Cause No. FC-9-21

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Plaintiff

- and –

THE PROVINCE OF NEW BRUNSWICK

Defendant

AFFIDAVIT OF NOA MENDELSOHN AVIV

I, Noa Mendelsohn Aviv, of the City of Toronto, Province of Ontario, AFFIRM:

1. I am the Director of the Equality Program at the Canadian Civil Liberties Association (the "CCLA"). I have personal knowledge of the matters and facts in my affidavit, except where I state that the facts are based on information and belief, in which case, I believe the information to be true.

2. CCLA has commenced an action against the Province of New Brunswick in which it challenges the constitutionality of Schedule 2(a.1) of *Regulation 84-20* of the *Medical Services Payment Act*, R.S.N.B. 1973, c. M-7, which excludes out-of-hospital abortions from coverage under the provincial medicare plan. The CCLA seeks declarations that, among other things, Schedule 2(a.1) of *Regulation 84-20* is unconstitutional and violates sections 7 and 15 of the Canadian Charter of Rights and Freedoms (the "*Charter*"). A copy of the Statement of Claim is attached to my affidavit as **Exhibit "A"**.

3. In this affidavit, I first provide some background about the CCLA. I then address the CCLA's extensive experience advocating for the protection of *Charter* rights generally, as well as its specific experience advocating for the protection of abortion rights. Finally, I will address the CCLA's interest in this action, and our ability to pursue it.

Background to the CCLA

4. The CCLA, founded in 1964, is a national, independent, non-profit, and non-governmental organization dedicated to the furtherance of human dignity and rights in Canada. The CCLA has several thousand supporters drawn from diverse backgrounds. A wide variety of people, occupations, and interests are represented in the national membership, including from New Brunswick.

5. The CCLA continually seeks to defend, foster and ensure fundamental rights and freedoms through advocacy both inside and outside of courts. On every issue about which the CCLA advocates, it directs its attention to the critical reconciliation of civil liberties and other public interests. The underlying purpose of its work is to promote and maintain the civil liberties, human rights and democratic freedoms of all people across Canada.

6. Since its founding, the CCLA has challenged legislation, intervened and appeared in courts across Canada, presented briefs to legislative committees, and delivered programs to promote fundamental rights and freedoms for persons in Canada. CCLA is active in work that protects life, liberty, security of the person, equality, and other fundamental rights, while reconciling these with other rights and interests. It has addressed issues as diverse as: access to abortion and autonomy of pregnant women, welfare laws, privacy, safe injection sites, prohibitions in relation to sex work,

racial profiling, police accountability, refugee rights, freedom of expression for people who solicit money, mental health, and conditions of confinement.

7. Given its history fighting against rights violations in Canada, CCLA has significant experience advocating with respect to deprivations imposed on those who are already marginalized. CCLA has dedicated many of its efforts to ensuring the constitutionality of Canadian laws, promoting the fair and equitable enforcement of those laws, and to advocating for the life, liberty, security of the person, and equality rights of people in Canada (including those who are marginalized based on sexual orientation, gender identity and expression, and other grounds).

CCLA's Advocacy Experience Before the Courts as a Party and an Intervener

8. The CCLA has been involved in the litigation of many important civil liberties issues arising both prior to and under the *Charter* as both a party and an intervener. A list and description of over 270 cases in which CCLA has acted as a public interest party or as an intervener is set out as **Appendix "A"** to this affidavit.

9. Party Status. The CCLA has acted directly as a party in several court cases and an inquest raising civil liberties and *Charter* issues. For example:

(a) *Corporation of the Canadian Civil Liberties Association v. Ministry of Energy, Northern Development and Mines, et al.* (Ontario Superior Court of Justice File No.: CV-19-006266850000), 2020 ONSC 4838: an application concerning the constitutionality of Ontario legislation which compels gas retailers to post an anti-carbon tax notice on all gas pumps or face fines.

(b) *Corporation of the Canadian Civil Liberties Association and Lester Brown v. Toronto Waterfront Revitalization Corporation, et al.*, (Ontario Superior Court of Justice File No. 211/19): an application concerning whether Sidewalk Labs' smart city project is *ultra vires* and whether it violates ss. 2(c), 2(d), 7 and 8 of the *Charter*.

(c) *Corporation of the Canadian Civil Liberties Association v. Canada (AG)*, 2017 ONSC 7491, 2019 ONCA 243: an application and appeal regarding the constitutionality of legislation related to solitary confinement in prisons.

(d) *Becky McFarlane, in her personal capacity and as litigation guardian for LM, and The Corporation of the Canadian Civil Liberties Association v. Minister of Education (Ontario)*, 2019 ONSC 1308, concerning whether the removal of sections of Ontario's health and physical education curriculum violates the equality rights of LGBTQ+ students and parents.

(e) *Ichrak Nourel Hak, National Council of Canadian Muslims (NCCM) and Corporation of the Canadian Civil Liberties Association v Attorney General of Quebec* (Quebec Superior Court File No. 500-17-108353-197); *Hak c. Procureure générale du Québec*, 2019 QCCA 2145: an application to challenge the validity of provisions banning religious symbols in certain professions in the public sector, and an application for an order staying the operation of these provisions.

(f) *National Council of Canadian Muslims et al. v. Attorney General of Québec et al.* (Quebec Superior Court File No. 500-17-100935-173); *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec*, 2018 QCCS 2766, and *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459: an application to challenge the validity of a provision banning face coverings in giving or receiving public services and applications for an order staying the operation of this provision.

(g) *Corporation of the Canadian Civil Liberties Association and Christopher Parsons v. Attorney General (Canada)* (Ontario Superior Court File No. CV-14-504139): an application regarding the proper interpretation of certain provisions of the federal *Personal Information Protection and Electronic Documents Act* which have been used to facilitate warrantless access to internet subscriber information.

(h) Inquest into the Death of Ashley Smith (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died by her own hand while in prison, under the watch of correctional officers.

(i) *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341(CA), reversing (1988), 64 OR (2d) 577 (Div Ct): concerning whether a program of mandatory religious education in public schools violated the *Charter*'s guarantee of freedom of religion.

10. Intervener Status. The CCLA has a long history of intervening in litigation on matters of public interest. It has been granted intervener status and participated in hundreds of cases before the courts, including many leading *Charter* cases at the Supreme Court of Canada, as set out in detail in Appendix "A". Central recurring themes in the CCLA's submissions include the need to develop a principled approach that reconciles different interests; the recognition of the intersection of and interplay between different *Charter* rights, including ss. 7 and 15; and the impact of *Charter* deprivations on marginalized individuals.

CCLA's Long History Defending Access to Abortion Rights

11. The CCLA has had a long history of being involved both politically and in litigation in order to advance and protect the rights and autonomy of pregnant girls and women, and in particular defending and promoting the right of access to abortion. For example:[1]

(a) In 1974, in the CCLA's first ever intervention, the CCLA intervened in the Supreme Court of Canada in *R. v. Morgentaler*, [1976] 1 S.C.R. 616. CCLA argued that the criminal prohibition on abortion was unconstitutional and contrary to Canada's 1960 *Bill of Rights*. In preparation for its intervention, CCLA conducted a survey of Canadian hospitals, including contacting 325 hospitals. Its brief included extensive documentary evidence on the impact of the abortion law.[2]

(b) In 1976, the CCLA sent a letter to Parti Québecois leader René Lévesque, ahead of provincial elections, asking him to drop outstanding charges against Dr. Morgentaler if he became Premier.[3]

(c) In 1983, the CCLA sent a letter to the Ontario Minister of Community and Social Services to intervene on behalf of a 15-year-old girl who had become pregnant as a result of rape. The girl was a ward of the Cornwall Children's Aid Society, which attempted to deny her an abortion without excessive conditions being met.[4]

(d) Following the landmark Supreme Court of Canada ruling in *R. v. Morgentaler* in 1988, the Progressive Conservative government of Brian Mulroney attempted to craft new abortion laws between 1988 and 1991 and failed three times. Between the first and second proposed bills in 1988 and 1989 respectively, as public interest in abortion rose, CCLA joined a pro-choice advocacy coalition of 25 groups.[5]

(e) CCLA intervened in the Supreme Court of Canada in *Tremblay v. Daigle*, [1989] 2 S.C.R. 530 in which the issue was whether a man who impregnated a woman could obtain an injunction prohibiting the woman from having an abortion. The CCLA intervention addressed the issue of whether "coercing a woman to keep a fetus in her body against her will" was in accordance with "legal principles" and whether an injunction in such cases is appropriate because, if a precedent was created, injunctions might be used to delay and interfere with abortions at any stage in a pregnancy.[6]

(f) CCLA intervened in the Supreme Court of Canada in the case of *Winnipeg Child and Family Services (Northwest Area) v. D.F.G.*, [1997] 3 S.C.R. 925 in which the

[1] The source of my knowledge for paras. (a)-(f) is from Marian Botsford Fraser, Acting for Freedom: Fifty Years of Civil Liberties in Canada (2014) ("Fraser, CCLA (2014)"). Ms. Fraser wrote this book after researching CCLA's files and speaking with board members.
[2] Fraser, CCLA (2014), p. 153. Excerpt attached as **Exhibit "B"** to my affidavit.
[3] Fraser, CCLA (2014), p. 157. Excerpt attached as **Exhibit "B"** to my affidavit.
[4] Fraser, CCLA (2014), p. 163. Excerpt attached as **Exhibit "B"** to my affidavit.
[5] Fraser, CCLA (2014), p. 169. Excerpt attached as **Exhibit "B"** to my affidavit.
[6] Fraser, CCLA (2014), pp. 169-171. Excerpt attached as **Exhibit "B"** to my affidavit.

issue was whether the state was entitled to interfere with the privacy, dignity and liberty of a pregnant woman where her actions (such as addictions) may expose the fetus to serious injury. CCLA argued that to restrain the rights of a pregnant woman would represent a "dramatic rewriting of the law, a rewriting with vast ramifications for the civil liberties of pregnant women."[7]

(g) CCLA sent a letter dated November 11, 2011 to the Prince Edward Island Minister of Health and Wellness expressing concern about the lack of access to abortion services in PEI due to the lack of provincial medicare coverage, and procedural barriers facing girls and women who seek funding for out-of-province abortion care. A copy of that letter is attached as **Exhibit "C"** to my affidavit.

(h) CCLA sent a letter dated August 10, 2016 to federal Minister of Health Jane Philpott regarding unusual and unnecessary rules restricting access to the combination drug product for abortion care known as mifegymiso. A copy of that letter is attached as **Exhibit "D"** to my affidavit.

(i) CCLA intervened before the Ontario Superior Court of Justice and Ontario Court of Appeal in *Christian Medical and Dental Society et al. v. College of Physicians and Surgeons of Ontario*, 2018 ONSC 579 and 2019 ONCA 393, defending the constitutionality of policies requiring physicians who object to a medical practice, such as an abortion, on religious or conscience grounds to nevertheless provide the patient with an effective referral and urgent care to prevent imminent harm.

(j) On August 27, 2020, CCLA published a statement of support for Rally on Right to Abortion, which was a protest for abortion access rights in New Brunswick. A copy of that statement is attached as **Exhibit "E"** to my affidavit.

(k) On September 25, 2020, CCLA published a statement of support for the Vigil for Clinic 554, which was in support of activists and protestors gathering to celebrate the achievements of Clinic 554, and its predecessor, the Morgentaler Clinic. A copy of that statement is attached as **Exhibit "F"** to my affidavit.

(l) CCLA sent a letter dated October 14, 2020, to the Premier and Health Minister of New Brunswick demanding a repeal of *Regulation 84-20* as it creates barriers to abortion, and that they take urgent measures to ensure abortion access in the province. A copy of that letter is attached as **Exhibit "G"** to my affidavit.

12. In addition to advocating for the promotion of access to abortion and the rights of pregnant girls and women, the CCLA has also advocated and defended the right to protest, including by those who oppose abortions.

[7] Fraser, CCLA (2014), pp. 173-174. Excerpt attached as **Exhibit "B"** to my affidavit.

CCLA's Interest in and Ability to Pursue this Action

13. CCLA's position is that Schedule 2(a.1) of *Regulation 84-20* is a discriminatory law that imposes barriers on women, girls and trans people seeking access to abortion in violation of their *Charter* rights. The CCLA has a direct public interest in the validity and constitutionality of Schedule 2(a.1) of *Regulation 84-20*. As set out in detail above, the CCLA has a long history of holding governments to account and advocating for the protection of the rights and autonomy of pregnant girls, women and trans people, including ensuring their *Charter* right to proper access to abortion services is not compromised or undermined.

14. The CCLA has the legal resources and experience necessary to organize and advance the *Charter* litigation of the nature raised by the present action. CCLA has the legal resources and determination to produce a complete evidentiary record that will assist this Court in making the findings of fact necessary to resolve the human rights and constitutional questions that lie at the heart of this case, including a record containing the relevant legislative facts and evidence on the impact and effect of the impugned Regulation.

15. I do not believe that there is another reasonably available plaintiff that offers a more effective way of bringing the issues in the action to the Court. The persons who are more directly affected by the Regulation, namely pregnant women, girls and trans individuals who are seeking abortions in New Brunswick, are unlikely to bring this type of court challenge. This is not only because of the time-sensitive nature of the issue, but also because it is a private healthcare concern and because of the social stigma imposed in connection with abortions and on those who have abortions.

16. For example, CCLA has written about abortion access in New Brunswick and this lawsuit on Twitter. Some of the replies we received provide a window into the type of social stigma that exists against abortion and that any individual plaintiff could face in his/her community. For example:

(a) On January 7, 2021, CCLA tweeted "Today we launched litigation to fight for abortion access in New Brunswick." One person responded by writing "Yes because murdering the unborn so people have the freedom to be whores is a good thing. If abortion is legal then why isn't murder?" Another person wrote "Unborn humans have no civil liberties eh? Y'all suck." Another person wrote "Canadians are experiencing the largest crackdown of their rights and freedoms EVER. But sure, we need to make sure people can kill their unborn children. This organization is a disgrace."

A copy of the Twitter post and replies is attached as **Exhibit "H"**.

(b) On January 7, 2021, CCLA tweeted a petition for abortion access in New Brunswick. One person responded "#AbortionisMurder." Another person responded "I remember when someone having an abortion wasn't a celebrated thing, by the person having it done or the public. It was a hard decision that was hard to get over. Now you guys are partying in the street about murdering life, and want to be able to do it no matter what trimester. Sick." A copy of the Twitter post and replies is attached as **Exhibit "I"**.

(c) On January 8, 2021, the day the Statement of Claim in this action was filed, CCLA shared on Twitter an article from The Guardian regarding the lawsuit and a quote

from myself stating, “I would like to think that in 2021, no government would think it’s remotely feasible to deny a group their basic equality rights – And abortion is a basic equality right, for women and trans people.”

One person replied with two posts as follows: “You people are all crazy as f***. You don’t even know what’s going on. Wow” and “Gay and trans people are seriously f***** in the head. This is the main reason for the demise of mankind.” Another person wrote “What great human rights! The right to butcher and dismember innocent preborn human beings. The right to keep women in the dark about their options, support, and what abortion really does to them their babies.”

A copy of the Twitter post and replies is attached as **Exhibit “J”**.

17. Similarly, there are these types of comments on Clinic 554’s Facebook page, which are attached as **Exhibits “K” and “L”** to my affidavit. For example:

(a) On September 23, 2020, Clinic 554 posted that it will be closing. The following were posts by four different persons:

(i) “Abortion is murder, baby’s can feel up to 10-12 weeks. And spread their fingers repent from your wickedness and turn to Jesus.”

(ii) “Heartwarming to know that no more vulnerable will be brutally murdered at this facility.”

(iii) “STOP KILLING INNOCENT BABIES!”

(iv) “What a blessing. Praise be to Jesus Christ.”

(b) On May 8, 2020, Clinic 554 posted that it is appalled that women are being told that their closest access for a Medicare covered abortion if they are more than 13 weeks along is in Nova Scotia, particularly in the COVID-19 era. Clinic 554 also posted that to extend its non-judgment and shame-free zone from its clinic to its online presence, it "will be deleting all comments that question people's morality and does not respect people's right to have children or not have children."

Despite that, there still were judgmental and negative comments, including "Who wouldnt wanna fund a place that commits cold blooded murder" and "How horrendous and unacceptable that women have to drive so far to murder an innocent, unborn baby!"

18. While I believe many people are supportive generally of the constitutional rights of women, girls and trans people to have access to abortions, since CCLA announced it intended to bring a claim against the government of New Brunswick, we have received many notes of encouragement, but no one has asked to join us as plaintiff in our claim. I believe this is because women, girls and trans people who decide to seek an abortion view this decision as incredibly private, coupled with the social stigma – reflected in the negative comments I describe above – that they might face.

19. It was 12 years ago that Dr. Morgentaler was granted public interest standing by the New Brunswick courts to bring an action almost identical to the one now brought by the CCLA (2008 NBBR 258, aff'd 2009 NBCA 26). Dr. Morgentaler died in May 2013 and it is my understanding that the action never proceeded on the merits. Since then, women, girls and trans individuals requiring and obtaining abortions have been harmed by Schedule 2(a.1) of *Regulation 84-20* for the reasons set out in CCLA's Statement of Claim. Yet, I am not aware of any other action or application of a similar nature being brought.

20. In light of the above, I believe that, but for this action, the issue of whether Schedule 2(a.1) of *Regulation 84-20* is unconstitutional and a violation of the *Charter* may not come before the Court. The CCLA's past experience and expertise, summarized above, gives it the appropriate experience to deal with the important issues raised by this litigation.

AFFIRMED REMOTELY by videoconference from the City of Toronto, in the Province of Ontario to the City of Toronto in the Province of Ontario, on 8th day of February, 2021.

