

Women's Legal Education and Action Fund (LEAF)

Impact Case Studies

Volume 2: LEAF and PEI Abortion Access

LEAF is a national, charitable, non-profit organization, founded in 1985. LEAF works to advance the substantive equality rights of women and girls in Canada through litigation, law reform and public education using the Canadian Charter of Rights and Freedoms. For more information, visit [our website](#).

This publication was created as part of LEAF's Feminist Strategic Litigation (FSL) Project. The FSL Project examines the use and impact of feminist strategic litigation to help LEAF, feminists, and gender equality advocates more effectively combat systemic discrimination and oppression.

LEAF would like to thank the following individuals and groups:

- All of those involved in advocacy and activism surrounding bringing abortion to Prince Edward Island
- Borrsha Kanapathipillai, for her research assistance
- Kat Owens, FSL Project Director, for creating this publication

The FSL Project is funded by Women and Gender Equality Canada.

Copyright 2020 Women's Legal Education and Action Fund (LEAF)

All rights reserved

Why Measure Impact?

- Choosing how we measure impact helps us identify our goals and examine our value judgments about who and what we prioritize
- Measuring impact helps us to figure out whether litigation has achieved our goals, and what additional work needs to be done
- Measuring impact can help us make strategic decisions moving forward, thinking about whether litigation is appropriate in a particular case and how to increase the effectiveness of our efforts

Looking for Impact

Below are five key levels of impact for feminist strategic litigation, and potential sources of impact to consider. When looking at these levels of impact, it is important to keep in mind that:

1. Impact can be found in the process and the outcome of the case
2. Impact can be positive, negative, or neutral
3. Impact can change over time
4. Litigation is rarely the only form of advocacy in play, so identify other forms of advocacy being used - both by your organization and by other actors - and think about their impact

Five Key Levels of Impact

1. Impact on individuals and broader communities
 - Impact of the remedy
 - Impact of any policy changes
 - Impact of the process and being involved
 - Impact on communities involved or facing similar challenges
 - Impact on communities not immediately involved

2. Legal impact

- Outcome of the case
- Precedent set
- Feminist or equality arguments adopted
- Impact on legal culture

3. Impact on legislation, regulations, and policy

- Reversal or removal of policy
- Enforcement of existing policy
- Creation of new policy

4. Impact on public discourse and perception

- Framing or reframing of issues
- Media coverage
- Social media engagement
- Academic commentary
- Other engagement
- Backlash

5. Impact on social movements

- New supporters or relationships
- Connections with movement actors
- Connections with influential actors
- Impact on organizational capacity or credibility

Abortion Access in PEI: Key Context

For almost 30 years, women in Prince Edward Island engaged in grassroots organizing to push for abortion access on the Island. Examples of activism in the lead-up to the legal case include:

1. PEI Reproductive Rights Organization (PRRO)
 - A group of young PEI feminists formed the PRRO, and then organized the first pro-choice rally to be held on PEI in 20 years
2. Community Based Collaborative Action Research (CBCAR)
 - CBCAR conducted community-based research on the impact of the abortion policy on women's health, which led to an international conference on abortion scholarship
3. Abortion Rights Network (ARN)
 - Community members and reproductive justice organizations formed the ARN, which built solidarity, held rallies, and organized events

AANPEI v. Government of PEI (2016)

Facts: After abortion was decriminalized in Canada in 1988, the government of Prince Edward Island (PEI) introduced a policy so that no induced abortions would be performed on the Island. As a result, PEI women could only safely and legally access the procedure by travelling to Nova Scotia or New Brunswick, making abortion unavailable to many residents. Limited information existed about how to access abortion services, and a high degree of stigma surrounded the procedure.

Main issue: Did the PEI government's abortion policy - which meant that no abortions can be performed on PEI - violate equality rights under the Charter?

