

BEYOND COMPLACENCY:

Challenges (and Opportunities) for Reproductive Justice in Canada

EXECUTIVE SUMMARY



LEAF
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LEAF is a national charitable organization that works towards ensuring the law guarantees substantive equality for all women, girls, trans, and non-binary people.

This publication was created as part of LEAF's **Reproductive Justice Project**. This project looks to advance reproductive justice in Canada through law reform advocacy at the provincial and territorial levels.

Notably, LEAF recognizes that Indigenous, Black, and racialized women and trans people have long led the struggle for reproductive justice. This foundational and continuous advocacy by the communities most affected by reproductive injustice make our work possible. You can learn more about the past and present of the reproductive justice movement **here**.

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Reproductive justice means that every person can:

- 1 Make their own choices about having or not having children
- 2 Access sexual and reproductive health services like:
 - » Birth control
 - » Abortion
 - » Assisted reproductive technologies
 - » Sex education
 - » Proper care during pregnancy, during childbirth, and after childbirth
 - » Prevention, diagnosis, and treatment of sexually transmitted infections (STIs)
- 3 Raise their children in safe and healthy environments
- 4 Access the resources and supports they need to parent with dignity

This report identifies barriers to reproductive justice in Canada, as well as areas for law and policy reform to get closer to realizing reproductive justice. It will advance LEAF's Reproductive Justice Project, providing a foundation on which LEAF branches can advocate for important legal and policy changes at the provincial and territorial levels. Through this advocacy, we will strive to move ever closer to realizing reproductive justice in Canada.



A: BARRIERS TO ACCESSING SEXUAL AND REPRODUCTIVE HEALTH EDUCATION AND SERVICES

Access to sexual and reproductive health education and services is critical to ensuring that women, girls, trans, and non-binary people are able to make their own decisions around whether or not to have children. In Canada, however, there are many barriers to accessing sexual and reproductive health education and services.

i. Accessing sexual and reproductive health education

Despite its importance, sexual health education greatly varies in quality and content across the country, and even within specific provinces and territories. Bringing in outside supports such as health educators and nurses can help fill gaps, subject to capacity limitations and sufficient quality control. A national strategy on sexual education could also help to promote better quality education throughout Canada.

ii. Accessing sexual and reproductive health services

Access to broad sexual and reproductive health services is unequal in Canada. Many people do not have access to basic healthcare. Doctors face incentives that push them to see as many patients as possible rather than provide thorough care. Sexual and reproductive health services do not receive sufficient government investment. Even where funding exists, policy or other choices may still result in inadequate care.

For women, girls, trans, and non-binary people, factors such as sexism, anti-Indigeneity, racism (and anti-Black racism in particular), transphobia, ableism, and fatphobia/sizeism shape their ability to access needed care. Women, trans, and non-binary people who are criminalized and/or at risk of criminalization also face significant barriers to accessing reproductive health services.

iii. Accessing contraception

Individuals without insurance often have to pay for contraception. Contraception requires a prescription, and different regulations for who can prescribe contraception lead to varying levels of access in different provinces and territories.

iv. Accessing abortion

There are five main barriers to accessing abortion in Canada. First, abortion providers are concentrated in urban areas, requiring significant travel for those outside of those specific cities. Second, there is often insufficient professional capacity and/or willingness to provide abortions. Third, getting an abortion can be expensive. Fourth, governments have not provided enough funding for providing or expanding abortion services outside of hospitals. Finally, there are information gaps – and misinformation – surrounding abortion care. Access could be improved through “bubble zone” legislation, and through making it easier to access medication abortion.

v. Accessing fertility preservation

When it comes to accessing fertility preservation, individuals seeking to preserve their genetic material can face significant expenses that may not be covered by health insurance. This is particularly relevant for trans people looking to begin hormone replacement therapy (HRT). In addition, the medical system does not provide trans people with adequate information about how to start a family, including about their options to preserve their genetic material before starting HRT.

vi. Accessing fertility treatments

Cost is a significant barrier when it comes to accessing fertility treatments. Women, trans, and non-binary people face different costs based on where they live. A lack of financial support, or insufficient support, means that fertility treatments are out of reach for many people.