Commissioner for Taking Affidavits

Emily Sherkey

Noa Mendelsohn Aviv

Appendix "A" – CCLA Litigation

CCLA Interventions

Cases in which the CCLA has been granted intervener status include those listed chronologically below:

1. *R. v. Morgentaler,* [1976] 1 S .C.R. 616, where the general issue was whether the necessity defence was applicable to a charge of procuring an unlawful abortion under the *Criminal Code* (the CCLA intervened in the Supreme Court of Canada);

2. *Nova Scotia (Board of Censors) v. McNeil,* [1976] 2 S.C.R. 265, in which the issue was whether a taxpayer has standing to challenge legislation concerning censorship of films (the CCLA intervened in the Supreme Court of Canada);

3. *R. v. Miller,* [1977] 2 S.C.R. 680, in which one of the issues was whether the death penalty under the *Criminal Code* constituted cruel and unusual punishment under the *Canadian Bill of Rights* (the CCLA intervened in the Supreme Court of Canada);

4. *Nova Scotia (Board of Censors) v. McNeil,* [1978] 2 S.C.R. 662, in which the issues were whether statutory provisions and regulations authorizing the Board of Censors to regulate and control the film industry in the province were *intra vires* the provincial legislature and whether they violated fundamental freedoms, including freedom of speech (the CCLA intervened in the Supreme Court of Canada);

5. *Reference re Legislative Privilege* (1978), 18 O.R. (2d) 529 (C.A.), in which the issue was whether a member of the legislature has a privilege allowing him or her to refuse to disclose the source or content of confidential communications by informants when testifying at a criminal trial (the CCLA intervened in the Ontario Court of Appeal);

6. *R. v. Saxell* (1980), 33 O.R. (2d) 78 (C.A.), in which one of the issues was whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated guarantees in the *Canadian Bill of Rights,* including the guarantee of due process and the protection against arbitrary detention and imprisonment (the CCLA intervened in the Ontario Court of Appeal);

7. *Nova Scotia (Attorney General) v. Maclntyre,* [1982] 1 S.C.R. 175, in which the issue was whether a journalist is entitled to inspect search warrants and the information used to obtain them (the CCLA intervened in the Supreme Court of Canada);

8. *Re Fraser and Treasury Board (Department of National Revenue)* (1982), 5 L.A.C. (3d) 193 (P.S.S.R.B.), in which the issue was whether termination of a civil servant for publicly criticizing government policy violated freedom of expression (the CCLA intervened before the Public Service Staff Relations Board);

9. *R. v. Dowson,* [1983] 2 S.C.R. 144, and *R. v. Buchbinder,* [1983] 2 S.C.R. 159, in which the issue was whether the Attorney General could order a stay of proceedings under s. 508 of the *Criminal Code* after a private information has been received but before the Justice of the Peace has completed an inquiry (the CCLA intervened in *R. v. Dowson* before the Ontario Court of Appeal and the Supreme Court of Canada, and in *R. v. Buchbinder* before the Supreme Court of Canada);

10. *R. v. Oakes* (1983), 40 O.R. (2d) 660, in which the issue was whether the reverse onus clause in s. 8 of the *Narcotic Control Act* violated an accused's right to be presumed innocent under the *Charter* (the CCLA intervened in the Court of Appeal);

11. *Re Ontario Film & Video Appreciation Society and Ontario Board of Censors* (1984), 45 O.R. (2d) 80 (C.A.), in which the issue was whether a provincial law permitting a board to censor films violated the Charter's guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);

12. *R. v. Rao* (1984), 46 O.R. (2d) 80 (C.A.), in which the issue was whether a provision under the *Narcotic Control Act* permitting warrantless searches violated the *Charter*'s guarantee of protection against unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);

13. *Re Klein and Law Society of Upper Canada; Re Dvorak and Law Society of Upper Canada* (1985), 16 D.L.R. (4th) 489 (Div. Ct.), in which the issue was whether the Law Society's prohibitions respecting fees advertising and communications with the media violated the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);

14. *Canadian Newspapers Co. Ltd. v. Attorney-General of Canada* (1986), 55 0. R. (2d) 737 (H.C.), in which the issue was whether the provision in the *Criminal Code* limiting newspapers' rights to publish certain information respecting search warrants violated the *Charter's* guarantee of freedom of expression (the CCLA intervened in the Ontario High Court of Justice);

15. *R. v. J.M.G.* (1986), 56 O.R. (2d) 705 (C.A.), in which the issue was whether a school principal's seizure of drugs from a student's sock violated the *Charter's* protection from unreasonable search and seizure (the CCLA intervened in the Ontario Court of Appeal);

16. *Re Ontario Film & Video Appreciation Society and Ontario Film Review Board* (1986), 57 O.R. (2d) 339 (Div. Ct.), in which the issue was whether actions taken by a film censorship board violated the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Ontario Divisional Court);

17. *R. v. Swain* (1986), 53 O.R. (2d) 609 (C.A.), in which some of the issues were whether the provision in the *Criminal Code* for the detention of an accused acquitted by reason of insanity violated ss. 7, 9, 12 or 15(1) of the *Charter* (the CCLA intervened in the Court of Appeal);

18. *Reference Re Bill 30, an Act to amend the Education Act (Ont.),* [1987] 1 S.C.R. 1148, in which the issues were whether Bill 30, which provided for full funding for Roman Catholic separate high schools, violated the *Charter's* guarantees of freedom of conscience and religion and equality rights (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);

19. *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O.R. (2d) 641 (C.A.), in which the issue was whether an Ontario regulation which provided for religious exercises in public schools violated the *Charter*'s guarantee of freedom of conscience and religion (the CCLA intervened in the Ontario Divisional Court and the Ontario Court of Appeal);

20. *Tremblay v. Daigle*, [1989] 2 S.C.R. 530, in which the issue was whether a man who impregnated a woman could obtain an injunction prohibiting the woman from having an abortion (the CCLA intervened in the Supreme Court of Canada);

21. *Canada (Human Rights Commission) v. Taylor*, [1990] 3 S.C.R. 892, in which one of the issues was whether a provision in the Canada *Human Rights Act* that prohibited telephone communication of hate messages offended the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);

22. *R. v. Keegstra*, [1990] 3 S.C.R. 697, in which the issue was whether the *Criminal Code* provision which made it an offence to willfully promote hatred against an identifiable group constitutes a violation of the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);

23. *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, in which the issues were whether the use for certain political purposes of union dues paid by nonmembers pursuant to an agency shop or Rand formula violated the *Charter* guarantees of freedom of expression and association (the CCLA intervened in the Supreme Court of Canada);

24. *R. v. Seaboyer*, [1991] 2 S.C.R. 577, in which one of the issues was whether the rape shield provisions of the *Criminal Code* violated the *Charter* guarantee of a fair trial (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada of Canada);

25. *R. v. Butler*, [1992] 1 S.C.R. 452, in which the issue was whether the obscenity provisions in s. 163 of the *Criminal Code* violate the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);

26. *J.H. v. Hastings (County)*, [1992] O.J. No. 1695 (Ont. Gen. Div.), in which the issue was whether disclosure to municipal councilors of a list of social assistance recipients violated the protection of privacy under the *Municipal Freedom of Information and Protection of Privacy Act* (the CCLA intervened in the Ontario Court – General Division);

27. *R. v. Zundel*, [1992] 2 S.C.R. 731, in which the issue was whether s. 177 of the *Criminal Code* prohibiting spreading false news violated the *Charter* guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);

28. *Ontario Human Rights Commission v. Four Star Variety* (October 22, 1993) (Ont. Bd. of Inquiry), in which the issues were whether convenience stores displaying and selling certain magazines discriminated against women on the basis of their sex contrary to the Ontario *Human Rights Code* and if the Board of Inquiry's dealing with the obscenity issue intruded on the *Charter* guarantee of freedom of expression (the CCLA intervened before the Board of Inquiry);

29. *Ramsden v. Peterborough (City)*, [1993] 2 S.C.R. 1084, in which the issue was whether a municipal by-law banning posters on public property violated the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Ontario Court of Appeal and the Supreme Court of Canada);

30. *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130, in which the issues were: (1) whether the common law of defamation should be developed in a manner consistent with freedom of expression; (2) whether the common law test for determining liability for defamation

disproportionately restricts freedom of expression; and (3) whether the current law respecting non-pecuniary and punitive damages disproportionately restricts freedom of expression and whether limits on jury discretion and damages should be imposed (the CCLA intervened in the Supreme Court of Canada);

31. *Ontario (Attorney General) v. Langer* (1995), 123 D.L.R. (4th) 289 (Ont. Gen. Div.), in which the issue was the constitutionality of ss. 163.1 and 164 of the *Criminal Code* relating to child pornography (the CCLA intervened in the Ontario General Division);

32. *Adler v. Ontario*, [1996] 3 S.C.R. 609, in which the issues were whether Ontario not funding of Jewish and certain Christian day schools violated the *Charter*'s guarantees of freedom of conscience and religion and of equality without discrimination based on religion (the CCLA intervened in the Ontario General Division, the Ontario Court of Appeal, and the Supreme Court of Canada);

33. *Al Yamani v. Canada (Solicitor General) (TD.)*, [1996] 1 F.C. 174 (T.D.), in which some of the issues were whether the provision in the *Immigration Act* regarding the deportation of permanent residents on the basis of membership in a class of organizations violated principles of fundamental justice contrary to s. 7 of the *Charter* or the *Charter* guarantees of freedom of association and expression (the CCLA intervened in the Federal Court Trial Division);

34. *R. v. Gill* (1996), 29 O.R. (3d) 250 (Ont. Gen. Div.), in which the issue was whether s. 301 of the *Criminal Code*, which creates an offence of publishing a defamatory libel, constitutes a violation of the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Ontario Court – General Division);

35. *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, in which some of the issues were whether a teacher, who had been subject to discipline for making discriminatory anti-Semitic statements while off duty, could defend his conduct, at least in part, on freedom of religion (the CCLA intervened in the Supreme Court of Canada);

36. *R. v. Stillman*, [1997] 1 S.C.R. 607, in which the issue was the explication of the circumstances, including police conduct, that would bring the administration of justice into disrepute within the meaning of s. 24(2) of the *Charter* if unconstitutionally obtained evidence were to be admitted into a proceeding (the CCLA intervened in the Supreme Court of Canada);

37. *Winnipeg Child and Family Services (Northwest Area) v. D.F.G*, [1997] 3 S.C.R. 925, in which the issue was whether the law should permit the state to interfere with the privacy, dignity, and liberty of a pregnant woman where her actions may expose the fetus to serious injury (the CCLA intervened in the Supreme Court of Canada);

38. *R. v. Lucas*, [1998] 1 S.C.R. 439, in which the issue was whether s. 300 of the *Criminal Code*, which creates the offence of publishing a defamatory libel, constitutes a violation of the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);

39. *Thomson Newspapers Co. (c.o.b. Globe and Mail) v. Canada (Attorney General)*, [1998] 1 S.C.R. 877, in which the issue was whether s. 322.1 of the *Canada Elections Act*, which prohibits the publication of public opinion polls during the last 72 hours of a federal election campaign, constitutes a violation of the *Charter*'s guarantee of freedom of expression (the CCLA intervened in the Supreme Court of Canada);

40. *Daly v. Ontario (Attorney General)* (1999), 44 O.R. (3d) 349 (C.A.), in which the issue was the extent to which Ontario's constitutionally protected Catholic separate school boards must adhere to the restrictions on employment discrimination contained in the *Ontario Human Rights Code* (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);

41. *R. v. Mills*, [1999] 3 S.C.R. 668, in which the central issue was the appropriate balance to be struck between the rights of the accused and the rights of complainants and witnesses with respect to the production of medical and therapeutic records (the CCLA intervened in the Supreme Court of Canada);

42. *Moumdjian v. Canada (Security Intelligence Review Committee)*, [1999] 4 F.C. 624, in which one of the issues was the constitutionality of *Immigration Act* provisions which impacted on the freedom of association (the CCLA intervened in the Federal Court of Appeal);

43. *United Food and Commercial Workers, Local 1518 (U.F.C.W.) v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083, and *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288 P*, [1999] 2 S.C.R. 1136, in which the issue was whether leafleting by striking employees at non-struck workplaces is constitutionally protected expression (the CCLA intervened in the Supreme Court of Canada);

44. *R. v. Budreo* (2000), 46 O.R. (3d) 481 (C.A.), in which the issue was whether the provision in s. 810.1 of the *Criminal Code*, which permits a court to impose recognizance on a person likely to commit sexual offences against a child, violates s. 7 of the *Charter* (the CCLA intervened in the Ontario Court of Appeal);

45. *Martin Entrop and Imperial Oil Ltd* (2000), 50 O.R. (3d) 18 (C.A.), in which one of the issues was the legality of an employer testing employees' urine for drug use (the CCLA intervened in the Ontario General Division and the Ontario Court of Appeal);

46. *Little Sisters Book and Art Emporium v. Canada (Attorney General)*, [2000] 2 S.C.R. 1120, in which one of the issues was whether certain provisions of Canada's customs legislation which permit customs officers to seize and detain allegedly obscene material at the border unreasonably infringe on the right to freedom of expression (the CCLA intervened in the Supreme Court of Canada);

47. *Toronto Police Association v. Toronto Police Services Board and David J. Boothby* (Ont. Div. Ct. Court, File No. 58/2000), in which the issue was the propriety of police fundraising and political activities, and the validity of a by-law and order issued by the Toronto Police Services Board and the Chief of Police, respectively, regarding police conduct (the matter settled prior to the hearing);

48. *R. v. Latimer*, [2001] 1 S.C.R. 3, in which one of the issues was whether the *Criminal Code* provision for a mandatory minimum sentence of life imprisonment for second degree murder constitutes cruel and unusual punishment under s. 12 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);

49. *R. v. Banks* (2001), 55 O.R. (3d) 374 (O.C.J.) and 2007 ONCA 19 (docket no. C43259) in which one of the issues was whether provisions of the Ontario *Safe Streets Act* prohibiting certain forms of soliciting violate s. 2(b) of the *Charter* (the CCLA intervened before the Ontario Court of Justice, the Ontario Superior Court of Justice and the Ontario Court of Appeal);

50. *R. v. Golden*, [2001] 3 S.C.R. 679, in which one of the issues was whether a strip search of the accused conducted as an incident to arrest violated s. 8 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);

51. *R. v. Sharpe*, [2001] 1 S.C.R. 45, in which the issue was whether the *Criminal Code* prohibition of the possession of child pornography is an unreasonable infringement on the right to freedom of expression under the *Charter* (the CCLA intervened in the Supreme Court of Canada);

52. *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S. C. R. 772, in which the CCLA supported a private university's claim to be accredited for certification of its graduates as teachers eligible to teach in the public school system, despite the fact that the university's religiously-based code of conduct likely excluded gays and lesbians (the CCLA intervened in the Supreme Court of Canada);

53. *Ross v. New Brunswick Teachers' Association* (2001), 201 D.L.R. (4th) 75 (N.B.C.A.), in which one of the issues was the extent to which the values underlying the common law tort of defamation must give way to the *Charter* values underlying freedom of expression, especially where a claimant who asserts the former at the expense of the latter freely enters the public arena (the CCLA intervened in the New Brunswick Court of Appeal);

54. *Ontario (Human Rights Commission) v. Brillinger*, [2002] O.J. No. 2375 (Div. Ct.), in which the issue concerned the balance to be struck between freedom of religion and the right to equality (the CCLA intervened in the Ontario Superior Court of Justice);

55. *Chamberlain v. The Board of Trustees of School District #36 (Surrey)*, [2002] 4 S.C.R. 710, which involved the balancing of freedom of religion and equality rights in the context of a public school board's approval of books for a school curriculum (the CCLA intervened in the Supreme Court of Canada);

56. *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.), in which the issues were the extent to which regulations made under the *Family Benefits Act* and the General *Welfare Assistance Act* amending the definition of "spouse" in relation to benefit entitlement (1) constituted discrimination under s. 15(1) of the *Charter*, and (2) set the stage for unwarranted government intrusion into the personal and private circumstances of affected recipients (the CCLA intervened before SARB, the Ontario Divisional Court, the Ontario Superior Court of Justice, and the Ontario Court of Appeal);

57. *Retail, Wholesale and Department Store Union, Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, in which the issue concerned the extent to which the common law regarding secondary picketing should be modified in light of *Charter values* (the CCLA intervened in the Supreme Court of Canada);

58. *Lafferty v. Parizeau* (SCC File No. 30103), [2003] S.C.C.A. No. 555 (leave granted but settled before hearing), which examined the application of *Charter* freedom of expression values to defamation and the defense of fair comment (the CCLA intervened in the Supreme Court of Canada, but the matter settled prior to hearing);

59. *R. v. Malmo-Levine, R. v. Clay, R. v. Caine*, [2003] S.C.J. No. 79, in which one of the issues was whether the criminal prohibition against the possession of marijuana violates s. 7 of the *Charter* (the CCLA intervened in the Supreme Court of Canada);

60. *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, which examined the appropriate scope of both the tort of abuse of public office and the tort of negligent supervision of the police, and the appropriate legal principles to be applied when addressing the issues of costs orders against private individuals of modest means who are engaged in public interest litigation (the CCLA intervened in the Supreme Court of Canada);

61. *La Congrégation des témoins de Jéhovah de St-Jérôme Lafontaine, et al. v. Municipalité du village de Lafontaine, et al.*, [2004] 2 S.C.R. 650, which examined the constitutionality of a municipal zoning decision that limited the location of building places of religious worship (the CCLA intervened in the Supreme Court of Canada);

62. *R. v. Glad Day Bookshop Inc.*, [2004] O.J No. 1766 (Ont. Sup. Ct. Jus.), in which one of the issues was the constitutionality of the statutory regime requiring prior approval and allowing the prior restraint of films (the CCLA intervened in the Ontario Superior Court of Justice);

63. *In the matter of an application under § 83.28 of the Criminal Code*, [2004] 2 S.C.R. 248, which questioned *inter alia* the constitutionality of investigative hearings and the over breadth of certain provisions of the Anti-Terrorism Act (the CCLA intervened in the Supreme Court of Canada);

64. *In the Matter of a Reference by the Government in Council Concerning the Proposal for an Act Respecting Certain Aspects of Legal Capacity for Marriage for Civil Purposes*, [2004] 3 S.C.R. 698, which examined the equality and religious freedom aspects of proposed changes to the marriage legislation (the CCLA intervened in the Supreme Court of Canada);

65. *R v. Mann*, [2004] 3 S.C.R. 59, which examined whether the police have the authority at common law to detain and search a person in the absence of either a warrant or reasonable and probable grounds to believe an offence has been committed (the CCLA intervened in the Supreme Court of Canada);

66. *R v. Tessling*, [2004] 3 S.C.R. 432, which examined the constitutionality of the police conducting warrantless searches of private dwelling houses using infrared technology during the course of criminal investigations (the CCLA intervened in the Supreme Court of Canada);

67. *Genex Communications Inc. v. Attorney General of Canada*, [2005] F.C.J. No. 1440 (F.C.A.), which examined the application of the *Charter's* guarantee of freedom of expression to a decision by the CRTC to refuse to renew a radio station license (the CCLA intervened in the Federal Court of Appeal);

68. *R. v. Hamilton*, [2005] S.C.J. No. 48, which examined the scope of the offence of counseling the commission of a crime (the CCLA intervened in the Supreme Court of Canada);

69. *R. v. Déry*, [2006] 2 S.C.R. 669, which examined whether the *Criminal Code* contains the offence of "attempted conspiracy" (the CCLA intervened in the Supreme Court of Canada);

70. *Montague v. Page* (2006), 79 O.R. (3d) 515 (Ont. S.C.J.), which concerned the application of the Charter's guarantee of freedom of expression to the question of whether municipalities are allowed to file defamation suits against residents (CCLA intervened in the Ontario Superior Court of Justice);

71. *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256, which concerned whether the *Charter's* guarantee of freedom of religion allows a student to wear a kirpan in school (the CCLA intervened in the Supreme Court of Canada);

72. *O'Neill v. Attorney General of Canada*, [2006] O.J. No. 4189 (Ont. S.C.J.), which concerned the interaction of national security and *Charter* rights (the CCLA intervened in the Ontario Superior Court of Justice);

73. *Owens v. Saskatchewan Human Rights Commission* (2006), 267 D.L.R. (4th) 733 (Sask.C.A.), which concerned the application of the *Charter's* guarantees of freedom of religion and expression to a provincial statute banning hateful speech (the CCLA intervened in the Saskatchewan Court of Appeal);

74. *Charkaoui et al. v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350, which examined, *inter alia*, the constitutionality of certain "security certificate" provisions of the *Immigration and Refugee Protection Act* (the CCLA intervened in the Supreme Court of Canada);

75. *R. v. Bryan*, [2007] 1 S.C.R. 527, which examined the constitutionality of provisions of the *Elections Act* which penalize dissemination of election results from eastern Canada before polls are closed in the West (the CCLA intervened in the Supreme Court of Canada);

76. *R. v. Clayton*, 2007 SCC 32, concerning the scope of the police power to establish a roadblock and to stop and search vehicles and passengers (the CCLA intervened in the Supreme Court of Canada);

77. *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, concerning the issue of whether police officers can be held liable in tort for a negligently conducted investigation (the CCLA intervened in the Supreme Court of Canada);

78. *Bruker v. Marcovitz*, 2007 SCC 54, which examined the extent to which civil courts can enforce a civil obligation to perform a religious divorce (the CCLA intervened in the Supreme Court of Canada);

79. *Lund v. Boissoin AND The Concerned Christian Coalition Inc.* (2006), CarswellAlta 2060 (AHRCC), which examined the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Human Rights and Citizen Commission);

80. *Whatcott v. Assn. Of Licensed Practical Nurses (Saskatchewan)*, 2008 SKCA 6, concerning the freedom of expression of an off-duty nurse who picketed a Planned Parenthood facility - whether he should be subject to disciplinary action by the professional association of nurses for this activity (the CCLA intervened in the Saskatchewan Court of Appeal);

81. *R. v. Kang-Brown*, 2008 SCC 18, and *R. v. A.M.*, 2008 SCC 19, concerning the constitutionality of using dogs to conduct random warrantless inspections of high school students (the CCLA intervened in the Supreme Court of Canada);

82. *Michael Esty Ferguson v. Her Majesty the Queen*, 2008 SCC 6, which concerned the constitutional challenge of a law requiring mandatory minimum sentences (the CCLA intervened in the Supreme Court of Canada);

83. *Elmasry and Habib v. Roger's Publishing and MacQueen* (No. 4), 2008 BCHRT 378, concerning the extent to which a British Columbia human rights law can limit the freedom of expression of a news magazine that had published offensive material about Muslims (the CCLA intervened before the British Columbia Human Rights Tribunal);

84. *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FCA 401, concerning the extraterritorial application of the *Charter*, and specifically its application to Canadian Forces in Afghanistan and the transfer of detainees under Canadian control to Afghan authorities (the CCLA intervened in the Federal Court of Appeal);