Advocacy: Abortion Access Now PEI (AANPEI), with LEAF's legal support, filed a constitutional challenge to the abortion policy. They argued that the abortion policy violated the right of PEI women to equal access to health care services under s. 15 of the Charter.

Outcome: Less than three months after AANPEI announced its legal challenge, the PEI government announced it would not fight the case. The Premier of PEI acknowledged that the courts would have likely found that the policy violated the Charter. The government ended its abortion policy, and took steps to open a women's health clinic to provide access to abortions on PEI.

Impact on individuals and broader communities:

- Many women now have access to the procedure on PEI and have the cost covered
- Those without healthcare coverage, such as those without status, still face barriers to access such as cost
- Individuals who require later term abortions must still leave the Island
- Fear and stigma surrounding abortion decreased

Legal impact:

- No documented legal impact

Impact on legislation, regulations, and policy:

- The PEI government ended the abortion policy
- They consulted with feminists prior to making the announcement
- They worked to create and fund the Women's Wellness Program in Summerside, PEI, which provides medical and surgical abortions as well as other reproductive health services

Impact on public discourse and perception:

- The case amplified the issue at a national level and helped grassroots movements keep fanning the flames locally
- It generated local and national media coverage
- It generated engagement on social media - shaping public discourse and awareness to support access

Impact on social movements:

- The case built on and reinforced existing social movements
- Local activists played a key role in laying the ground work for the legal challenge, as well as starting and directing it
- LEAF mobilized the legal community and helped provide national support

Moving Forward

Positive takeaways

- Not only did the PEI government end its abortion policy, it took active steps to create and fund sexual and reproductive healthcare services at the Women's Wellness Centre
- Grassroots organizing, community-based research, media engagement, social media campaigns, community dialogues, and a legal challenge worked together effectively
- Community members and organizations had a deep understanding of the issues and the ongoing injustices, and the legal challenge drew on their expertise and engagement

Remaining challenges

- Individuals without healthcare coverage still face barriers to access, such as cost
- Individuals requiring later term abortions still have to travel off the Island for the procedure

Key lessons

- Using a multi-pronged approach, with different advocacy and activism tactics, can lead to success
- Community involvement and direction can increase the effectiveness of legal advocacy
- Legal advocacy can contribute to positive outcomes even when a case never sees the inside of a courtroom

Resources consulted

- *Abortion Access Now PEI Inc. v. The Government of Prince Edward Island*, Draft Notice of Application (2016), available [online](#)
- Cathrine Chambers, Colleen MacQuarrie, and Jo-Ann MacDonald, "Trials and Trails: The Emergence of Canada's 'Abortion Refugees' in Prince Edward Island, in Christabelle Sethna and Gayle Davis, eds, *Abortion Across Borders: Transnational Travel and Access to Abortion Services* (Baltimore: John Hopkins University Press, 2019)
- Colleen MacQuarrie et al, eds, *Crossing Troubled Waters: Abortion in Ireland, Northern Ireland, and Prince Edward Island* (Charlottetown, PEI: Island Studies Press, 2018)
- Government of Prince Edward Island, "Women's Wellness Program & Sexual Health Services" (2020), available [online](#)
- Joanna N. Erdman, "The Law of Stigma, Travel, and The Abortion-Free Island" (2016) 33:1 Columbia Journal of Gender and Law 29, available [online](#)
- Kate McKenna, *No Choice: The 30-Year Fight for Abortion on Prince Edward Island* (Halifax and Winnipeg: Fernwood Publishing, 2018)
- Nasha Nijhawan and Kelly McMillan, "Threatened Litigation Returns Abortion Access to Prince Edward Island after 34 Years" (2016) 37:1 Health Law in Canada 2, available [online](#)
- Rachael Johnstone, "Explaining Abortion Policy Developments in New Brunswick and Prince Edward Island" (2018) 52:3 Journal of Canadian Studies 765
- Interviews with Ann Wheatley, Colleen MacQuarrie, and Kim Stanton