vii. Birthing supports

Pregnant Indigenous people do not have sufficient birthing supports. A lack of adequate healthcare infrastructure, healthcare providers, and funding mean that pregnant Indigenous people often cannot give birth in their own communities. Within the hospital setting, Indigenous women face barriers including a lack of culturally competent care. More needs to be done to increase the number of Indigenous midwives, and the scope of their role in community.

viii. Accessing surrogacy services, and impact on surrogate mothers/parents

The ability to access surrogacy services can enhance reproductive justice for intended parents who, for many reasons, may look to surrogacy as a means to have a child. At the same time, the regulation of surrogacy services must enable, protect, and respect the equality rights of surrogate mothers/parents. Under the current framework, surrogates carry the “ethical burden” of surrogacy, being expected to act altruistically while others financially benefit. They can face difficulties being reimbursed for expenses incurred after a surrogacy contract ends, and a lack of mental health and social supports.

B: ACCESSING THE RESOURCES AND SUPPORTS NECESSARY TO PARENT WITH DIGNITY

Access to the resources and supports necessary to parent with dignity allows women, trans, and non-binary people to choose to have children if they wish. It also allows them to raise those children in safe, healthy environments. There are a broad range of issues and systems that shape a person's ability to have and raise children, with different barriers and opportunities for change.

i. Obtaining legal parental recognition

Different provinces and territories have different rules and processes for legal recognition of parents. Some provinces only allow for recognition of two parents, while others allow for the recognition of up to four parents. Where a child is born through surrogacy, the rules for providing legal parentage to intended parents can impose costs on these parents.

ii. Accessing paid leave

Access to paid leave is far from equitable. Younger workers, part-time workers, and people working reduced hours face challenges qualifying for Employment Insurance maternity and parental benefits. Lower-income workers receive lower benefits compared to higher-income workers. For trans people, employment discrimination means they are less likely to participate in the formal economy and have access to employer-provided top-up benefits. Those who experience pregnancy loss, including those who access abortion, do not have access to paid leave responding specifically to that loss.



iii. Involvement with the child welfare system

Multiple structural factors lead to higher child welfare involvement for Indigenous and Black families. The high rates of Indigenous children in care cannot be separated from Canada's past and present colonial policies, including the residential school system, the "Sixties scoop", and chronic underfunding. Policies grounded in anti-Black racism shape local institutional practices, which in turn create the context in which child welfare policies are applied to Black families.

Fear of involvement with the child welfare system shapes women, trans, and non-binary people's decisions to have children, and the healthcare they receive. People involved with the child welfare system may not receive the supports they need to start and raise a family in dignity, if that is what they want. Once a person in care "ages out" of the system, typically at 18 or 19 years old, any supports they were receiving end. Meaningful supports need to be available to youth until they are at least 25 years old.

iv. Securing employment and income

Women, trans, and non-binary people face barriers to obtaining well-paying, stable employment. Low-income women, trans, and non-binary people disproportionately carry out unpaid acts of care labour, reducing their ability to participate in the waged labour market. This is particularly the case for those who are Black, Indigenous, racialized, disabled, and/or migrant workers. Trans people also face significant discrimination in the workplace and in seeking employment.

Even if women, trans, and non-binary people secure employment, they may be paid less than men despite carrying out work of equal value. Despite the lack of pay equity in Canada, not all provinces and territories have legislation protecting and promoting it. Pay equity legislation focusing exclusively on discrimination tied to sex also hides the impact of intersecting systems of oppression on wages. Broadening the scope of pay equity legislation and enacting pay transparency laws may help promote pay equity.

v. Accessing housing

Having access to affordable and adequate housing is a key requirement for having and raising a family. In many parts of Canada, this is not the reality. This is particularly true in the North. Communities in the Northwest Territories, for example, face poor living conditions, overcrowding, and a lack of accessible housing.

vi. Accessing childcare

Having access to affordable childcare shapes the family planning decisions made by women, trans, and non-binary people, particularly those who are marginalized. Cost and the concentration of daycare centres in urban centres makes access more difficult for Indigenous and racialized parents, people living with disabilities, poor families, and single mothers. It is critical to ensure that, in expanding access to childcare, childcare workers receive adequate compensation for their labour.

vii. Criminalization and incarceration

Incarceration separates parents from their children, causing lasting harm to relationships. When a person leaves custody, they can face barriers to meeting their basic needs, including food, transportation, clothing, housing, and access to employment.