85. *WIC Radio Ltd., et al. v. Kari Simpson*, 2008 SCC 40, concerning the appropriate balance to be struck in the law of defamation when one person's expression of opinion may have harmed the reputation of another (the CCLA intervened in the Supreme Court of Canada);

86. *Toronto Police Services Board v. (Ontario) Information and Privacy Commissioner*, 2009 ONCA 20 regarding freedom of information and the extent to which the public's right to access electronic data requires that the institution render such data in retrievable form (the CCLA intervened in the Ontario Court of Appeal);

87. *R. v. Patrick*, 2009 SCC 17, concerning the constitutionality of police conducting warrantless searches of household garbage located on private property (the CCLA intervened in the Supreme Court of Canada);

88. *Robin Chatterjee v. Attorney General of Ontario*, 2009 SCC 19, concerning the constitutionality of the civil forfeiture powers contained in Ontario's *Civil Remedies Act, 2001* (the CCLA intervened in the Supreme Court of Canada);

89. *R. v. Suberu*, 2009 SCC 33, concerning the constitutional right to counsel in the context of investigative detentions (the CCLA intervened in the Supreme Court of Canada);

90. *R. v. Grant*, 2009 SCC 32, concerning the appropriate legal test for the exclusion of evidence under s. 24(2) of the *Charter* (the CCLA intervened in the Supreme Court of Canada);

91. *R. v. Harrison*, 2009 SCC 34, concerning the appropriate application of s. 24(2) of the *Charter* in cases where police have engaged in "blatant" and "flagrant" *Charter* violations (the CCLA intervened in the Supreme Court of Canada);

92. *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, concerning whether a provincial law requiring that all driver's licenses include a photograph of the license holder violates the freedom of religion of persons seeking an exemption from being photographed for religious reasons (the CCLA intervened in the Supreme Court of Canada);

93. *R. v. Breeden*, 2009 BCCA 463, concerning whether the constitutional right to freedom of expression applies in certain public and publicly accessible spaces (the CCLA intervened before the British Columbia Court of Appeal);

94. *R. v. Chehil* [2009] N.S.J. No. 515, concerning the permissibility of warrantless searches of airline passenger information by police (the CCLA intervened at the Nova Scotia Court of Appeal);

95. *Matthew Miazga v. The Estate of Dennis Kvello, et al.*, 2009 SCC 51, concerning the appropriate legal test for the tort of malicious prosecution (the CCLA intervened at the Supreme Court of Canada);

96. *Johanne Desbiens, et al. v. Wal-Mart Canada Corporation*, 2009 SCC 55, and *Gaétan Plourde v. Wal-Mart Canada Corporation*, 2009 SCC 54, concerning the interpretation of the Quebec *Labour Code* and the impact of the freedom of association guarantees contained in the *Canadian Charter* and the Quebec *Charter* (the CCLA intervened in the Supreme Court of Canada);

97. *Stephen Boissoin and the Concerned Christian Coalition Inc. v. Darren Lund*, 2009 ABQB 592, which will examine the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Queen's Bench of Alberta);

98. *Quan v. Cusson*, 2009 SCC 62, raising the novel question of a public interest responsible journalism defence, as well as the traditional defence of qualified privilege, in the setting of defamation law and its relationship to freedom of the press (the CCLA intervened in the Supreme Court of Canada);

99. *Peter Grant v. Torstar Corp.*, 2009 SCC 61concerning the creation and operation of a public interest responsible journalism defence (the CCLA intervened in the Supreme Court of Canada);

100. *Whitcombe and Wilson v. Manderson*, December 18 2009, Ontario Superior Court of Justice File No. 31/09, concerning a Rule 21 motion to dismiss a defamation lawsuit being funded by a municipality (the CCLA intervened in the Ontario Superior Court of Justice);

101. *Karas v. Canada (Minister of Justice)*, (SCC File No. 32500) concerning the appropriateness of extraditing a fugitive to face the possibility of a death penalty without assurances that the death penalty will not be applied (the CCLA was granted leave to intervene at the Supreme Court of Canada but the case was dismissed as moot prior to the hearing);

102. *Prime Minister of Canada, et al. v. Omar Ahmed Khadr*, 2010 SCC 3, concerning *Charter* obligations to Canadian citizens detained abroad and the appropriateness of *Charter* remedies in respect to matters affecting the conduct of foreign relations (the CCLA intervened in the Supreme Court of Canada);

103. *R. v. Nasogaluak*, 2010 SCC 6, concerning the availability of sentence reductions as a remedy for violations of constitutional rights (the CCLA intervened in the Supreme Court of Canada);

104. *Whatcott v. Saskatchewan (Human Rights Tribunal)*, 2010 SKCA 26, concerning the extent to which a Saskatchewan human rights law can limit the expression of a man distributing anti-homosexual flyers (the CCLA intervened in the Saskatchewan Court of Appeal);

105. *Leblanc et al. c. Rawdon (Municipalite de) (Quebec Court of Appeal File No. 500-09-019915-099) concerning the ability of a municipality to sue for defamation, the proper test for an interlocutory injunction in a defamation case, and the impact of "anti-SLAPP" legislation* (the CCLA intervened at the Quebec Court of Appeal)*;*

106. *Warman v. Fournier et al.*, 2010 ONSC 2126, concerning the appropriate legal test when a litigant in a defamation action is attempting to identity previously-anonymous internet commentators (the CCLA intervened at the Ontario Superior Court of Justice);

107. *R. v. National Post*, 2010 SCC 16, concerning the relationship between journalist-source privilege, freedom of the press under s. 2b, and search warrant and assistance orders targeting the media (the CCLA intervened in the Supreme Court of Canada);

108. *Toronto Star Newspapers Ltd. v. Canada*, 2010 SCC 21, concerning the constitutionality of mandatory publication bans regarding bail hearing proceedings when requested by the accused (the CCLA intervened in the Supreme Court of Canada);

109. *Smith v. Mahoney* (U.S. Circuit Court of Appeals for the Ninth Circuit, Court File No. 94-99003) concerning the constitutionality of carrying out a death sentence on an inmate who has spent 27 years living under strict conditions of confinement on death row (the CCLA intervened in the U.S. Circuit Court of Appeals for the Ninth Circuit);

110. *R. v. Cornell*, 2010 SCC 31, concerning whether the manner in which police conduct a search, in particular an unannounced 'hard entry', constitutes a violation of s. 8 (the CCLA intervened in the Supreme Court of Canada);

111. *City of Vancouver, et al v. Alan Cameron Ward, et al.*, 2010 SCC 27, concerning whether an award of damages for the breach of a *Charter* right can made in the absence of bad faith, an abuse of power or tortious conduct (the CCLA intervened in the Supreme Court of Canada);

112. *R. v. Sinclair*, 2010 SCC 35, *R. v. McCrimmon*, 2010 SCC 36, and *R. v. Willier*, 2010 SCC 37, concerning the scope of the constitutional right to counsel in the context of a custodial interrogation (the CCLA intervened in the Supreme Court of Canada);

113. *R. v. N.S. et al.*, 2010 ONCA 670, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened at the Ontario Court of Appeal);

114. *The Toronto Coalition to Stop the War et al. v. The Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration Canada, 2010 FC 957, concerning the freedom of association and freedom of expression implications of a* preliminary assessment by the government that a British Member of Parliament who was invited to speak in Canada was inadmissible because the government claimed he had engaged in terrorism and was a member of a terrorist organization (the CCLA intervened in the Federal Court);

115. *Globe and Mail, a division of CTVglobemedia Publishing Inc. v. Attorney General of Canada, et al*, 2010 SCC 41, concerning the disclosure of confidential journalistic sources in the civil litigation context, and the constitutionality of a publication ban (the CCLA intervened in the Supreme Court of Canada);

116. *R. v. Gomboc*, 2010 SCC 55, concerning the constitutionality of police conducting warrantless searches of private dwelling houses using real-time electricity meters (the CCLA intervened in the Supreme Court of Canada);

117. *Tiberiu Gavrila v. Minister of Justice*, 2010 SCC 57, concerning the interaction between the Immigration and Refugee Protection Act and the Extradition Act and whether a refugee can be surrendered for extradition to a home country (the CCLA intervened in the Supreme Court of Canada);

118. *Reference re Marriage Commissioners Appointed Under the Marriage Act, 1995 S.S. 1995, c. M-4.1*, 2011 SKCA 3, concerning the constitutionality of proposed amendments to the *Marriage Act* that would allow marriage commissioners to refuse to perform civil marriages where doing so would conflict with commissioners' religious beliefs (the CCLA intervened at the Court of Appeal for Saskatchewan);

119. *Canadian Broadcasting Corporation et al. v. The Attorney General of Quebec et al.*, 2011 SCC 2, and *Canadian Broadcasting Corporation v. Her Majesty the Queen and Stéphan Dufour*, 2011 SCC 3 concerning the constitutional protection of freedom of the press in courthouses and the constitutionality of certain rules and directives restricting the activities of the press and the broadcasting of court proceedings (the CCLA intervened in the Supreme Court of Canada);

120. *R. v. Caron,* 2011 SCC 5, concerning the availability of advance cost orders in criminal and quasi-criminal litigation that raises broad reaching public interest issues (the CCLA intervened in the Supreme Court of Canada);

121. *R. v. Ahmad*, 2011 SCC 6, concerning the constitutionality of ss. 38 to 38.16 of the Canada Evidence Act, R.S.C. 1985 (the CCLA intervened in the Supreme Court of Canada);

122. *Farès Bou Malhab v. Diffusion Métromédia CMR inc., et al.*, 2011 SCC 9, concerning statements made by a radio host, and examining the scope and nature of defamation under Quebec civil law in the context of the freedom of expression guarantees found in the Quebec and Canadian Charters (the CCLA intervened in the Supreme Court of Canada);

123. *Ontario (Attorney General) v. Fraser*, 2011 SCC 20, concerning the exclusion of agricultural workers from Ontario's *Labour Relations Act* and whether the labour scheme put in place for these workers violated freedom of association under the *Canadian Charter* (the CCLA intervened in the Supreme Court of Canada);

124. *R. v. K.M.* 2011 ONCA 252, concerning the constitutionality of taking DNA samples from young offenders on a mandatory or reverse onus basis (the CCLA intervened in the Ontario Court of Appeal);

125. *Issassi v. Rosenzweig*, 2011 ONCA 302, concerning a 13 year old girl from Mexico who had been granted refugee status in Canada because of allegations that her mother had sexually abused her, and the subsequent return of that youth to her mother in Mexico, by a judge who did not conduct a risk assessment (the CCLA intervened at the Ontario Court of Appeal);

126. *Attorney General of Canada et al. v. Mavi et al.*, 2011 SCC 30, considering whether there is a need for procedural fairness in the federal immigration sponsorship regime (the CCLA intervened in the Supreme Court of Canada);

127. *Canada (Information Commissioner) v. Canada (Minister of National Defence),* 2011 SCC 25, cases concerning whether Minister's offices, including the Prime Minister's Office, are considered "government institutions" for the purposes of the federal *Access to Information Act* (the CCLA intervened in the Supreme Court of Canada);

128. *Toussaint v. Attorney General of Canada,* 2011 FCA 213, concerning whether a person living in Canada with precarious immigration status has the right to life-saving healthcare (the CCLA intervened in the Federal Court of Appeal);

129. *Phyllis Morris v. Richard Johnson, et al.*, 2011 ONSC 3996, concerning a motion for production and disclosure brought by a public official and plaintiff in a defamation action in order to get identifying information about anonymous bloggers (the CCLA intervened on the motion at the Ontario Superior Court of Justice);

130. Canada (Attorney General) v. PHS Community Services Society, 2011 SCC 44, concerning a safe (drug) injection site, and the constitutionality of certain criminal provisions in relation to users and staff of the site (the CCLA intervened in the Supreme Court of Canada);

131. *Crookes v. Newton*, 2011 SCC 47, concerning whether a hyperlink constitutes "publication" for the purposes of the law of defamation (the CCLA intervened in the Supreme Court of Canada);

132. R. v. Katigbak, 2011 SCC 48, considering the scope of the statutory defences to possession of child pornography (the CCLA intervened in the Supreme Court of Canada);

133. R. v. Barros, 2011 SCC 51, considering the scope of the informer privilege and whether it extends to prohibit independent investigation by the defence which may unearth the identity of a police informer (the CCLA intervened in the Supreme Court of Canada);

134. *Batty v. City of Toronto*, 2011 ONSC 6862, concerning the constitutionality of municipal bylaws prohibiting the erection of structures and overnight presence in public parks as applied to a protest (the CCLA intervened at the Ontario Superior Court of Justice);

135. *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7, concerning parents seeking to have their children exempt from participating in Quebec's Ethics and Religious Culture curriculum on the basis of their freedom of religion concerns (the CCLA intervened before the Supreme Court of Canada)**;**

136. *Doré v. Barreau du Québec*, 2012 SCC 12, concerning the jurisdiction of a provincial law society to discipline members for comments critical of the judiciary (the CCLA intervened before the Supreme Court of Canada);

137. *R. v. Ipeelee*, 2012 SCC 13, concerning the application of s. 718.2(e) of the *Criminal Code* and *Gladue* principles when sentencing an Aboriginal offender of a breach of long-term supervision orders (the CCLA intervened before the Supreme Court of Canada);

138. *Canada (Attorney General) v. Bedford*, 2012 ONCA 186, concerning the constitutionality of certain prostitution-related offences (the CCLA intervened at the Ontario Court of Appeal);

139. *R. v. Tse*, 2012 SCC 16, concerning the constitutionality of the Criminal Code's "warrantless wiretap" provisions (the CCLA intervened before the Supreme Court of Canada);

140. *Éditions Écosociété Inc. v. Banro Corp.*, 2012 SCC 18, concerning the appropriate test for jurisdiction and *forum non conveniens* in a multi-jurisdictional defamation lawsuit and the implications of these jurisdictional issues on freedom of expression (the CCLA intervened before the Supreme Court of Canada);

141. *Peel (Police) v. Ontario (Special Investigations Unit)*, 2012 ONCA 292, concerning the jurisdiction of Ontario's Special Investigations Unit to investigate potentially criminal conduct

committed by a police officer who has retired since the time of the incident (the CCLA intervened before the Ontario Superior Court of Justice and the Ontario Court of Appeal);

142. *Pridgen v. University of Calgary*, 2012 ABCA 139, which considers whether a university can discipline students for online speech and whether the *Canadian Charter of Rights and Freedoms* applies to disciplinary proceedings at a university (the CCLA intervened before the Alberta Court of Appeal);

143. *J.N. v. Durham Regional Police Service*, 2012 ONCA 428, concerning the retention of non-conviction disposition records by police services (the CCLA intervened in the Ontario Court of Appeal; CCLA also intervened before the Ontario Superior Court of Justice, *J.N. v. Durham Regional Police Service*, 2011 ONSC 2892);

144. *Opitz v. Wrzesnewskyj*, 2012 SCC 55, concerning the proper interpretation of the *Canada Elections Act* in the context of elections contested based on "irregularities," and in light of s. 3 of the Charter (CCLA intervened before the Supreme Court of Canada);

145. *Canada (Human Rights Commission) v. Warman*, 2012 FC 1162, concerning the constitutionality of the hate speech prohibitions in the *Canadian Human Rights Act* (the CCLA intervened in the Federal Court of Canada);

146. *R. v. Cuttell*, 2012 ONCA 661 and *R. v. Ward*, 2012 ONCA 660, concerning the permissibility of warrantless searches of internet users' identifying customer information (the CCLA intervened at the Ontario Court of Appeal);

147. *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45, concerning the issue of the appropriate test for granting standing in a public interest case (CCLA intervened before the Supreme Court of Canada);

148. *R. v. Cole*, 2012 SCC 53, examining an employee's reasonable expectation of privacy in employer-issued computers and the application of s. 8 to police investigations at an individual's workplace (CCLA intervened before the Supreme Court of Canada);

149. *R. v. Prokofiew*, 2012 SCC 49, concerning the inferences that could be made from accused person's decision not to testify (CCLA intervened before the Supreme Court of Canada);

150. *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, concerning the proper balance between the transparency of court proceedings and the privacy of complainants (CCLA intervened before the Supreme Court of Canada);

151. *Lund v. Boissoin*, 2012 ABCA 300, which considers the extent to which Alberta human rights law can limit a homophobic letter to the editor (the CCLA intervened before the Alberta Court of Appeal);

152. *R. v. Khawaja*, 2012 SCC 69 and *Sriskandarajah v. United States of America*, 2012 SCC 70 which together considered whether the definition of "terrorist activity" introduced by the Anti-Terrorism Act 2001, amending the Criminal Code, infringe the Charter (CCLA intervened before the Supreme Court of Canada);

153. *R. v. NS*, 2012 SCC 72, concerning the balancing of freedom of religion and conscience and fair trial rights, where a sexual assault complainant is a religious Muslim woman and the accused has requested that she be required to remove the veil before testifying (the CCLA intervened before the Supreme Court of Canada);

154. *R. v. Davey*, 2012 SCC 75, *R. v. Emms*, 2012 SCC 74 and *R. v. Yumnu*, 2012 SCC 73, concerning the Crown's vetting of prospective jurors prior to jury selection and the failure to disclose information to defence counsel (CCLA intervened before the Supreme Court of Canada);

155. *R. v. Manning*, 2013 SCC 1, concerning the proper interpretation of a criminal forfeiture provision, and whether courts may consider the impact of such forfeiture on offenders, their dependents, and affected others (CCLA intervened before the Supreme Court of Canada);

156. *Saskatchewan Human Rights Commission v. William Whatcott*, 2013 SCC 11, concerning the constitutionality and interpretation of the hate speech provisions of the Saskatchewan Human Rights Code and the extent to which that law can limit the expression of a man distributing anti-homosexual flyers (CCLA intervened before the Supreme Court of Canada);

157. *R. v. Mernagh*, 2013 ONCA 67, concerning the constitutionality of medical marijuana regulations (CCLA intervened before the Ontario Court of Appeal);

158. *Tigchelaar Berry Farms v. Espinoza*, 2013 ONSC 1506, concerning temporary migrant workers who, following their termination, were immediately removed from Canada by their employers pursuant to a government-mandated employment contract (CCLA intervened before the Ontario Superior Court);

159. *R. v. TELUS Communications Co.*, 2013 SCC 16, concerning the interpretation of the interception provisions of the *Criminal Code* and whether the authorizations in a General Warrant and Assistance Order are sufficient to require a cell phone company to forward copies of all incoming and outgoing text messages to the police;

160. *R. v. Pham*, 2013 SCC 15, concerning whether the demands of proportionality in sentencing require that the individual accused's circumstances be taken into account to include a collateral consequence, such as deportation;

161. *Canadian Human Rights Commission v. Canada (Attorney General)*, 2013 FCA 75, in which the court considered whether an allegation that the Government of Canada has engaged in prohibited discrimination by under-funding child welfare services for on-reserve First Nations children, in order to succeed, requires a comparison to a similarly situated group;

162. *Penner v. Niagara (Regional Police Service Board)*, 2013 SCC 19, concerning the use of issue estoppel in the context of civil claims against the police;

163. *R. v. Saskatchewan Federation of Labour*, 2013 SKCA 43, concerning essential services legislation and the freedom to strike;

164. *R. v. Welsh*, 2013 ONCA 190, concerning the constitutionality of an undercover police officer posing as a religious or spiritual figure in order to elicit information from a suspect;

165. *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34, concerning employee privacy and the reasonableness of randomized alcohol testing in the workplace;

166. *RC v. District School Board of Niagara*, 2013 HRTO 1382, concerning the policy and practice of distribution of non-instructional religious material within the school board system and whether it is discriminatory on the basis of creed;

167. *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, concerning the government's refusal to permit Canadians detained abroad to serve the remainder of their sentence in Canada and the application of s. 6 of the Charter (the CCLA also intervened at the Federal Court of Appeal, 2011 FCA 39);

168. *R. v. Chehil*, 2013 SCC 49, and *R. v. Mackenzie*, 2013 SCC 50, concerning the "reasonable suspicion" standard and the right to be free from unreasonable search and seizure;

169. *Ezokola v. Minister of Immigration and Citizenship*, 2013 SCC 40, concerning application of the exclusion clause 1(F)(a) of the 1951 UN Refugee Convention, as incorporated in the IRPA, and the proper test for complicity in war crimes and crimes against humanity. The case considers an individual who has been denied refugee status because he was employed by the government of the Democratic Republic of Congo at a time that international crimes were committed by the State;

