the asserted belief. The fact that Bill 207 is completely silent on the s 7 and s 15 rights so clearly implicated by its effects sends a troubling and powerful message to women that their rights are not valued.

Fundamental changes to the provision and access of health care services require careful consideration. Changes like those proposed by Bill 207 which significantly undermine the equality and security rights of Albertans protected under sections 7, 15 and 28 of the Charter should not be undertaken without due consideration of how the Bill could

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<sup>2</sup> Under the *Health Professions Act*, regulated health professionals include a diversity of health care professionals including but not limited to physicians, denturists, acupuncturists, dietitians, and hearing aid practitioners.

<sup>3</sup> Section 3 of the Bill. “Health care services” are defined broadly in s 1(d) to include both formal and informal referrals.

<sup>4</sup> Section 4 of the Bill.

<sup>5</sup> Section 5(1) of the Bill.



potentially impact on access to health care services – and to the serious likelihood that it would fail any meaningful constitutional scrutiny.

To this end, we request that you provide the opportunity for submissions considering the wide-ranging impact of this Bill on Albertans from a constitutional and equality perspective. We urge you to hear from Albertans and equality-seeking groups on this matter, including organizations such as LEAF, who are well-suited to speak to these matters with authority. In particular, we would welcome the opportunity to provide both written submissions and to appear before the legislative committee to further explain LEAF's views on how the Bill violates the Charter.

I look forward to hearing from you about whether you will provide LEAF with an opportunity to provide further submissions on this Bill.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Megan Stephens', written over a faint circular stamp.

Megan Stephens  
Executive Director & General Counsel  
Women's Legal Education and Action Fund (LEAF)

- cc. Jason Kenney, Premier of Alberta  
Tyler Shandro, Minister of Health  
Leela Aheer, Minister of Culture, Multiculturalism and Status of Women