

CANADIAN
CIVIL LIBERTIES
ASSOCIATION



ASSOCIATION
CANADIENNE DES
LIBERTES CIVILES

October 14, 2020

The Honourable Blaine Higgs
Premier of New Brunswick
Chancery Place, P. O. Box 6000
Fredericton, NB E3B 5H1

The Honourable Dorothy Shepard
Minister of Health
HSBC Place, P. O. Box 5100
Fredericton, NB E3B 5G8

Email: premier@gnb.ca

Dear Ministers,

We write on behalf of the Canadian Civil Liberties Association (CCLA) to seek (a) the repeal of discriminatory laws that deny women, girls, and trans people fair access to abortion; and further that (b) your government take urgent measures to ensure that surgical and medical abortions are accessible throughout New Brunswick. Absent such important changes, we are prepared to commence legal proceedings to overturn the existing statutory framework, which violates New Brunswickers' *Charter* rights.

The CCLA is an independent, non-profit organization with supporters from New Brunswick and across the country. Founded in 1964, the CCLA is a national human rights organization committed to defending the rights, dignity, safety, and freedoms of all people in Canada.

Schedule 2 (a.1) of Regulation 84-20 to the *Medical Services Payment Act* unjustifiably limits coverage of abortion services to *approved* hospitals. Although there are hospitals in numerous communities across the province, there are only three hospitals that provide abortion services (two in Moncton and one in Bathurst). The population of those two cities are less than 10% of the Province's overall population, meaning that most residents do not have access to abortion services near their local community. This is particularly concerning given the early gestational limits on abortion at these hospitals.

The province therefore has a serious accessibility problem for this necessary health care. To access abortions, patients must first secure an appointment with one of three hospitals within a matter of a few weeks, and then must travel hundreds of kilometres (in some cases, a 6-hour return trip or more) just to access abortion services, where both poverty (particularly with respect to single mothers) and weather can be a serious impediment. Many of these patients do

not have the time or financial means to travel and cannot take time off work, pay for gas, childcare, or other travel costs (such as staying overnight in a hotel). These are financial burdens that will have disproportionate effects on the underprivileged and vulnerable. The long journey and its logistical difficulties also mean that patients who need abortions may be unable to access this much-needed service. Younger patients will be unable to access the procedure without their parents finding out, which has major implications for their privacy rights. As a result, this statutory framework renders this vital healthcare service practically unavailable in New Brunswick.

The province's exclusion of out-of-hospital abortions from coverage under the *Medical Services Payment Act* has also ensured that safe and accessible options, such as abortions performed in out-of-hospital clinics, are not viable. Clinic 554, a family medical practice that is also the only abortion provider in Fredericton, is closing due to the province's failure to fund non-hospital abortions.

Unjustifiable restrictions on access to abortion services are unconstitutional. New Brunswick's hospital-only abortion laws interfere with the right and access to abortion and constitute a form of sex-based discrimination. Regulation 84-20 also violates New Brunswick's obligations under the *Canada Health Act*, further evidencing the laws' improper effect. Just this year, the federal government sought to penalize New Brunswick for violating the *Canada Health Act* for lack of abortion access.

Regulation 84-20 is arbitrary, denies critical healthcare disproportionately to women, girls and trans people, violates their privacy rights, and creates barriers that have harsh impacts on marginalized and low-income populations. These violations cannot continue. As such, we are writing to demand that you repeal Regulation 84-20 immediately and that you take urgent action to create accessible, publicly funded abortion in New Brunswick.

New Brunswickers deserve the same constitutional rights as all other Canadians. If you do not take steps to uphold these rights, the CCLA will ask the courts to do so. We have taken steps to launch proceedings immediately.

Yours truly,



Noa Mendelsohn Aviv
Director, Equality Program