170. *Reva Landau v. Ontario (Attorney General)*, 2013 ONSC 6152, concerning the constitutionality of the current funding of Ontario's Catholic schools;

171. *R. v. Vu*, 2013 SCC 60, concerning the scope of police authority to search computers and other personal electronic devices found within a place for which a warrant to search has been issued;

172. *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, concerning the constitutionality of Alberta's *Personal Information Protection Act* in light of its impact on a union's freedom of expression in respect of activities on a picket line;

173. *Faysal v. General Dynamics Land Systems Canada* (Ontario Human Rights Tribunal File No. 2009-03006-I), concerning the application by a Canadian employer of the US *International Traffic in Arms Regulations*, and whether such application constitutes discrimination, contrary to the Ontario *Human Rights Code*, the *Charter of Rights and Freedoms*, and Canadian legal obligations pursuant to international human rights law (matter settled before a hearing);

174. *Wood v. Schaeffer*, 2013 SCC 71, concerning the scope of public interest standing and the interpretation of certain Regulations governing investigations conducted by Ontario's Special Investigations Unit (the CCLA also intervened at the Ontario Court of Appeal, 2011 ONCA 716);

175. *Bernard v. Canada (Attorney General)*, 2014 SCC 13, concerning an employer sharing the contact information of a Rand employee with a union and whether this violates rights to privacy and the freedom not to associate;

176. *John Doe v. Ontario (Finance)*, 2014 SCC 36, concerning an exception in Ontario's *Freedom of Information and Protection of Privacy Act* for advice and recommendations to a Minister;

177. *Mission Institution v. Khela*, 2014 SCC 24, concerning the scope of habeas corpus, the disclosure obligations on a correctional institution when they conduct an involuntary transfer, and the remedies that are available pursuant to a habeas application;

178. *R. v. Summers*, 2014 SCC 26, concerning the presumption of innocence and the interpretation of "circumstance[s]" that may justify granting enhanced credit for pre-trial custody under s. 719(3.1) of the *Criminal Code*;

179. *Canada (Citizenship and Immigration) v. Harkat*, 2014 SCC 37, concerning the constitutionality of Canada's "security certificate" regime, particularly the restrictions on communications between a Named Person and the Special Advocate;

180. *France v. Diab*, 2014 ONCA 374, regarding whether an extradition judge must engage in a limited weighing of evidence to assess the sufficiency of evidence for committal to extradition and whether a failure to do so would violate s. 7 of the *Charter*;

181. *R. v. Spencer*, 2014 SCC 43, concerning the permissibility of warrantless searches of internet users' identifying customer information;

182. *R. v. Taylor*, 2014 SCC 50, concerning the right to counsel and whether intentional police reliance on medical procedures to gather evidence without implementing the right to counsel violates s. 8 of the *Charter*;

183. *R. v. Hart*, 2014 SCC 52, concerning the constitutionality and admissibility of a confession obtained through a "Mr. Big" police operation;

184. *Febles v. Canada (Citizenship and Immigration)*, 2014 SCC 68, concerning whether a court must consider an individual's rehabilitation when seeking to exclude a refugee from Canada for "serious prior criminality";

185. *Kazemi Estate v. Islamic Republic of Iran*, 2014 SCC 62, concerning the application of the *Charter* to the *State Immunity Act* and whether it denies state immunity for acts committed by foreign governments when such acts result in violations of international law prohibitions against torture (the CCLA also intervened at the Quebec Court of Appeal, 2012 QCCA 1449);

186. *Wakeling v. United States of America*, 2014 SCC 72, regarding the constitutionality of sections of the *Criminal Code* and the *Privacy Act* that allow for the substance of wiretaps to be disclosed to foreign law enforcement actors;

187. *R. v. Fearon*, 2014 SCC 77, concerning the scope of the police power to search incident to arrest and whether it extends to a warrantless search of personal electronic devices (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 106);

188. *PS v. Ontario*, 2014 ONCA 900, concerning detention under mental health law and the scope of *Charter* protection afforded to a person with a hearing impairment and linguistic needs, in a situation of compound rights violations;

189. *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, concerning the constitutionality of the labour relations regime for members of the Royal Canadian Mounted Police;

190. *Carter v. Canada (Attorney General)*, 2015 SCC 5, concerning the constitutionality of the *Criminal Code* prohibition on assisted suicide in light of the rights protected under ss. 7 and 15 of the *Charter*;

191. *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, concerning the impact of provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, and associated regulations, on solicitor-client privilege and whether these provisions unjustifiably violate s. 7 of the *Charter*;

192. *Baglow v. Smith*, 2015 ONSC 1175, concerning the fair comment defence and the approach to defamation cases where the allegedly defamatory publication takes place within the "blogosphere";

193. *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, concerning whether a private religious high school should be exempted from the requirement to teach Quebec's Ethics and Religious Culture curriculum and whether the failure to grant an exemption violates the institution's freedom of religion;

194. *Figueiras v. Toronto (Police Services Board)*, 2015 ONCA 208, regarding whether a roving police "stop and search" checkpoint targeting apparent protesters during the G20 Summit violated ss. 2 and 7 of the *Charter*;

195. *R. v. Nur*, 2015 SCC 15, concerning the constitutionality of various provisions of the *Criminal Code* which impose mandatory minimum sentences for the possession of a prohibited firearm (the CCLA also intervened at the Ontario Court of Appeal, 2013 ONCA 677, and at the Ontario Superior Court of Justice, 2011 ONSC 4874);

196. *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, concerning whether the rights to equality or to freedom of religion as protected under the Quebec *Charter of human rights and freedoms* are violated when a prayer is recited at the outset of a municipal council meeting;

197. *Henry v. British Columbia (Attorney General)*, 2015 SCC 24, regarding the availability of *Charter* remedies for non-disclosure of evidence at trial and whether claimants should be required to prove prosecutorial malice in the *Charter* claim;

198. *Bowden Institution v. Khadr*, 2015 SCC 26, regarding the proper interpretation of the *International Transfer of Offenders Act* as applied to the sentence received by a Canadian citizen sentenced in the United States and whether the sentence should be served in a provincial correctional facility;

199. *R. v. St-Cloud*, 2015 SCC 27, regarding the interpretation of the power to deny bail because detention is necessary to maintain confidence in the administration of justice;

200. *R. v. Barabash*, 2015 SCC 29, considering the scope of the private use exception to making and possessing child pornography;

201. *R. v. Smith*, 2015 SCC 34, concerning the constitutionality of the *Marijuana Medical Access Regulations* and whether the limitation in the *Regulations* restricting legal possession to only dried marijuana unreasonably infringes s. 7 *Charter* rights;

202. *Equustek Solutions Inc. v. Google Inc.*, 2015 BCCA 265, concerning the validity of an order of the BC Supreme Court that requires a global internet search service to delete certain websites from its search results worldwide;

203. *Taylor-Baptiste v. Ontario Public Service Employees Union*, 2015 ONCA 495, concerning the role of the *Charter of Rights and Freedoms* in the interpretation of the Ontario *Human Rights Code* by the Human Rights Tribunal of Ontario, and in particular how the *Charter* protection of freedom of expression impacts on the Code's protections (the CCLA also intervened before the Ontario Superior Court of Justice, 2014 ONSC 2169);

204. *Frank v. Canada (Attorney General)*, 2015 ONCA 536, concerning the constitutionality of provisions of the *Canada Elections Act* that preclude Canadian citizens who have resided outside of the country for more than five years from voting in federal elections;

205. *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, concerning the application of the Quebec *Charter* to a Canadian company's refusal to train a Pakistan-born Canadian pilot because he was refused clearance under a US program requiring security checks for foreigners;

206. *Disciplinary Hearings of Superintendent David Mark Fenton*, Toronto Police Service Disciplinary Tribunal decision dated 25 August 2015, regarding whether the mass arrest of hundreds of individuals at two locations during the G20 Summit constituted a violation of ss. 2 and 9 of the *Charter* and whether the officer's conduct amounted to misconduct under the *Police Services Act*;

207. *R. v. Appulonappa*, 2015 SCC 59, and *B010 v. Canada (Citizenship and Immigration)*, 2015 SCC 58, concerning the constitutionality of criminal and immigration sanctions imposed on those who provide assistance to refugee claimants as "human smugglers" (CCLA also intervened in *R. v. Appulonappa* before the BC Court of Appeal, 2014 BCCA 163);

208. *Schmidt v. Attorney General of Canada*, 2016 FC 269, concerning the proper interpretation of statutory provisions requiring the Minister of Justice to report to Parliament on the constitutionality of proposed legislation;

209. *Good v. Toronto (Police Services Board)*, 2016 ONCA 250, regarding the certification of a class action arising from alleged police misconduct during the 2010 G20 Summit;

210. *Villeneuve c. Montréal (Ville de)*, 2016 QCCS 2888, concerning the constitutionality of a City of Montreal by-law that prohibits the holding of gatherings and marches without informing the police of the itinerary and location and prohibiting individuals participating in such gatherings from covering their faces without valid justification;

211. *Trinity Western University v. Law Society of Upper Canada*, 2016 ONCA 518, considering the Law Society of Upper Canada's decision not to accredit the proposed law school at Trinity Western University, and whether the decision strikes an appropriate balance between freedom of religion and equality;

212. *Thompson v. Ontario (AG)*, 2016 ONCA 676, concerning a constitutional challenge to schemes in Ontario's *Mental Health Act* that permit involuntary detention and coerced medical treatment for individuals who are not a danger to themselves or others;

213. *R. v. Donnelly* and *R. v. Gowdy*, 2016 ONCA 988 and 2016 ONCA 989, concerning the availability of a sentence reduction remedy under s. 24(1) of the *Charter* and whether such a remedy allows courts to reduce an offender's sentence below the statutory mandatory minimum;

214. *Jean-François Morasse v. Gabriel Nadeau-Dubois*, 2016 SCC 44, concerning an appeal of a contempt conviction in respect of an individual who made public statements about the legitimacy of certain protest activities (CCLA also intervened before the Quebec Court of Appeal, 2015 QCCA 78);

215. *Ernst v. Energy Resources Conservation Board*, 2017 SCC 1, concerning the availability of a Charter remedy where a statute has a general immunity clause;

216. *BC Freedom of Information and Privacy Association v. Attorney General of British Columbia*, 2017 SCC 6, concerning the constitutionality of provisions of the British Columbia *Election Act* requiring registration of third party advertisers without a threshold spending limit;

217. *R. v. Saikaley*, 2017 ONCA 374, concerning the proper interpretation of the *Customs Act* in relation to the warrantless search of cell phones (or other electronic devices) of anyone entering Canada;

218. *Bingley v. Her Majesty the Queen*, 2017 SCC 12, regarding whether a *Mohan voir dire* is required to determine the admissibility of testimony from a Drug Recognition Expert;

219. *R. v Peers*, 2017 SCC 13, concerning whether the word punishment in s. 11(f) of the *Charter* is restricted to imprisonment or other punishments that engaged the accused's liberty interests;

220. *R. v Tinker*, 2017 ONCA 552, concerning whether a mandatory victim surcharge violates ss. 7 and 12 of the Charter;

221. *Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26, concerning the imposition of personal costs against a criminal lawyer on the basis of his conduct in the representation of his clients;

222. *R. v Antic*, 2017 SCC 27, concerning the *Criminal Code* restriction on cash bails and the right of an accused to the least restrictive form of bail;

223. *Deborah Louise Douez v. Facebook, Inc*, 2017 SCC 33, regarding the need to modify the "strong cause" test in forum selection cases where constitutional or *quasi*-constitutional rights are engaged in contracts of adhesion;

224. *Google Inc. v. Equustek Solutions Inc., et al.*, 2017 SCC 33, concerning the validity of an order of the BC Supreme Court that requires a global internet search service to delete certain websites from its search results worldwide (the CCLA also intervened before the British Columbia Court of Appeal, 2015 BCCA 265);

225. *Nour Marakah v. Her Majesty the Queen*, 2017 SCC 59, regarding whether the sender of a text message has a reasonable expectation of privacy in the message once it is accessible on a recipient's cell phone;

226. *Tristin Jones v. Her Majesty*, 2017 SCC 60, companion case to Marakah, regarding whether the standing test in an informational privacy case should be clarified in the context of evolving technologies;

227. *Cooperstock v. United Airlines* (Federal Court of Appeal File No. A-262-17), concerning whether an attempted parody website critical of a corporation constitutes a copyright or trademark violation (CCLA was granted leave to intervene but the matter settled prior to a hearing);

228. *Schmidt v. Attorney General of Canada*, 2018 FCA 55, concerning the proper interpretation of statutory provisions requiring the Minister of Justice to report to Parliament on the constitutionality of proposed legislation (the CCLA also intervened before the Federal Court, 2016 FC 269);

229. *R v. Wong*, 2018 SCC 25, concerning an accused's request to withdraw a guilty plea after finding the applicant was uninformed of significant collateral consequences of the plea;

230. *Groia v. Law Society of Upper Canada*, 2018 SCC 27, concerning a finding of professional misconduct made against a lawyer on the basis of incivility and the question of when such a finding impacts freedom of expression (the CCLA also intervened before the Law Society Appeal Panel, 2013 ONLSAP 41, the Divisional Court, 2015 ONSC 686, and the Court of Appeal, 2016 ONCA 471)**;**

231. *Trinity Western University v. Law Society of Upper Canada*, 2018 SCC 33, considering the Law Society of Upper Canada's decision not to accredit the proposed law school at Trinity Western University, and whether the decision strikes an appropriate balance between freedom of religion and equality (the CCLA also intervened before the Ontario Court of Appeal, 2016 ONCA 518);

232. *Stewart v. Toronto Police Services Board*, 2018 ONSC 2785, concerning the constitutionality of establishing a police perimeter around a public park and requiring a search of bags and belongings as a condition of entry.

233. *Re: Interim Prohibitory Orders issued against Leroy St. Germaine, Lawrence Victor St. Germaine and James Sears dated May 26, 2016*, Board of Review proceedings under the *Canada Post Corporation Act*, considering the constitutionality of a Ministerial decision to prohibit access to Canada Post for individuals alleged to be committing an offence;

234. *Abdi v Canada*, 2018 FC 733 concerning whether *Charter* rights and values may be considered in admissibility proceedings against a non-citizen who had been a Crown ward;

235. *R v Boudreault*, 2018 SCC 58, concerning whether a mandatory victim surcharge violates s. 12 of the Charter;

236. *R v Vice Media Canada Inc*, 2018 SCC 53, considering when a journalist can be compelled to reveal communications with a source for the purpose of assisting a police investigation and whether the police record underlying the production order should be subject to a sealing order or a publication ban (The CCLA also intervened before the Ontario Court of Appeal, 2017 ONCA 231);

237. *Frank v. Canada (Attorney General)*, 2019 SCC 1 concerning the constitutionality of provisions of the *Canada Elections Act* that preclude Canadian citizens who have resided outside of the country for more than five years from voting in federal elections;

238. *Spencer Dean Bird v. Her Majesty the Queen*, 2019 SCC 7, concerning the role of Charter considerations when applying the doctrine of collateral attack;

239. *R v. Jarvis*, 2019 SCC 10, concerning whether surreptitious visual recordings of students were made in circumstances that give rise to a reasonable expectation of privacy;

240. *R v. Corey Lee James Myers*, 2019 SCC 18, concerning the proper approach to be taken in respect of a 90 day bail review;

241. *Mills v. Her Majesty the Queen*, 2019 SCC 22, concerning whether an accused had a reasonable expectation of privacy in electronic communications to an undercover police officer;

242. *Minister of Public Safety and Emergency Preparedness, et al. v. Tusif Ur Rehman Chhina*, 2019 SCC 29, concerning whether a *habeas corpus* proceeding should be available to individuals held in immigration detention;

243. *Gregory Allen v. Her Majesty the Queen in right of Ontario as represented by the Minister of Community Safety and Correctional Services* (Ontario Human Rights Tribunal File No 2016-25116-I) concerning the use of solitary confinement on persons with physical disabilities (this matter settled prior to hearing);

244. *Mitchell v. Jackman* (Supreme Court of Newfoundland and Labrador, Court of Appeal File No. 2017 01H 0089), concerning the constitutionality of provisions of the Newfoundland *Elections Act* which allow for special ballot voting prior to an election writ being dropped (CCLA also intervened in the Newfoundland and Labrador Trial Division (General) 2017 NLTD(G) 150; the Court of Appeal dismissed the appeal as moot);

245. *R. v. Culotta*, 2018 SCC 57, concerning whether the right to counsel requires immediate access to a phone and the internet, and whether blood samples should be excluded under s. 24(2) of the *Charter* when the samples are taken for strictly medical purposes rather than police purposes;

246. *R. v. Le*, 2019 SCC 34, concerning whether a detention and search in a private backyard of a racialized individual violated an accused's ss. 8 and 9 rights;

247. *R. v. Penunsi*, 2019 SCC 39, concerning whether the judicial interim release provisions contained in s. 515 of the Criminal Code apply to s. 810 peace bond proceedings, and whether s. 810.2(2) of the *Criminal Code* empowers a judge to issue an arrest warrant in order to cause a defendant to a s. 810.2 information to appear.

248. *Christian Medical and Dental Society et al. v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393, concerning the constitutionality of policies requiring physicians who conscientiously object to a medical practice to nevertheless provide an effective referral and urgent care to patients seeking care (CCLA also intervened in the Superior Court, 2018 ONSC 579);

249. *R v. Passera,* 2019 ONCA 527, considering whether it is cruel and unusual punishment to compel an offender who is detained prior to trial to spend more time in custody than other similarly situated offenders prior to becoming eligible for parole or early release;

250. *Marie-Maude Denis v. Marc-Yvan Coté,* 2019 SCC 44, concerning the interpretation and application of the *Journalistic Sources Protection Act* and the changes it made to the *Canada Evidence Act* concerning the treatment of journalistic sources in court proceedings;

251. *Fleming v. Ontario,* 2019 SCC 45, concerning the ancillary common law powers of police officers in the context of an arrest for an apprehended breach of the peace, and the impact of the exercise of that power on the right to freedom of expression and peaceful protest;

252. *R. v. Rafilovich,* 2019 SCC 51, concerning whether a fine in lieu of forfeiture should be imposed in respect of proceeds of crime seized by the police but returned by order of the court to the accused to pay for defence counsel;

253. *Kosoian v. Société de transport de Montréal, et al.,* 2019 SCC 59, concerning whether a pictogram can create an infraction and the circumstances in which an individual must identify themselves to police;

254. *Ontario (Attorney General) v. Bogaert*s, 2019 ONCA 876, concerning private organizations with delegated law enforcement powers that engage s. 8 of the *Charter*, and the importance of transparency and accountability as fundamental legal principles under s. 7;

255. *C.M. v York Regional Police,* 2019 ONSC 7220, concerning the procedural fairness of the police vulnerable sector check process;

256. *Stewart v. Toronto Police Services Board,* 2020 ONCA 255, concerning the constitutionality of establishing a police perimeter around a public park and requiring a search of bags and belongings as a condition of entry;

257. *R. v. Sullivan,* 2020 ONCA 333, concerning the constitutionality of s. 33.1 of the Criminal Code which ousts the common law defence of automatism for certain offences when induced by voluntary intoxication;

258. *Leroux v. Ontario,* 2020 ONSC 1994, concerning the impact of the *Crown Liability and Proceedings Act* on a certification motion previously granted by the Court;

259. *R. v. Zora,* 2020 SCC 14, concerning the mens rea for the offence of failing to comply with a condition of undertaking or recognizance;

260. *British Columbia v. Provincial Court Judges' Association of B.C.,* 2020 SCC 20 and Nova Scotia v. Nova Scotia Provincial Court Judges' Association, 2020 SCC 21, considering whether Cabinet documents should be protected from disclosure in the judicial review of judicial compensation or whether they should be exempted on the basis of public interest immunity;

261. *1704604 Ontario Limited v. Pointes Protection Association, et al.,* 2020 SCC 22 and *Maia Bent, et al. v. Howard Platnick, et al.,* 2020 SCC 23, concerning the appropriate approach to applying the criteria for dismissal set out in ss. 137.1 to 137.5 in Ontario's Courts of Justice Act (i.e. the proper interpretation of Ontario's anti-SLAPP provisions);

262. *Attorney General of Quebec, et al. v. 9147-0732 Québec inc.* , 2020 SCC 32, considering whether corporations should (or should not) have a right to be free from cruel and unusual treatment under s. 12 of the Charter;

263. *Ontario (Attorney General) v. G,* 2020 SCC 38, concerning whether inclusion on a sex offender registry is contrary to ss. 7 and 15 of the *Charter* for persons found not criminally responsible by reason of mental disorder and absolutely discharged by a Review Board (CCLA also intervened before the Ontario Court of Appeal);

264. *Children's Aid Society of Toronto v. O.O & J.A.G.-L.* (Ontario SCJ File No. FS-20-16365), concerning the suspension of parental access to a child in care as a result of the COVID-19 pandemic and the proper evidentiary threshold that must be met before eliminating parental access; and

265. *AC and JF v Alberta*, 2021 ABCA 24, concerning the test for an injunction against government action or legislation, in the context of a constitutional challenge against the government's retroactive change to Alberta's Support Financial Assistance Program for young people who had been raised in government care. The change lowered the age eligibility for this program.

CCLA Interventions – Hearing or Decision Pending

266. *Leroux v. Ontario,* (Ontario Div Ct. File: DC-003-19), considering whether the *Crown Liability and Proceedings Act* alters the common law of Crown immunity, whether the legislation improperly usurps the core jurisdiction of the superior courts, and the impact of the legislation on a previously certified class proceeding;

267. *Estate of Bernard Sherman and the Trustees of the Estate et al., v. Kevin Donovan et al.* (Supreme Court of Canada File No. 38695), considering the relationship between privacy interests in an estate administration matter and the open courts principle;

268. *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral, et al. v. Teshome Aga, et al.* (Supreme Court of Canada File No. 39094), concerning when a civil court can intervene in a dispute about membership within a voluntary religious association; and

269. *Francis v. Ontario* (Ontario Court of Appeal File No. C68403), concerning a class action regarding the placement of inmates with serious mental illness in solitary confinement, and the scope of the Crown's liability in tort under the *Crown Liability and Proceedings Act*.

The CCLA has also litigated significant civil liberties issues as a party in the following cases and inquests:

270. *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (CA), reversing (1988), 64 OR (2d) 577 (Div Ct), concerning whether a program of mandatory religious education in public schools violated the *Charter*'s guarantee of freedom of religion;

271. *Canada (Canadian Human Rights Commission) v. Toronto-Dominion Bank (re Canadian Civil Liberties Association)*, [1996] 112 FTR 127, affirmed [1998] 4 FC 205 (CA), concerning whether an employer's policy requiring employees to submit to a urine drug test was discriminatory under the *Canadian Human Rights Act*;

272. *Corporation of the Canadian Civil Liberties Association v. Ontario (Civilian Commission on Police Services)* (2002), 61 OR (3d) 649 (CA), concerning the proper evidentiary standard to be applied under the *Ontario Police Services Act* when the Civilian Commission on Police Services considers the issue of hearings into civilian complaints of police misconduct;

273. *Canadian Civil Liberties Association v. Toronto Police Service*, 2010 ONSC 3525 and 2010 ONSC 3698, concerning whether the use of Long Range Acoustic Devices (LRADs) by the Toronto Police Service and the Ontario Provincial Police during the G20 Summit in June 2010 violated Regulation 926 of the *Police Services Act* and ss. 2 and 7 of the *Charter*;

274. *Inquest into the Death of Ashley Smith* (Office of the Chief Coroner) (Ontario), concerning the death of a young woman with mental health issues, who died by her own hand while in prison, under the watch of correctional officers;

275. *Corporation of the Canadian Civil Liberties Association and Christopher Parsons v. Attorney General (Canada)* (Ontario Superior Court File No. CV-14-504139), an application regarding the proper interpretation of certain provisions of the federal *Personal Information Protection and Electronic Documents Act* which have been used to facilitate warrantless access to internet subscriber information (application ongoing);

276. *Corporation of the Canadian Civil Liberties Association v. Attorney General (Canada),* 2019 ONCA 243; and *Corporation of the Canadian Civil Liberties Association v. Her Majesty the Queen*, 2017 ONSC 7491, an application and appeal regarding the constitutionality of provisions of the *Corrections and Conditional Release Act* which authorize "administrative segregation" in Canadian correctional institutions (currently on cross-appeal at the Supreme Court of Canada, File No. 38574,);

277. *Corporation of the Canadian Civil Liberties Association, et al. v. Attorney General (Canada)* (Ontario Superior Court File No. CV-15-532810), an application concerning the constitutionality of provisions of various pieces of legislation as a result of the *Anti-Terrorism Act, 2015* (application ongoing);

278. *National Council of Canadian Muslims (NCCM), Marie-Michelle Lacoste and Corporation of the Canadian Civil Liberties Association c Attorney General of Quebec* (Quebec Superior Court File No. 500-17-100935-173); *National Council of Canadian Muslims (NCCM) c. Attorney General of Québec*, 2018 QCCS 2766, and *National Council of Canadian Muslims (NCCM) c. Attorney General of Quebec*, 2017 QCCS 5459, an application to challenge the validity of a provision banning face coverings in giving or receiving public services and applications for an order staying the operation of this provision;

279. *Becky McFarlane, in her personal capacity and as litigation guardian for LM, and The Corporation of the Canadian Civil Liberties Association v. Minister of Education (Ontario),* 2019 ONSC 1308, concerning whether the removal of sections of Ontario's health and physical education curriculum violates the equality rights of LGBTQ+ students and parents;

280. *Ichrak Nourel Hak, National Council of Canadian Muslims (NCCM) and Corporation of the Canadian Civil Liberties Association v Attorney General of Quebec* (Quebec Superior Court File No. 500-17-108353-197); *Hak c. Procureure générale du Québec*, 2019 QCCA 2145, an application to challenge the validity of provisions banning religious symbols in certain

professions in the public sector, and an application for an order staying the operation of these provisions.

281. *Corporation of the Canadian Civil Liberties Association and Lester Brown v Toronto Waterfront Revitalization Corporation, et. al*, (Ontario Superior Court of Justice File No. 211/19), concerning whether Sidewalk Labs' smart city project is *ultra vires* and whether it violates ss. 2(c), 2(d), 7, and 8 of the *Charter of Rights and Freedoms* (without costs abandonment filed when Sidewalk Labs ended the project);

282. *CCLA v. Attorney General of Ontario,* 2020 ONSC 4838, concerning the constitutionality of Ontario's *Federal Carbon Tax Transparency Act* which compels gas retailers to post an anti-carbon tax notice on all gas pumps or face fines;

283. *Sanctuary Ministries of Toronto, et. al v. City of Toronto, et. al* (Ontario Superior Court of Justice), concerning the constitutionality of the Toronto Shelter Standards and 24-Hour Respite Site Standards, and of the conduct of the City in the operation of its shelters and failure to develop and implement a COVID-19 mitigation plan, on the basis that these do not comply with public health dictates regarding physical distancing during the COVID-19 pandemic;

284. *Canadian Civil Liberties Association et al. v. Attorney General of Canada* (Federal Court File No. T-539-20), claiming that the Correctional Service of Canada's failure to take reasonable steps to protect the lives and health of inmates in the face of the COVID-19 pandemic violates the statutory duties in ss. 70, 86 and 87 of the CCRA and violates prisoners' ss. 7, 12 and 15 *Charter* rights; and

285. *Taylor v. Newfoundland and Labrador*, 2020 NLSC 125, claiming that the Special Measures Order put in place by the province's Chief Medical Officer of Health that prohibits some Canadian citizens and permanent residents to visit the province is *ultra vires* provincial jurisdiction and that it violates ss. 6 and 7 of the *Charter* and cannot be saved by s. 1, and arguing that new enforcement provisions under the *Public Health Protection and Promotion Act* unjustifiably infringe ss. 7 8 and 9 of the *Charter* (decision is being appealed).

THIS IS **EXHIBIT "A"** REFERRED TO IN THE

AFFIDAVIT OF **NOA MENDELSOHN AVIV**
SWORN BEFORE ME THIS

8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Sherley

Cause No. FC-9-21

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Plaintiff

- and –

THE PROVINCE OF NEW BRUNSWICK

Defendant

NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED (FORM 16A)

TO: The Province of New Brunswick
c/o The Office of the Attorney General
Chancery Place, 675 King Street
Fredericton, NB E3B 1E9

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED.

If you wish to defend these proceedings, either you or a New Brunswick lawyer acting on your behalf must prepare your Statement of Defence in the form prescribed by the Rules of Court and serve it on the plaintiff or the plaintiff's lawyer at the address shown below and, with proof of such service, file it in this Court office together with the filing fee of $50

COUR DU BANC DE LA REINE DU NOUVEAU-BRUNSWICK

DIVISION DE

CIRCONSCRIPTION JUDICIAIRE DE FREDERICTON

E N T R E:

RECEIVED AND FILED
REÇU ET DÉPOSÉ

JAN 08 2021

COURT SERVICES
SERVICE AUX TRIBUNAUX
Fredericton, NB

demandeur

- et -

défendeur

AVIS DE POURSUITE ACCOMPAGNÉ D'UN EXPOSÉ DE LA DEMANDE (FORMULE 16A)

DESTINATAIRE:

PAR LE DÉPOT DU PRÉSENT AVIS DE POURSUITE ACCOMPAGNÉ D'UN EXPOSÉ DE LA DEMANDE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE CONTRE VOUS.

Si vous désirez présenter une défense dans cette instance, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger un exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de $50 et une preuve de sa signification:

(a) if you are served in New Brunswick, WITHIN 20 DAYS after service on you of this Notice of Action with Statement of Claim Attached, or

(b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(c) if you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(b) the plaintiff intends to proceed in the English language; and

(c) your Statement of Defence must indicate the language in which you intend to proceed.

If you pay to the plaintiff or the plaintiff's lawyer the amount of the plaintiff's claim, together with the sum of $100 for the plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the court to have the action dismissed.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Andrea J. Hull, Clerk of the Court at Fredericton, New Brunswick, the 8th day of January, 2021.

(a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou

(b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou

(c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ETRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

(a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

(b) le demandeur a l'intention d'utiliser la langue _____; et

(c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus $100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

CET AVIS est signé et scellé au nom de la Cour au Banc de la Reine par _____ greffier de la Cour à Justice, Fredericton, New Brunswick, ce , jour de 2021.

.....

Clerk of the Court of Queen's Bench of New Brunswick Andrea J. Hull

.....

GREFFIER

Justice Building
427 Queen Street, Room 207
P.O. Box 5001
Fredericton NB E3B 5H1

STATEMENT OF CLAIM

1. The Plaintiff claims:

(a) A declaration that Schedule 2(a.1) of *Regulation 84-20*, enacted pursuant to the *Medical Services Payment Act*, R.S.N.B. 1973, c. M-7, is inconsistent with and in violation of the *Canada Health Act*, R.S.C., 1985, c. C-6;

(b) A declaration that Schedule 2(a.1) of *Regulation 84-20* is *ultra vires* the powers of the province of New Brunswick, as it is in pith and substance criminal law falling within the exclusive legislative jurisdiction of the Parliament of Canada under s. 91(27) of the *Constitution Act, 1867*, and is therefore of no force and effect;

(c) A declaration that Schedule 2(a.1) of *Regulation 84-20* violates sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982 (the "*Charter*"), and is therefore of no force and effect;

(d) A declaration that Section 2.01(b) of the *Medical Services Payment Act* does not apply to medical offices and clinics;

(e) Costs of this action; and

(f) Such other orders and declarations and other relief including consequential and ancillary orders that may be necessary and advisable to the Court.

A. Overview

2. An abortion is a medical procedure that ends a pregnancy. It is a basic reproductive-related healthcare need for any person who can become pregnant, such as women, girls and transgender people. Abortion is a common procedure; approximately 1 in 3 Canadian women will have an abortion, whether surgically or by taking a number of special medications. Canadian women, girls

and transgender people have the right to reproductive choice and abortion service should be readily available.

3. It has been over thirty years since the Supreme Court of Canada's landmark ruling in *R. v. Morgentaler* struck down the criminal prohibition on abortion as a violation of Canadian's constitutional rights. However, abortion remains inaccessible in New Brunswick, particularly to those living in rural areas of the province and to the vulnerable facing personal hardships like poverty and domestic violence.

4. This inaccessibility is no accident. It is because the Province of New Brunswick remains politically and principally opposed to providing barrier-free abortion services, particularly in a clinical setting. The Province has therefore imposed barriers to abortion access through Schedule 2(a.1) of *Regulation 84-20* to the *Medical Services Payment Act*, which unjustifiably excludes out-of-hospital abortions from medical insurance coverage and, in so doing, improperly deems clinical abortions as non-essential services.

5. Schedule 2(a.1) of *Regulation 84-20* is arbitrary and was enacted as part of the province's attempt to give Dr. Morgentaler the "fight of his life" if he tried to open an abortion clinic in the province. Abortions (and the resulting impact they have on patients' lives and mental health) are not, and should not be treated as, an elective procedure.

6. In stark contrast, New Brunswick does provide coverage for other out-of-hospital services, such as vasectomies.

7. Schedule 2(a.1) of *Regulation 84-20* has served its purpose: abortion is inaccessible to many New Brunswickers. In order to obtain a surgical abortion covered by the province's medical

insurance plan, a patient's only option is to travel across the province to one of two cities (Bathurst or Moncton) that have a hospital approved to offer such services.

8. This is insufficient, for many reasons. *First*, patients need to obtain an appointment within the hospital's early gestational limits, which is a real issue due to wait times, quotas and delays at the hospitals. *Second*, travelling across the province, particularly in the winter, is an insurmountable burden to many, particularly for the those who cannot take time off work, arrange childcare or transportation, or afford to travel. These financial and logistical barriers also have major implications for patients' privacy rights, in addition to their rights of liberty and security of the person, as many patients (e.g., minors or those suffering from ongoing domestic violence) cannot travel hours across the province, often requiring an overnight stay, without informing their family members.

9. For the many patients who cannot access the hospitals in those two cities due to financial, geographic, timing and/or personal restrictions, their other option is to pay out of pocket for a surgical abortion at a clinic. There is only one clinic in the province that provides this type of abortion services and it is the only place to get a surgical abortion in Fredericton, the province's third largest city. However, even though this clinic performs a huge proportion of the province's abortions, this option is soon to be unavailable to New Brunswickers as the clinic has reduced its services and is about to close its doors due to a lack of provincial funding for one of the key healthcare services it provides.

10. The *Canada Health Act* requires that Canadians have reasonable access to medically necessary healthcare services without financial or other barriers. Such services must be provincially funded. However, New Brunswick refuses to comply with this important piece of

federal legislation and, in doing so, violates both sections 7 and 15 of the *Charter*. Schedule 2(a.1) of *Regulation 84-20* is also *ultra vires* on the ground that the *Regulation* is in pith and substance criminal law falling within the exclusive legislative jurisdiction of the Parliament of Canada. It must be struck down.

B. The Parties

11. The Plaintiff, the Canadian Civil Liberties Association ("CCLA), is a national human rights organization with supporters in New Brunswick and across the country. CCLA is committed to defending the rights, dignity, safety, and freedoms of all people in Canada. Founded in 1964, CCLA is an independent, national, nongovernmental organization, working in the courts, before legislative committees, in the classrooms, and in the streets, protecting the dignity and rights of people in Canada.

12. The CCLA's mandate as a public interest organization devoted to the protection of civil liberties, the organization's legal resources and institutional capacity, and its past experience acting as a plaintiff and intervener in many Charter claims and appeals make it well-placed to advance the present litigation in the interest of safeguarding fundamental rights and freedoms more broadly across Canada.

13. The Defendant is the Crown in Right of the Province of New Brunswick, which is named pursuant to *The Proceedings Against the Crown Act*, R.S.N.B., c. P.18.

C. Overview of the *Canada Health Act*: Abortion is a Medically Necessary Service

14. Medicare is a term that refers to Canada's publicly funded and administered health care system. The Canadian health insurance system is achieved through 13 provincial and territorial health care insurance plans.

15. The *Canada Health Act*, R.S.C., 1985, c. C-6 is the federal legislation governing Medicare. The aim of the *Act* is to facilitate reasonable access to medically necessary hospital and physician services on a prepaid basis, without charges related to the provision of insured health service. The policy of the *Canada Health Act* is universal healthcare for all, without regard for ability to pay.

16. The *Canada Health Act* establishes the criteria and conditions that the provincial/territorial healthcare insurance plans must fulfill in order to receive the full federal cash contribution under the Canada Health Transfer. These conditions or criteria include accessibility (Canadians must have reasonable access to insured services without charge or fees and without discrimination on the basis of age, health status, financial circumstances, or location within the province), comprehensiveness (all insured services must be covered by the plan), and universality (all insured persons in the province must be entitled to health insurance coverage on uniform terms and conditions). Extra-billing and user charges are violations of the *Canada Health Act*.

17. The federal government has clearly communicated to the provinces and territories that abortion services are a medically necessary service that must be covered by provincial health insurance plans.

C. Statutory Framework in New Brunswick: New Brunswick Seeks to Suppress Access to Abortion by Limiting Medical Insurance Coverage of Surgical Abortions

18. In New Brunswick, the formal name for Medicare is the Medical Services Plan. The Minister of Health is responsible for operating and administering the plan through the *Medical Services Payment Act* and its Regulations. The Act and Regulations establish a Medicare plan, and define which Medicare services are covered and which are excluded.

19. Schedule 2 of *Regulation 84-20* lists the services that are specifically excluded from the range of "entitled" medical services under the *Medical Services Payment Act*. Schedule 2(a.1) states that abortion is "deemed not to be" an entitled service "unless the abortion is performed in a hospital approved by the jurisdiction in which the hospital facility is located."

20. Excluding of out-of-hospital abortions is unjustifiable and arbitrary. It improperly deems clinical abortions as non-essential services. The Province has a long history of seeking to limit access to abortion care in the province, as the history and context of the enactment of Schedule 2(a.1) of *Regulation 84-20* shows.

21. In 1988, in *R. v. Morgentaler*, the Supreme Court of Canada struck down section 251 of the *Criminal Code*, which required women seeking abortions to obtain approval from a therapeutic abortion committee at an accredited hospital. As a result of this decision, abortion was officially removed from the *Criminal Code* and classified as a medical procedure to be regulated by the provinces and territories like any other under the *Canada Health Act*.

22. Shortly after this decision, Premier McKenna told reporters he would give Dr. Morgentaler the "fight of his life" if he tried to establish an abortion clinic in the province. The Province promulgated regulations and legislation seeking to prohibit abortions outside of hospitals in order to restrict access to abortions and prevent the establishment of abortion clinics.

23. In 1985, in direct response to a letter from Dr. Morgentaler seeking to establish a funded abortion clinic, the Province passed Bill 92, which amended the *Medical Act* and allowed the suspension of physicians' licenses where they performed abortions outside of an approved hospital.

24. In 1994, the New Brunswick Court of Queen's Bench struck down these amendments as *ultra vires* because the impugned sections of the *Medical Act* were enacted by the Legislature to suppress or punish what the government "perceived to be the socially undesirable conduct of abortion." The Court found that the purpose of the amendments was to prohibit the establishment of freestanding abortion clinics, in particular a clinic run by Dr. Morgentaler.

25. In May 1989, the Province enacted Schedule 2(a.1) of *Regulation 84-20*, which essentially maintained the same therapeutic abortion committee the Supreme Court held to infringe the *Charter*. For abortion to be an "entitled service", a patient needed written approval from two doctors who had determined that an abortion was "medically necessary" and the abortion needed to be provided by a gynecologist in an approved hospital.

26. In 2015, Schedule 2(a.1) was amended to remove the requirements for prior doctor approval and a gynecologist. However, the amended *Regulation* maintained the restriction on abortions performed outside of approved hospitals.

27. There is no medical reason requiring abortions to be performed in hospitals rather than clinics. Other processes, such as vasectomies, are covered in New Brunswick whether they are performed in a hospital or a clinic. The purpose of Schedule 2(a.1) of *Regulation 84-20* is to suppress access to abortion services and prevent or undermine the establishment of abortion clinics.

D. Surgical Abortion is Not Accessible in New Brunswick

28. Schedule 2(a.1) of *Regulation 84-20* makes access to abortions for New Brunswickers difficult and uncertain. It has caused delays and hardships in access and can prevent access altogether.

29. Abortion is one of the most commonly performed surgical procedures in the country. However, although New Brunswick has numerous hospitals, only three hospitals in two cities provide these types of abortions: one hospital in Bathurst (a city in the north-east with a population of approximately 13,000 people) and two hospitals in Moncton (a city in the south-east with a population of approximately 70,000 people). These hospitals only provide abortions during the first trimester, *i.e.*, up to 13 weeks and six days of the pregnancy.

30. The hospital in Bathurst only accepts patients from the Bathurst area. That means for all other residents, their only option for accessing a Medicare-funded abortion is to travel to Moncton, in the southeastern part of the province. For residents in the northwestern part of the province (*e.g.*, Edmundston), that is an 8-hour return trip by car.

31. Moreover, abortion is not particularly accessible through these hospitals. In order to access abortion services, patients must first secure appointments within a matter of days or weeks after finding out they are pregnant in order to meet the hospital's early gestational limits. This can be a real issue due to delay caused by quotas and wait times. Assuming the patient can obtain an appointment in time, the patient must then travel to Moncton or Bathurst. This burden is significant in a province where both poverty (particularly with respect to single mothers) and weather can make travel into a serious impediment. This is made even more difficult where the hospitals require multiple visits.

32. As a result, there are many significant barriers to patients accessing abortion services, including:

(a) patients must have the funds to pay for the travel, such as staying overnight in a hotel, and arranging for transportation (such as obtaining a car, paying for gas, etc.);

(b) patients need to be able to make personal arrangements to have the time to travel, such as taking more time off work (often on short-notice), arranging childcare, etc.; and

(c) as the hospitals provide a patient an anesthetic for the procedure, patients also require someone to accompany them and pick them up from the hospital after the procedure. This requires the patients to have such family or personal support available.

33. Not all patients have these financial or personal resources available. As a result, abortion services can be inaccessible to many patients. Such burdens have (and will continue to have) disproportionate effects on the underprivileged, marginalized and vulnerable.

34. In addition to the impact of these accessibility issues on rights to liberty and security of the person, discussed below, these financial and logistical barriers to abortion also have major implications for patients' privacy rights. For example, younger patients may be unable to access the procedure without their parents finding out about their pregnancy and their plan to terminate it. Patients suffering domestic violence or in abusive relationships may also be unable to access the procedure without their partner finding out.

35. For patients who cannot travel or cannot obtain an appointment in the limited timeframe in which the three hospitals provide abortion services, their only other option to obtain access to abortion services is Clinic 554, a family medical practice that is the only abortion provider in Fredericton. It is a four-hour return trip from Fredericton to Moncton by car and six-hour return trip to Bathurst. Clinic 554 is also the only second trimester abortion provider in the province (it provides abortions up to 15 weeks and 6 days of pregnancy).

36. Clinic 554 abortions are not publicly funded. Patients having abortions at Clinic 554 had to pay a fee for the procedure. Clinic 554 tried to manage these barriers to abortion access, such as by lowering or waiving the fee for patients in certain circumstances.

37. Clinic 554 is clearly a necessary option for patients in New Brunswick: it has provided more than 1,000 abortions since it opened in 2015. Its predecessor, the Morgentaler Clinic, performed about 60% of abortions in New Brunswick before its closed in 2014 from the absence of funding.

38. Like its predecessor, Clinic 554 is now closing as it cannot afford to provide services without provincial funding. By excluding abortions from Medicare, New Brunswick has achieved its unconstitutional goal of ensuring freestanding abortion clinics are not available in the province.

39. In sum, the in-hospital limitation in the *Regulation*, coupled with the lack of approved hospitals, renders this vital healthcare service extremely inaccessible in New Brunswick.

40. New Brunswick does provide coverage for the cost of medical abortions. Medical abortions involve taking two pills of a medication called Mifegymiso and can be used to terminate a pregnancy up to nine weeks in gestation. While providing access to medical abortion is an important step, it does not address the inaccessibility caused by Schedule 2(a.1) of *Regulation 84-20* for a variety of reasons, including:

(a) Mifegymiso is a relatively new drug in Canda that is not widely prescribed;

(b) medical abortion is only available at the very early stages of a pregnancy. Many patients do not know of their pregnancy and/or cannot procure a medical appointment prior to 9 weeks of pregnancy;

(c) Mifegymiso is not a viable option for many patients, such as those low in iron, those with bleeding problems or clotting conditions, those taking certain drugs, etc.;

(d) some patients prefer surgical abortions, due to uterine pain, the longer duration, discomfort or fear about aborting at home without professional supervision; and

(e) surgical abortion access must be available for patients who first try medical abortions because medical abortions can fail. An incomplete abortion can cause harm and even death if left untreated.

41. Providing proper access to abortion services requires real access to medical abortions and surgical abortions. Canadians have the right, as part of their right to health and right to autonomy over their bodies, to a choice among equally safe and cost-effective methods.

E. Schedule 2(a.1) of *Regulation 84-20* Violates the *Canada Health Act*

42. The exclusion of out-of-hospital abortions from the *Medical Services Payment Act*, and thus their status as non-essential health services is contrary to the *Canada Health Act*.

43. The federal Government has concluded that Schedule 2(a.1) of *Regulation 84-20* violates the *Canada Health Act*. In July 2019, the Minister of Health wrote to all provinces and territories about the persistent barriers to access for abortion services across the country, which pose concerns under the accessibility and comprehensiveness criteria of the *Canada Health Act*. The federal Minister of Health also wrote specifically to New Brunswick's Minister of Health and informed him that any patient charges for abortions would be considered extra-billing and user chargers under the *Canada Health Act* and would result in penalties.

44. In March of 2020, the federal Government penalized New Brunswick for violating the *Canada Health Act* due to its exclusion of out-of-hospital abortions. The federal Government

withheld money from the Canada Health Transfer reflecting the quantum New Brunswickers paid for abortions at Clinic 554. However, the federal government temporarily reimbursed the withheld transfer payments due to the COVID-19 pandemic's impact on the health care system.

E. Schedule 2(a.1) of *Regulation 84-20* is unconstitutional

45. There are three reasons that Schedule 2(a.1) of *Regulation 84-20* is unconstitutional:

(a) it is *ultra vires* on the ground that the *Regulation* is in pith and substance criminal law falling within the exclusive legislative jurisdiction of the Parliament of Canada under s. 91(27) of the *Constitution Act, 1867*;

(b) it violates section 7 of the *Charter of Rights and Freedoms*; and

(c) it violates section 15(1) of the *Charter of Rights and Freedoms*.

46. ***Schedule 2(a.1) of* Regulation 84-20 *is* ultra vires.** An examination of the terms and effect of Schedule 2(a.1) of *Regulation 84-20*, its history, and the circumstances surrounding its enactment show that the *Regulation*'s central purpose and dominant characteristic is the restriction of abortion and to undermine the establishment of abortion clinics to ensure the restriction of access to abortion because of the Province's position that abortion is a socially undesirable practice which should be suppressed. Both the intent and impact of the *Regulation* has been to restrict access to abortion.

47. There is no valid health-related concern that can justify excluding out-of-hospital abortions from public funding. The in-hospital requirement is not justified from a medical point of view. Indeed, abortions in hospitals may carry many risks or barriers that are reduced or mitigated by clinic abortions, such as delays and waiting lists, quotas, shorter gestational limits, lack of privacy,

lack of counselling and increased medical risks (such as the use of a general anesthetic instead of a local one).

48. ***Schedule 2(a.1) of* Regulation 84-20 *violates section 7 of the* Charter.** Section 7 of the *Charter* states that "[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

49. Patient autonomy in medical decision-making is a protected right. Individuals have a right to make decisions about their bodily integrity and to direct the course of their own medical care. State interference with bodily integrity and serious state-imposed psychological stress constitutes a breach of security of the person. Schedule 2(a.1) of *Regulation 84-20* clearly interferes with patients' physical, bodily and psychological integrity.

50. The exclusion of out-of-hospital abortions limits access to abortions by imposing financial barriers, location barriers, privacy barriers and other logistical barriers. Abortion is very time-sensitive. The barriers to accessing abortions caused by Schedule 2(a.1) result in great risks to the patient. There is a greater risk to the health of patients due to delays in accessing abortions (*e.g.*, due to wait times and delays at the three hospitals providing such services). A delay of even a few days or weeks can have serious impacts on the health and psychological well-being of patients.

51. There is also serious risk to women, girls and transgender people that they will be unable to obtain the abortion (either because they cannot access timely abortion care within the early gestational limits; because they cannot afford to travel to the hospitals; or because other personal circumstances deny them the ability to travel across the province to access one of the three hospitals that provide abortions, such as the ability to maintain their privacy from other family members). Such outcomes increase the risk that patients will seek risky alternative options for the

termination of the pregnancy and increase the risk of imposing unwanted pregnancy and delivery (and the associated health risks) on patients who cannot obtain access to abortion.

52. All of the concerns listed above not only interfere with patients' physical and bodily integrity, but also cause serious psychological stress and harm.

53. The barriers created by Schedule 2(a.1) of *Regulation 84-20* also engage and infringe the right to liberty. The difficulty, delay, uncertainty, lack of access, resulting stigma and, in some cases, unwanted pregnancy caused by Schedule 2(a.1) cause women, girls and transgender people physical and psychological harm, including harm to conscience and dignity. This denies women, girls and transgender people the freedom to make important decisions concerning their health and their bodies.

54. By restricting and in some cases preventing access to abortion, the *Regulation* constitutes state interference with the right of the individual to a protected sphere of autonomy over decisions of fundamental personal importance, such as whether to terminate a pregnancy. The right to reproductive freedom is central to a person's autonomy and dignity.

55. This infringement of the right to life, liberty and security of the person is not consistent with the principles of fundamental justice. Schedule 2(a.1) of *Regulation 84-20* is arbitrary and was created for improper reasons. New Brunswick established Schedule 2(a.1) in response to the decriminalization of abortion following *R. v. Morgentaler* and to prevent Dr. Morgentaler and others from opening an abortion clinic in the province. The original terms of the *Regulation* largely mirrored the *Criminal Code* provision that was struck down.

56. Schedule 2(a.1) of *Regulation 84-20* regulates the place *where* an abortion may be obtained because of the Province's political and moralistic position that abortion is a socially undesirable or immoral practice, and not due to any medical or proper healthcare justification.

57. Furthermore, Schedule 2(a.1) further restricts coverage to *approved* hospitals. Only three hospitals in two cities across the entire province fall within this definition and provide this service. Aside from the complete absence of such services in the province's heavily populated rural communities, the Province has not even made this medically necessary service available in two of its largest cities (Saint John and Fredericton). The Province is using the limitation in Schedule 2(a.1) to further fulfil its improper agenda of restricting access to abortion by denying the practical availability of *approved* hospitals.

58. ***Schedule 2(a.1) of* Regulation 84-20 *violates section 15 of the* Charter**. Section 15(1) of the *Charter* states that "[e]very individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." Section 15(1) reflects a profound commitment to promote substantive equality and prevent discrimination against disadvantaged groups.

59. Schedule 2(a.1) of *Regulation 84-20* violates section 15(1) of the *Charter* as it (1) creates a distinction based on enumerated or analogous grounds (both on its face and in its impact) and (2) imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating or exacerbating a disadvantage.

60. Schedule 2(a.1) of *Regulation 84-20* creates a distinction based on enumerated or analogous grounds. Schedule 2(a.1) of *Regulation 84-20* creates this distinction on its face as it

excludes from healthcare coverage out-of-hospital abortions, even though abortion is a procedure that can be performed safely outside of a hospital. This creates a distinction based on pregnancy and sex. Abortion is a medical procedure accessed almost exclusively by women and girls, as well as by transgender people, who become pregnant. Pregnancy discrimination is sex discrimination.

61. The *Regulation* also has an adverse and disproportionate impact on women, girls and transgender people for the reasons set out above. Abortion is an essential healthcare that is required almost exclusively by women and girls – as such no comparator is needed. Women, girls and transgender people seeking an abortion are denied the benefits provided to others. The *Regulation* treats abortion services in a manner that is different from the way the Province treats similar basic health services. For example, men seeking vasectomies are not subject to the same barriers put in place with respect to abortions. The *Regulation* singles out abortion, regulating and limiting *where* an abortion may be obtained, and creates an underinclusive and discriminatory regime under the *Medical Services Payment Act* on prohibited grounds of sex.

62. Schedule 2(a.1) of *Regulation 84-20* has the effect of reinforcing, perpetuating or exacerbating disadvantage. Women, girls and transgender people historically have experienced disadvantage in the form of barriers to accessing reproductive health services, including abortion. Women, girls and transgender people also faced prejudice, stereotyping and stigmatization in relation to reproductive decision-making. The effect of *Regulation 84-20* reinforces, perpetuates and/or exacerbates these disadvantages. In particular:

(a) the *Regulation* has the effect of reinforcing, perpetuating and/or exacerbating the historical disadvantage of access to reproductive health services by erecting barriers to abortion access;

(b) the *Regulation* has the effect of reinforcing, perpetuating and/or exacerbating the current and historical stigma against women, girls and transgender people who have had, or choose to have an abortion as it treats abortion as a stigmatized medical procedure. This reflects on those who seek clinical abortions; and

(c) the *Regulation* harms the dignity of those who require or obtain an abortion. By treating such services differently to and less worthy than similar health services it communicates that those who use them are less worthy of recognition or value.

63. *Regulation 84-20* also imposes costs, delay and other burdens on pregnant persons who require abortion which are not imposed on other groups in relation to similar health services.

64. The discriminatory restriction of New Brunswickers' access to abortion services is inconsistent with a number of international legal agreements signed and ratified by Canada, and by which Canada is bound under international law, including:

(a) The Convention on the Elimination of All Forms of Discrimination Against Women, ratified by Canada in 1981. Article 12 requires State Parties to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

(b) The United Nations Convention against Torture ("UNCAT"), ratified by Canada in 1985. A delay or denial of abortion services amounts to torture or cruel, inhuman or degrading treatment in contravention of the UNCAT.

65. ***Schedule 2(a.1) of* Regulation 84-20 *cannot be saved by section 1 of the* Charter.** The infringements of sections 7 and 15 of the *Charter* cannot be justified pursuant to the criteria of

section 1. For the reasons set out above, Schedule 2(a.1) of *Regulation 84-20* was imposed for improper purposes and not a legitimate state objective.

66. There is no pressing and substantial objective for limiting the *Charter* right. There is no pressing and substantial policy concern, purpose or principle that explains why out-of-hospital abortions should be excluded from Medicare. In fact, this limitation is inconsistent with appropriate purposes and goals of the *Medical Services Payment Act* and the *Canada Health Act*, which is to ensure access, without financial barriers, to medically required services.

F. Section 2.01(b) of the *Medical Services Payment Act* Has No Application to Medical Office and Clinics

67. Section 2.01 of the *Medical Services Payment Act* states that "the medical services plan shall not provide payment for [...] (b) entitled services furnished in a private hospital facility in the Province."

68. The Province has made recent public statements that suggests that if Schedule 2(a.1) of *Regulation 84-20* were struck down, it would still limit access to out-of-hospital abortions as "private clinics are not funded" (a quote from Premier Higgs in and around September 2020). Such statements make it necessary for the CCLA to seek declaratory relief that ensures the Province cannot use this provision to continue to limit access to abortion if Schedule 2(a.1) of *Regulation 84-20* is struck down as unconstitutional.

69. CCLA seeks a declaration that Section 2.01(b) of the *Medical Services Payment Act* does not apply to medical offices or clinics, like Clinic 554. Section 2.01(b) does not state that it will not fund privately-operated clinics. Rather, it states that it excludes private *hospital* facilities. A

private hospital facility is defined as "a *hospital facility* established, operated, or maintained by a person other than a regional health authority." The term "hospital facility" is not defined.

70. As such, if Schedule 2(a.1) of *Regulation 84-20* is struck down as unconstitutional for the reasons set out above, Section 2.01(b) has no application to medical offices or clinics that offer such services.

DATED this 6th day of January, 2021.

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THIS IS **EXHIBIT "B"** REFERRED TO IN THE

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SWORN BEFORE ME THIS

8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Shirley

MARIAN BOTSFORD FRASER
WITH SUKANYA PILLAY AND KENT ROACH

ACTING *for* FREEDOM

FTY YEARS OF CIVIL LIBERTIES IN CANADA—

Second Story Press

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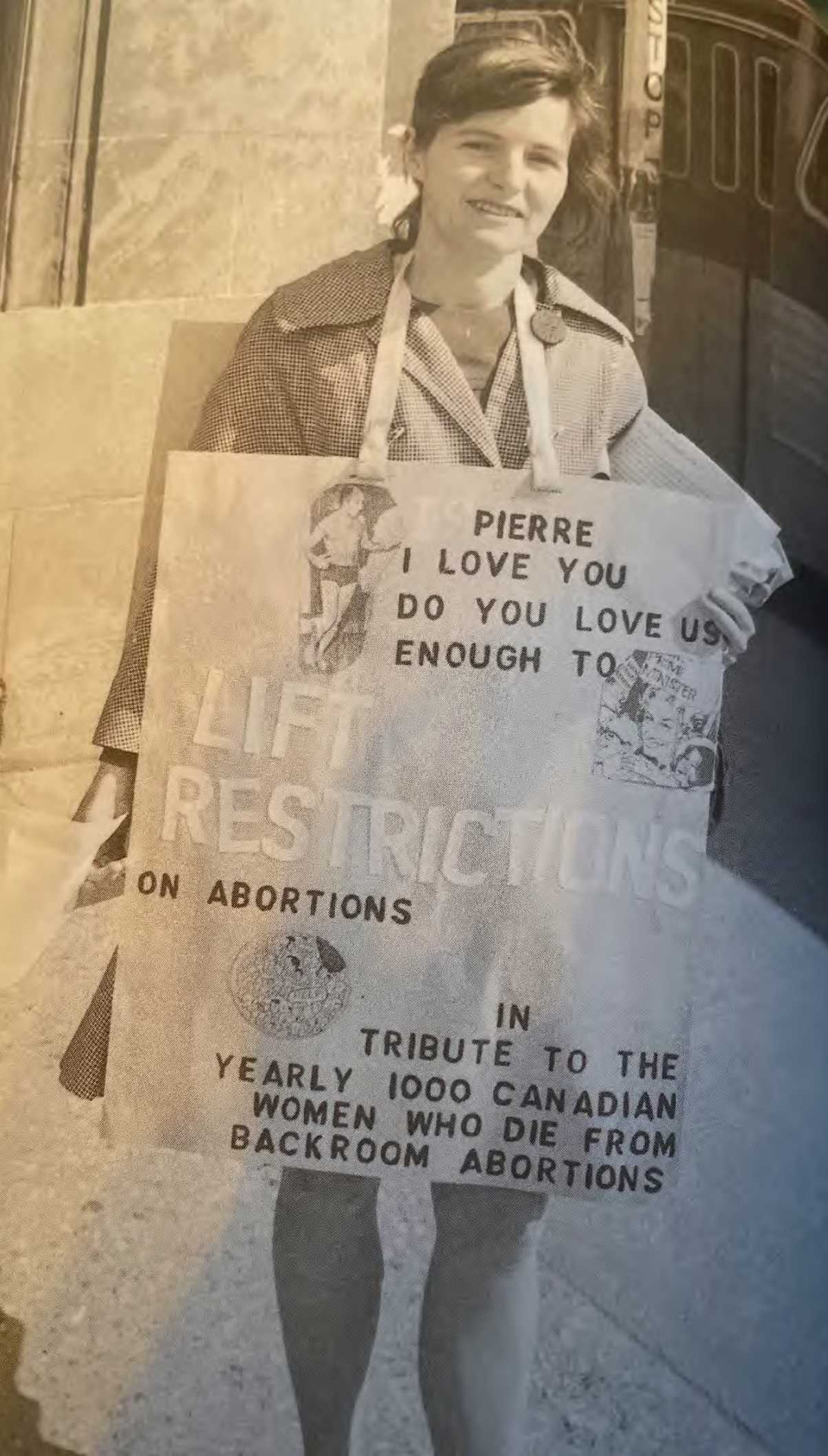
PIERRE
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WOMEN WHO DIE FROM
BACKROOM ABORTIONS

CHAPTER THREE
Life and Death Matters—Abortion

I read about a poor farmer's wife in North Carolina throwing herself under a wagon when she discovered she was going to have her ninth child, about women dying in tenements from complications of pregnancy or childbirth or terrible failed abortions which they performed with hatpins, knitting needles, bubbles of air. I read, or skipped, statistics about the increase in population, laws which had been passed in various countries for and against birth control, women who had gone to jail for advocating it.

—*Lives of Girls and Women*, Alice Munro, 182–3, 1971

Abortion is unquestionably a tragedy; it is also a tragedy to force untimely childbearing on unready women.

—June Callwood, *The Globe and Mail*, 1989

Abortion is a freighted issue in the arena of Canadian civil and human rights history. Not only is the subject itself burdened with profound emotional and moral complications for individuals, but the evolution of abortion rights in Canada happened mostly in a compressed time frame of twenty years, and ran parallel to the creation of the *Charter of Rights and Freedoms*. In 1969, access to abortion was made legal in Canada for the first time, under very specific conditions. In 1976, the Supreme Court of Canada resolutely denied that access to abortion was a fundamental human right in this country. In 1988, the Supreme Court reversed its earlier decision and struck down the *Criminal Code* provisions governing abortion in Canada.

Between 1968 and 1988 especially, a broad range of Canadians was caught up in either the abortion rights story, or the patriation of the Constitution and creation of the Charter, or both. And abortion activists were not just what are sometimes denigrated by


WE CARE!
DO YOU?
ABORTION IS HARMFUL TO
THE
ABORTION
IS
HARMFUL
TO
BABIES

politicians as "special interest groups": Thousands of Canadians, for and against the legalization of abortion, took to the streets and signed petitions and joined hospital boards and lobbied their elected representatives. Feelings about abortion were, and are still, extremely polarized, and on occasion they have been violent. After the *Criminal Code* rules governing abortion were shot down by the Supreme Court and the government failed three times to create new legislation, abortion activism became a particularly ugly form of street theatre for a few years.

In 1975, a petition signed by more than one million Canadians was delivered to Ottawa, demanding protection of the rights of the unborn. In July 1983, an estimated 4,000 pro-choice demonstrators protested the arrest of Dr. Henry Morgentaler in Toronto for "procuring miscarriages," and exactly one month later, 1,500 anti-choice protesters demanded his clinic be shut down. In February 1985, back-to-back front page headlines in the *Toronto Star* read as follows: "3000 protesters demand abortion clinic be closed" (February 22); "5000 march in support of abortion" (February 23). During the 1990s, after abortion was removed from the *Criminal Code* by the 1988 Supreme Court decision, Morgentaler's Toronto clinic was destroyed by a bomb and three abortion providers were shot at or stabbed in Vancouver, Winnipeg, and Ancaster, Ontario. (These criminal acts mirrored similar attacks in the United States, where, since the 1990s, there have been eight murders and seventeen attempted murders of abortion providers.)

In 2013, twenty-five years after abortion regulations in the *Criminal Code* were declared unconstitutional by the 1988 *Morgentaler* decision, questions about the rights of the fetus, and the fact that abortions are legal in Canada at any time during pregnancy, surfaced in Parliament. According to January 2013 polls, public opinion on the issue of abortion remains split almost fifty-fifty, but a strong majority (59 per cent) of Canadians adamantly do not wish the issue to be reopened in the courts or in Parliament. Interestingly, it appears that neither those in favour of legalized abortion nor those opposed trust Parliament to deal with this question.

Signs of pro-life and pro-choic
activists of the 1970s spell out
deep divide in public opinion
abortion issue. The emotion-c
debate continues.

CCLA has been engaged in the abortion issue since 1976, when the organization intervened in the Supreme Court of Canada's first ruling on the abortion practice of Dr. Henry Morgentaler. But CCLA is probably the only organization in Canada that has defended *both* a woman's right to choose and the anti-abortionist's right to protest.[152]

PROCREATION, PROMISCUITY, AND THE PILL—1969

The period of time during which abortion was neither completely illegal in Canada—as it was for one hundred years prior to 1969—nor completely legal and unlegislated—as it has been since 1988—was a scant twenty years. But during those twenty years, abortion was an issue that engaged Canadians mightily, at many levels—in the courts, in the streets, during election campaigns, in the media.

The "pill" became part of the conversation about virginity, sex, and abortion around 1963, at the beginning of a profound shift in societal ideas about the role of women and their right to have premarital sex and use contraception. All forms of birth control had been labelled "obscene" in the 1892 *Criminal Code*, for "tending to corrupt morals," but from the 1920s Canadian women and medical practitioners had been quietly providing information and birth control materials. Until 1969 in Canada, chemical birth control, meaning the pill, could only be prescribed to deal with menstrual cycle irregularities, preferably those of married women. (In the 1960s it took enormous courage for a single young woman to ask for a prescription for birth control pills from a doctor, and when she did so, she rarely went to her own family doctor.) A combination of the Planned Parenthood movement, women's groups, and a coalition of churches, including Anglican, United, Presbyterian, Unitarian, and the Salvation Army methodically, systematically lobbied the government of Canada through the 1960s to remove birth control from the *Criminal Code*.

Before 1969, abortion in Canada was an offence that carried the death penalty or life imprisonment for whomever performed an abortion, be it the woman herself or a medical practitioner. However, in England in 1938, in *Rex v. Bourne*, a precedent was

established for performing an abortion to protect the health of the mother, in that case a fourteen-year-old girl who was raped by five off-duty soldiers: "If the doctor is of the opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are entitled to take the view that the doctor is operating for the purpose of preserving the life of the mother." The argument for abortion under such circumstances would probably also have been accepted in Canada. Between 1900 and 1972, there were just over 1,100 convictions for induced abortion in Canada; most of those convicted were lay-people, and most of them were women; physicians who conducted illegal abortions, it seems, were rarely charged, possibly because their rate of failure was lower.[153]

Socially and economically privileged women in Canada would always have been able to find a doctor willing to perform a discreet abortion, at least in urban centres. Disadvantaged women would have either attempted to perform the abortion themselves or would have gone to backstreet practitioners. Women in remote locations and without resources who were unwillingly pregnant, for whatever reason, would have had no such recourse. There are no official records documenting either the frequency of abortions or the deaths of women and infants as the result of botched abortions, unless those deaths occurred in hospitals. Until 1969, abortion was a secret; even when it was alluded to, as in Alice Munro's fiction cited above, it was distanced as a rumour, something that happened to other women in other places. The act of establishing very strict rules for obtaining a legal abortion (hospital-based, subject to approval first by a family doctor and second by a Therapeutic Abortion Committee) brought this secret into the light of day. It almost seems, in retrospect, that legalizing abortion, by bringing it into the precincts of the *Criminal Code,* was a necessary precursor to abortion becoming an unregulated medical procedure.

Several factors were pertinent to the evolution of Canada's position on the legality of abortion: The first was the technological advances from the 1960s onward, including both the introduction of birth control pills and increasingly sophisticated abortion

procedures. The second was the coincidental impact of the thalidomide scandal in the early 1960s. On the market briefly between 1957 and 1962, thalidomide was a drug given to pregnant women to deal with morning sickness, which resulted in babies being born with deformed limbs, deformed hearts and eyes, blindness, and deafness. The tragedy created public sympathy for the notion of therapeutic abortions and hovered in the background of the abortion debate as legal battles on behalf of thalidomide babies ran their course over many years. The third, and most significant factor, was the direct challenge to the law by Dr. Henry Morgentaler.

The introduction into Canada's *Criminal Code* of specific clauses concerning abortion was one of several measures, including language on homosexuality and divorce, in an Omnibus Bill first proposed by Pierre Trudeau, as Justice Minister in 1967, and finally passed in May 1969 after months of difficult debate in the House of Commons and Senate.

Trudeau's intent was to modernize Canadian laws to reflect contemporary attitudes and practices. In the case of abortion, the legislation reflected the input of provincial governments and medical practitioners rather than women, and it is laden with telltale bureaucratic language and process. A physician who performs an abortion is subject to life imprisonment; a women who procures her own miscarriage is subject to two years in prison, *unless* the abortion has been performed in an accredited hospital and approved in advance by a majority of a hospital's Therapeutic Abortion Committee (TAC) finding that the continuation of pregnancy would endanger the woman's health.

It is worth noting that, in Trudeau's opinion at the time, the provisions he was proposing on abortion were appropriate and sufficient. He was not setting the stage for more flexible regulation of abortion at a later date. Indeed, when the language and provisions of the Charter were being negotiated a decade later, Trudeau firmly rejected including fetus and abortion rights in the Charter.

In section 251 of the *Criminal Code*, there was no definition or clarification of precisely what endangerment to health means, which gave considerable latitude and discretion to the therapeutic abortion committees appointed by an elected hospital board.

Hospitals were accredited and overseen by the provinces; they were not required by law to establish a TAC and/or to perform abortions. Abortions were legal, but really hard to get, a problem quickly apparent to Montreal family doctor Henry Morgentaler.

"SOCIALLY UNDESIRABLE CONDUCT SUBJECT TO PUNISHMENT": THE FIRST MORGENTALER SUPREME COURT DECISION—1974/1976[154]

Henry Morgentaler was a Montreal family physician who decided that illegal abortions were a serious problem requiring a practical, compassionate, and deliberately illegal response. He made the argument for legal abortions initially before a Parliamentary committee studying the issue in 1967. Morgentaler opened private abortion clinics first in Montreal (from 1968 onwards) and then in Ontario (from 1974) and subsequently elsewhere in the country. Morgentaler never hid his practice or his intent to perform abortions from authorities; in fact, his first clinic operated for two years in Montreal before it was raided by police. He applied for permits, which were never granted or denied. By 1973, Morgentaler was stating publicly that he had safely performed more than 5,000 abortions. Finally, in response to a tip-off from the FBI that American women were coming to Montreal for abortions, Morgentaler was arrested and charged—three times in the early 1970s in Montreal and then elsewhere in the country as he opened up clinics.

The principle charge against Morgentaler was "having procured the miscarriage of a female person by the manipulation and use of an instrument" contrary to section 251 of the *Criminal Code*, which only permitted such acts in accredited hospitals, and with the approval of a therapeutic abortion committee.

Three juries in Montreal, between 1973 and 1975, unanimously found Morgentaler "not guilty," even though he had broken the law. Defiance by a jury of existing laws is known as "jury nullification," and the fact that it was done three times clearly signalled the state of public opinion in Quebec concerning abortion at the time. (The same thing would happen a decade later in Toronto in 1984, despite instructions from the judge to the jury that a "not guilty" finding was not, technically, their job, which was to

Dr. Henry Morgentaler with supporters arrives at Montreal police station to turn himself in on March 25, 1975.

enforce the law. Defence attorney Morris Manning had audaciously suggested that the jury did have the option of using the nullification strategy.)

In 1974, Morgentaler's first acquittal by a jury was overturned by the Quebec Court of Appeal and arbitrarily replaced with a prison sentence. Morgentaler appealed this ruling to the Supreme Court of Canada (SCC), and a cohort of interveners, including CCLA, was permitted to take part.

According to Alan Borovoy, writing in *Uncivil Obedience* (1991), the granting of permission to intervene in this case was "a rather rare phenomenon," only the second time in the history of the SCC that "third-party" interveners had been allowed to participate in a criminal appeal. This was also the first time that CCLA had used the tactic of seeking intervener status, which became one of the organization's central strategies from then on.

Determining grounds for CCLA intervention, delivered by special counsel Edward Greenspan, required considerable

consultation and manoeuvring by Borovoy and others. At the time there were strong, opposing positions held by members of the CCLA board concerning the right of a woman to choose to have an abortion. Consequently the CCLA intervention focused on issues of process, and specifically on the unfairness inherent in the way that the abortion laws were structured and administered across the country. In preparation for its intervention, CCLA conducted a survey of Canadian hospitals, contacting 325 hospitals, of which ninety replied, thirty-two of which indicated that they had therapeutic abortion committees (TACs).

Morgentaler's defence team and the interveners including CCLA challenged the 1969 abortion law (section 251 of the *Criminal Code*) as unconstitutional and a violation of Canada's 1960 Bill of Rights—a denial of a woman's rights to security of person, as guaranteed by the Bill of Rights, and a denial of the rights of women to a fair hearing. They also challenged the right of the Quebec Court of Appeal to overturn an acquittal by jury and impose a prison sentence.

They argued that a test of "necessity," meaning medical emergency, should determine if an abortion could be legally performed outside the framework of hospitals and TACs. They pointed out that the law on abortion was unclear regarding the meaning of "danger to health."

And finally, as part of its brief, CCLA presented extensive documentary evidence on the impact of the 1969 abortion law. The evidence showed that the possibility of getting an abortion across Canada was idiosyncratic and discriminatory, that it depended first on a pregnant woman's proximity to a hospital with a TAC and secondly on the biases and prejudices within any hospital's board-appointed TAC.

According to the data collected by CCLA, in January 1974 there were 904 hospitals in Canada. In 1973, only 261 of those hospitals had TACs; roughly half the hospitals in Ontario and British Columbia had TACs, whereas in Saskatchewan, only 10 out of 133 hospitals had TACs, and in Quebec, 24 of 133 hospitals had TACs.

The CCLA survey revealed that across the country there were widely differing interpretations of the test concerning "danger to

health." One hospital required women to prove that they were suicidal, while others only asked that the wording of the applications for an abortion conform exactly to the language of the *Criminal Code*. Some hospitals required independent reports from two physicians, one of whom had to be a psychiatrist. And several TACs would only approve an abortion if the woman agreed to subsequently undergo a tubal ligation in order to ensure no further pregnancies.

There was evidence that women who had been refused an abortion by one hospital would be granted an abortion by another; in one case, a woman who had been refused an abortion while admitted to one hospital following a suicide attempt was approved for an abortion by a second hospital in a different city. The CCLA report noted that "when this committee felt justified in granting a certificate despite previous rejections...the resultant delay occasioned an increasingly hazardous operation."

The Supreme Court heard the case in late 1974, delivered its decision in early 1975, but the decision was published in 1976. It was a split decision, 6 to 3, with the majority of justices denying Morgentaler's appeal and allowing the Quebec Court of Appeal's guilty verdict and sentence to stand. Justice Brian Dickson made the following statement as a preamble to his reasons for denying the appeal:

> It seems to me to be of importance at the outset to indicate what the Court is called upon to decide in this appeal, and equally important, what it has not been called upon to decide. It has not been called upon to decide, or even to enter, the loud and continuous public debate on abortion which has been going on in this country between, at the two extremes, (i) those who would have abortion regarded in law as an act purely personal and private, of concern only to a woman and her physician, in which the state has no legitimate right to interfere, and (ii) those who speak in terms of moral absolutes and, for religious or other reasons, regard an induced abortion and destruction of a foetus, viable or not, as destruction of a human life and tantamount to murder. The values we must accept for the purposes of this appeal

are those expressed by Parliament, which holds the view that the desire of a woman to be relieved of her pregnancy is not, of itself, justification for performing an abortion.

All the SCC justices deferred unequivocally to the authority of Parliament on the issue of abortion. Even the judgment of those justices in the minority, who would have allowed portions of Morgentaler's appeal, signalled disapproval of abortion: Chief Justice Bora Laskin wrote on behalf of the minority, "Parliament has in its judgment decreed that interference by another, or even by the pregnant woman herself, with the ordinary course of conception is *socially undesirable conduct* subject to punishment.... and the fact that there may be safe ways of terminating a pregnancy or that any woman or women claim a personal privilege to that end, becomes immaterial."

The "urgent necessity" argument was dismissed. CCLA's evidence concerning the "unevenness in the administration" of the laws governing abortions was deemed irrelevant to the case by all justices; these problems were something "for Parliament to correct and not for the courts to monitor as being a denial of equality before the law and the protection of the law." This was a matter of "administrative efficiency"; there was no reason to find section 251 unconstitutional "merely because not all persons affected by s.251 may find it feasible because of geographic or economic considerations to take shelter under its exculpating terms." The court most definitely did not think it was the job of the SCC to deal with inequalities in how the law was carried out; access to abortion was not a right.

The Quebec Court of Appeal's decision to overturn the acquittal by jury and issue a different verdict and a prison sentence was deemed legal by the majority of SCC justices, but was described as "obviously a power to be used with great circumspection." It was this aspect of the appeal that Chief Justice Laskin and two others disagreed with, finding that "the jury's verdict is not one which can be lightly interfered with, by an appellate court," and recommending that the jury's verdict of acquittal be restored.

Another point made by Chief Justice Laskin became an important marker in the evolution of abortion laws and the

broader human and civil rights debate. Both Morgentaler's lawyer and CCLA had argued that the abortion legislation was unconstitutional because of the rights delineated in the Bill of Rights. But Laskin noted that the Bill of Rights is only "a statutory instrument, illustrative of Parliament's primacy within the limits of its assigned legislative authority...." In other words, the Bill of Rights was not a constitutional document, and therefore could not trump other legislation. The 1976 *Morgentaler* decision and other concurrent circumstances helped to prepare the ground for the creation of a constituted, entrenched, and binding *Canadian Charter of Rights and Freedoms*. When Morgentaler came before the Supreme Court again, in 1988, Brian Dickson was chief justice. The parameters defining "socially undesirable conduct" changed considerably over the intervening decade. The creation of the *Charter of Rights and Freedoms* irrevocably altered the terms of the debate about the rights of women. And in 1988, there was also, for the first time, a woman justice on the Supreme Court—Bertha Wilson, appointed by Prime Minister Trudeau in 1982.

"WHAT'S AT ISSUE IS NOT THE STATUTORY LAW OF ABORTIONS BUT THE COMMUNITY'S FAITH IN JURIES." (ALAN BOROVOY, CCLA LETTER TO RENÉ LEVÉSQUE, 1976)

Immediately after the SCC decision came down in 1975, Morgentaler began serving the sentence decreed by the Quebec Court of Appeal. He was in prison for ten months and was denied parole. While he was in prison, the Quebec courts instigated a second trial on different charges, at which he was again acquitted by jury.

Public and political response to the Supreme Court decision was immediate and strong, on two separate issues. First, there was the SCC decision that it was legal for a superior court to simply overturn the verdict of a jury. Politicians in Ottawa and civil liberties groups like CCLA were outraged by this ruling. The federal government consequently rushed to introduce a modification to the *Criminal Code* now known as the *Morgentaler Amendment*, which denied higher courts the right to override an acquittal (now

they can only order a new trial). In a move that was clearly politically motivated, even unprecedented, Federal Minister of Justice Ron Basford applied the *Morgentaler Amendment* retroactively to Morgentaler's own case and ordered a new trial in Quebec.

Morgentaler was again acquitted quickly, in less than one hour, by a Montreal jury.

But the SCC case, despite its complete dismissal of all aspects of Morgentaler's appeal, brought the issue of abortion to a rolling boil in public discourse. On May 29, 1975, the Alliance for Life delivered to Parliament, in orange crates, the Petition of One Million, demanding protection of the rights of the unborn. In September, the government created the Badgley Commission to conduct a review of abortion practices across Canada.

Immediately prior to the elections in Quebec in 1976, CCLA wrote to René Lévesque, leader of the Parti Québécois, asking that, if he became premier, his government drop outstanding charges against Morgentaler: "What's at issue is not the statutory law of abortions but the community's faith in juries." In November 1976 the newly elected Parti Québécois announced that it would not prosecute Morgentaler further, a position that not only challenged the historic hegemony of the Catholic Church in the province but also directly resisted the authority of federal law. This was in part interpreted as Quebec flouting the authority of the federal government, but the Parti Québécois's position was also very much a response to public opinion.

The Badgley Commission reported back to Parliament in 1977. The three-person committee was only permitted to review and report on the "equitable" application of the law across Canada, not to make any recommendations concerning the underlying policy, which presumably might have undermined the *Criminal Code* provisions. The commission answered a series of specific questions about access to abortion, and did not address incendiary issues such as rights of the fetus or late-pregnancy termination.

The findings were an indictment of the abortion law and resolutely confirmed the evidence presented by CCLA to the Supreme Court in 1974. Not only were there gross variations in the application of the law from province to province but ironically, the

demand for therapeutic abortions unleashed by the legalization of abortion created unmanageable pressures on hospital resources. This meant, among other things, that the time between a request for an abortion and approval could regularly be as long as eight weeks. Almost two-thirds of the hospitals surveyed by the committee introduced, with no legal justification whatsoever, the necessity of consent to an abortion by a husband, even an ex-husband. The fact that many hospitals were owned by religious denominations had an impact on the number of hospitals that would even have TACs, and the opinions of medical professionals (85 per cent of doctors surveyed were male) created additional barriers; almost half of all physicians surveyed by the committee believed that "abortion lowered the value of human life."

The conclusions of the Badgley Commission were very carefully worded: The problem, the commission said, was not the legislation itself, but incompatibility between two "equally durable" facts: "a substantial number of women seeking this operation, and a sizable proportion of the medical profession and a large number of hospital boards which on moral and professional grounds will not participate in this procedure."

This standoff was rooted, the commissioners noted obliquely, in "tolerance of widespread and entrenched social inequity for women [several hundred thousand women and their families] involved in the abortion procedure," an inequity that was eloquently articulated in substantial verbatim testimony to the committee from women who had had abortions, legal and illegal, before and after 1969. Furthermore, the committee stated its belief that the demand for abortions would increase, because of the tension in Canadian society between "two sensitive issues, abortion and family planning."

The irony was that by setting up a complicated procedure for obtaining a legal abortion, Parliament had created conditions, observed the committee, that made the likelihood of getting such an abortion "in practice illusory."

The findings of the Badgley Commission were largely underreported and not acted upon at the time. However, the statistics found their way, in considerable detail, into the 1984 trial of

Henry Morgentaler in Ontario, and as a result into the SCC's 1988 decision.

In the interim, Canada became fiercely engaged in the patriation of the Constitution, and in the wording of the new bill of rights proposed by Prime Minister Trudeau—the Charter.

WHO IS EVERYONE?—THE *CHARTER OF RIGHTS AND FREEDOMS*

The process whereby Canada acquired the *Charter of Rights and Freedoms* was reviewed in the previous chapter of this book, with specific reference to the leadership role played by CCLA. But several aspects of that process are worth mentioning in the context of the abortion issue; these have to do with revisions to the draft Charter—presented by Trudeau in fall of 1980, and the subject of intense public attention and intervention—and with submissions from the public and organizations to the Joint Parliamentary Committee created to review the draft.

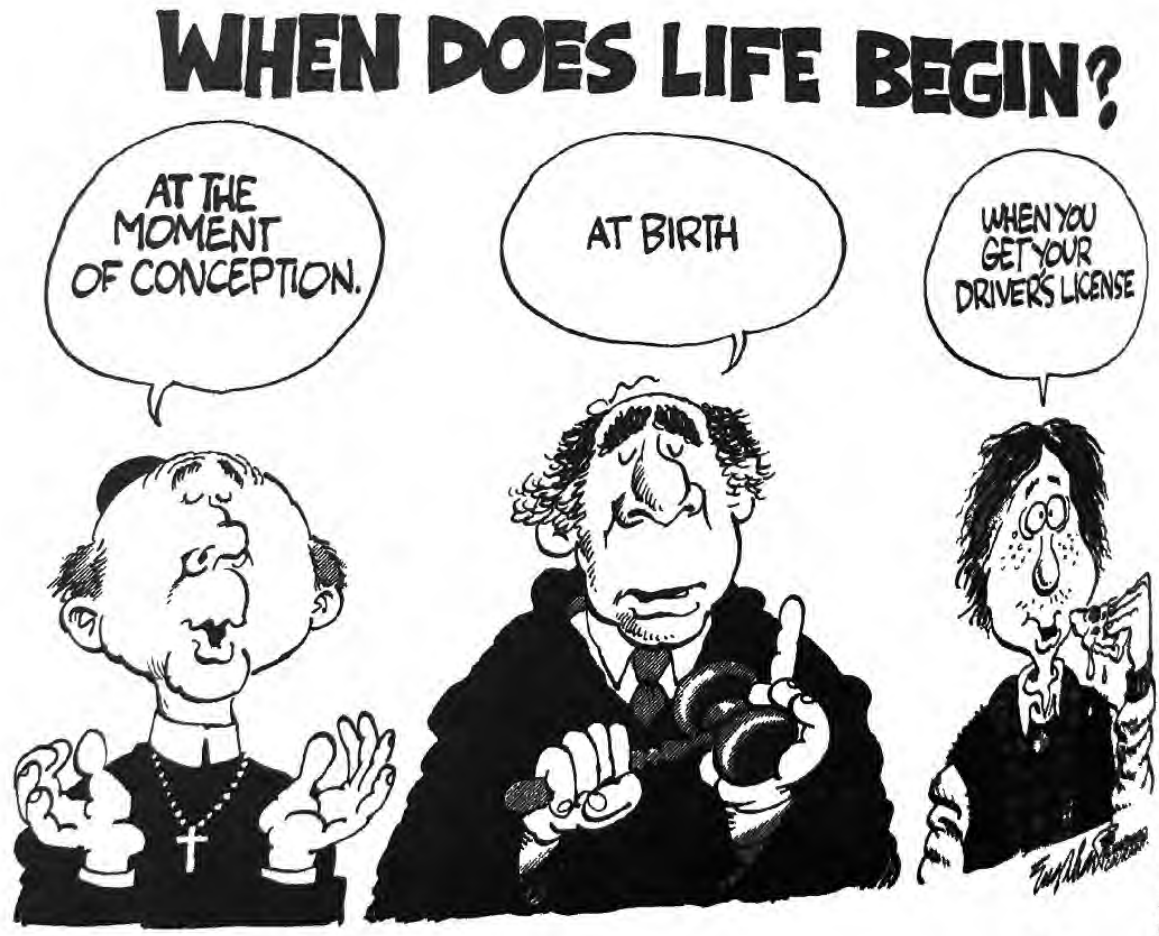
The first and most obvious change to the draft was the strengthening of the language concerning the equality of rights of women, eventually enshrined in numerous clauses throughout the Charter. Feminist groups, led by Doris Anderson (Status of Women), Mary Eberts of the Advisory Council on the Status of Women (ACSW), and others successfully lobbied to expand sections of the Charter, to rename the proposed "non-discrimination" clause as the "Equality" clause, and to specify that equality rights hold under the law and also enjoy "equal benefit of the law." The Charter's final version also included a specific guarantee of "sexual equality" notwithstanding anything else in the Charter, which was specifically designed to take precedence over the "reasonable limitations" on rights made possible in section 1.

The second issue raised during the Charter debates was whether or not abortion or fetal rights should be included. This debate circled around suggestions (both overt and covert) that a woman's right to have an abortion should actually be spelled out in the Charter, but more generally took the form of discussion about the intended meaning of the word "everyone" in the document.

There are several clauses in the Charter that assign rights and

freedoms to "everyone." In some sections, the term "every citizen of Canada" or "every individual" is used, but the attention of both feminists and anti-abortion groups, in their interventions on Charter language, was on the precise meaning of the word "everyone," especially in those clauses that dealt with rights and freedoms in the largest sense. Both groups found the term "everyone" too general; feminists argued that it should be changed to "every person" in order to resonate with the definition of "person" in the 1929 Persons Case (*Edwards v. Canada [Attorney General]*), which first recognized women in Canada as "full legal persons." Anti-abortion groups argued for even more specific language: "everyone from conception until natural death…"

Archbishop MacNeil, president of the influential Canadian Conference of Catholic Bishops, sent the following statement to Trudeau in March, 1981: "Any Charter of Rights which is not founded upon respect for life from the moment of conception would be flawed by an inherent weakness…. It would be deplorable



if your Charter of Rights could, either now or in the future, be interpreted in such a way as to broaden the impact and effect of the present abortion legislation, which is already in some of its prescriptions unacceptable to us."

But Trudeau insisted unequivocally in his response to Archbishop MacNeil that the Charter would be neutral on the subject of abortion: "No provision of the Charter is reasonably capable of an interpretation that would either enshrine a right to abortion or a right to life for the unborn or deny the ability of Parliament to legislate on the matter in the context of the Criminal Code."

Anti-abortion activist Joseph Borowski, formerly a Manitoba NDP Cabinet minister, went on an eighty-day hunger strike in 1980 to protest the lack of protection for unborn children in the Charter. Between 1978 and 1989 Borowski launched a challenge, first citing the Bill of Rights and later the Charter, claiming (just like his nemesis and arch-rival Morgentaler) that the *Criminal Code* provisions for legal abortion were unconstitutional. CCLA applied to intervene in the Saskatchewan Court of the Queen's Bench in 1983, where Borowski's challenge was first heard; this location was designated for the simple and practical reason of alleviating the expenses of Borowski's lawyer, Morris Shumiatcher—himself a rather famous person, who in 1947 drafted the *Saskatchewan Bill of Rights*. CCLA was hoping to argue that, Borowski's implications to the contrary, it would be "repugnant" to interpret either the Charter or the *Bill of Rights* as intent on "barring medical treatment considered necessary for life or health."[155]

The CCLA application to intervene was denied, as was the application of the Canadian Abortion Rights Action League. CCLA declared that the absence of interveners made the Borowski case "lopsidedly uneven" and subsequently requested, without success, that federal Justice Minister Mark MacGuigan ask for a Supreme Court reference concerning the constitutionality of the abortion laws. (A Supreme Court reference can be requested by Cabinet, through the offices of the governor general, for interpretation of law or fact about the Constitution or federal or provincial legislation; recent examples are the 2004 Supreme Court reference on

same-sex marriage and the 2014 references concerning abolition of the Senate, and the composition and constitutional status of the SCC itself.)

It was deeply unfair, said CCLA, that Borowski was being given his day in court on the subject of abortion, but that women cannot even intervene on an issue that affected them directly. "He, of course, is not now a fetus or the father of one. He, of course, is not now pregnant or likely to become so. Nevertheless, he enjoys special standing in this case while many women in the country do not."

Borowski's case moved very slowly through the Saskatchewan and federal courts, until it finally was rejected as moot in 1989, by the SCC, because of the 1988 *Morgentaler* decision.

In accounts of the tumultuous abortion debate in Canada over these twenty years, Morgentaler and Borowski are consistently depicted as the chief protagonists (attracting intense media attention, celebrity lawyers, and huge sums of money) in a drama about the rights of women. Even the court challenges were focused on doctors, not pregnant women.

Neither proposal to alter the meaning of "everyone" was accepted, nor was there support for any mention of abortion rights in the Charter. To date, the term "everyone" has not been interpreted by the courts to include the fetus.

"IN THIS COUNTRY, ACCESS TO AN ABORTION REQUIRES A TRAVEL AGENT—AND MONEY." (JUNE CALLWOOD, *THE GLOBE AND MAIL*, 1986)

Within weeks of the ceremonial enshrinement of the Charter in April 1982, Henry Morgentaler announced that he was opening clinics in Winnipeg and Toronto, and Borowski was defending the rights of the fetus in Regina courts. Around the country, forces for and against abortion rights mobilized; the elections of hospital boards (responsible for determining not only whether abortions would be performed, but also the very important composition of the TACs) became intensely politicized. Canadian women openly attempted to seek abortions either legally or from a private clinic. The Canadian Abortion Rights Action League not only raised

funds for Morgentaler's clinics, and the expected legal costs, but also lobbied provincial governments and hospitals for improved access to abortion services.

Interpretation of the abortion law by hospitals and other institutions was alarmingly unpredictable and prejudicial. In Ontario, in 1983 for example, the Cornwall Children's Aid Society attempted to deny an abortion to a fifteen-year-old girl—one of their wards who had become pregnant as a result of rape—insisting that the Society would only permit the abortion if two doctors (in addition to a therapeutic abortion committee) declared that her life was in danger. CCLA requested that the Ontario Minister of Community and Social Services intervene, arguing that "it is a gross abuse of power for a public agency to deny a youngster medical treatment...considered necessary for her health." Before the Minister responded, the girl had travelled to Montreal to the Morgentaler Clinic.

Within a year of opening, both of the new Morgentaler clinics were raided by police, Morgentaler and others were arrested and charged, and in November 1983, the court case began in Toronto that would ultimately end up in the Supreme Court, which was always the intention of both Morgentaler and his lawyer, Morris Manning. The Toronto Morgentaler defence was a showpiece of legal gamesmanship, involving a pretrial motion to quash the indictment on constitutional grounds (which took eight months), acquittal by a jury (just like in Montreal), appeals and cross-appeals, and an order for a new trial in Ontario, before the case ascended to the Supreme Court.

"THE CONTEMPORARY VIEW [IS] THAT ABORTION IS NOT ALWAYS SOCIALLY UNDESIRABLE BEHAVIOR" (FROM THE ONTARIO COURT OF APPEAL, QUOTED IN 2ND MORGENTALER SCC DECISION, 1986/88)

In the pretrial phase of the Toronto court proceedings, Manning had strategically introduced all of the evidence he could muster concerning the difficulties in obtaining an abortion (as delineated in the Badgley Commission Report and elaborated upon by numerous witnesses) and the constitutional arguments, so that both issues

could be incorporated as the bedrock for his case in the SCC. The grounds for this appeal were similar to the grounds of the 1976 case—necessity and equality of access—with additional arguments for right to privacy, now based on section 15 of the Charter.

There were no interveners in what was to date the most significant Charter case before the Supreme Court. Manning, it is said, preferred to go it alone and brushed aside the offers of organizations like CCLA to intervene, perhaps concerned that a cast of interveners in support of Morgentaler would attract an equally large contingent of interveners on the other side. (According to Borovoy, Manning simply did not answer his calls.) Anti-abortion activists were already focused on the Borowski case, which was expected to be considered by the SCC at almost the same time.

Manning made his arguments to the SCC over six days in November 1986. It took the court more than one year to prepare a ruling. The decision came down on January 26, 1988. It was a complex split decision from seven judges (one justice was absent because of illness and another was then removed from proceedings to prevent a tied judgment): five justices upheld Morgentaler's appeal, in three separate written rationales, and two justices would have denied the appeal.

It was an extraordinary ruling for many reasons, not least of which was that it was, on almost every point, a complete reversal of the 1976 *Morgentaler* decision. The reversal extended even to the opinions of the justices on the idea of abortion; in 1976, Justice Dickson described abortion as socially unacceptable. In 1988, he quoted the Ontario Court of Appeal in saying the exact opposite. In 1976, the formidable difficulties faced by women trying to get legal abortions, itemized by CCLA, were dismissed as mere administrative matters. In 1988, those difficulties were seen to invalidate the *Criminal Code* procedures.

The appeal was granted on very narrow grounds (the court chose not to even consider the issue of right to privacy): first, section 251 of the *Criminal Code* was deemed a denial of a woman's legal rights to "security of person" (guaranteed in section 7 of Charter) and secondly, the terms of this infringement (the means by which an abortion could be deemed legal) were found unjustifiable.

The following statement is from Chief Justice Brian Dickson's summary of the ruling by the majority:

> Section 251 clearly interferes with a woman's physical and bodily integrity. Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman's body and thus an infringement of security of the person. A second breach of the right to security of the person occurs independently as a result of the delay in obtaining therapeutic abortions caused by the mandatory procedures of s.251, which results in a higher probability of complications and greater risk. The harm to the psychological integrity of women seeking abortions was also clearly established....
>
> One of the basic tenets of our system of criminal justice is that when Parliament creates a defence to a criminal charge, the defence should not be illusory or so difficult to attain as to be practically illusory. The procedure and restrictions stipulated in s.251 for access to therapeutic abortions make the defence illusory resulting in a failure to comply with the principles of fundamental justice.

Chief Justice Dickson enumerated at considerable length the flaws of the "unfair and arbitrary" procedure: it required the participation of at least four physicians; the term "accredited" and the need for provincial approval set up too many restrictions; "the word 'health' is vague" making it "impossible for women to know in advance what standard of health will be applied by any given committee."

In his concurring comments, Justice Jean Beetz wrote the following:

> If a rule of criminal law precludes a person from obtaining appropriate medical treatment when his or her life or health is in danger, then the state has intervened and this intervention constitutes a violation of that man's or that woman's security of the person. "Security of the person" must include a right of access to medical treatment for a

> condition representing a danger to life or health without fear of criminal sanction. If an act of Parliament forces a person whose life or health is in danger to choose between, on the one hand, the commission of a crime to obtain effective and timely medical treatment and, on the other hand, inadequate treatment or no treatment at all, the right to security of the person has been violated.

It is curious that, although the majority decisions all specifically stated that the court was not asked to rule on whether or not the word "everyone" in the Charter included the fetus (with independent rights to "life, liberty and security of person"), they all framed their decision concerning the constitutionality of section 251 of the *Criminal Code* in terms of the rights of the woman *against* the rights of the fetus, even though there was also no reference at all in section 251 to the fetus. Chief Justice Dickson wrote: "State protection of foetal interests may well be deserving of constitutional recognition under s.1." Justice Bertha Wilson declared, "The primary objective of the impugned legislation is the protection of the foetus...." Objectives like protection of the life and health of women are "ancillary."

Justice Wilson went even further and considered issues such as the viability of the fetus. She cited the principle used in the 1973 US Supreme Court decision *Roe v. Wade* to identify when, during the term of a pregnancy, the court might have an interest in the life of a fetus, what she referred to as the "developmental nature of the gestation process." Wilson declared that "the foetus should be viewed in differential and developmental terms. This view of the foetus supports a permissive approach to abortion in the early stages where the woman's autonomy would be absolute and a restrictive approach in the later stages where the states's interest in protecting the foetus would justify its prescribing conditions. The precise point in the development of the foetus at which the state's interest in its protection becomes 'compelling' should be left to the informed judgment of the legislature which is in a position to receive submissions on the subject from all the relevant disciplines."

In strong, rhetorical language, Justice Wilson also articulated

what she saw as deep offence to women in section 251 of the *Criminal Code*:

> In essence, what it does is assert that the woman's capacity to reproduce is not to be subject to her own control. It is to be subject to the control of the state. She may not choose whether to exercise her existing capacity or not to exercise it.... She is truly being treated as a means—a means to an end which she does not desire but over which she has no control. She is the passive recipient of a decision made by others as to whether her body is to be used to nurture a new life. Can there be anything that comports less with human dignity and self-respect? How can a woman in this position have any sense of security with respect to her person? I believe that s.251 of the *Criminal Code* deprives the pregnant woman of her right to security of the person as well as her right to liberty.

In addition, Wilson found that section 251 failed the test of section 1 of the Charter because abortion is essentially a moral question, a question of conscience: "It is not just a medical decision; it is a profound social and ethical one as well."

Dissenting justices argued in favour of the abortion clauses of the *Criminal Code*. They noted that the "proposition that women enjoy a constitutional right to have an abortion is devoid of support in either the language, structure or history of the constitutional text, in constitutional tradition, or in the history, traditions or underlying philosophies of our society." And that the "allegation of procedural unfairness is not supported by the claim that many women wanting abortions have been unable to get them in Canada.... Any inefficiency in the administrative scheme is caused principally by forces external to the statute—the general demand for abortion irrespective of the provisions of s.251. A court cannot strike down a statutory provision on this basis."

This issue of "procedural unfairness" and "inefficiency in the administrative scheme" would surface twelve years later in a very different SCC case, that of *Little Sister's Book and Art Emporium v. Canada Customs*.

The 1988 SCC ruling in favour of Morgentaler was not an endorsement of unregulated abortion as a right of women. The ruling declared section 251 illegal, meaning it has no force and is not in effect, even though it still remains in the *Criminal Code*, as section 287.

The judgment left the door wide open for Parliament to introduce new legislation concerning abortions, and clearly the court imagined that such legislation would be proposed; the comments by Justice Wilson in particular invited Parliament to consider specifically the issue of late-term abortion in new legislation.

In October 1988, the SCC also heard the appeal of Joe Borowski, arguing for the rights of the fetus as implied in "everyone," and in February 1989 it ruled that because of the *Morgentaler* decision, and in order not to preempt the anticipated new legislation on abortion, Borowski's case was moot.

The entire country fully expected a new abortion law. Alan Borovoy wrote in 1988 about the significance of the SCC *Morgentaler* decision and what message parliamentarians should take from it:

> According to the court, the abortion law violated the procedural protections of the Charter. In some ways, however, the opinion of the judges is not nearly as significant as that of the many jurors who assessed Dr. Morgentaler's conduct in four different trials. Each time he was tried for violating Canada's abortion laws, Dr. Morgentaler was acquitted by juries of his peers.... They were, of course, unanimous.... What explains their unwillingness to convict a self-confessed abortionist? The most plausible explanation is that those jurors acted out of a visceral sense of the appropriate limits of state coercion. Even if they had been brought up to oppose abortion and respect the law, they had also been exposed to the norms of the democratic system.... The application of the law in the Morgentaler case meant intruding state power on the right of women to control their own bodies. That was something those juries were not prepared to do.
>
> No matter what kind of abortion law our parliamentarians favour, they cannot afford to ignore the remarkable

experience of the Morgentaler case. If they enact a law that juries find repugnant to enforce, our parliamentarians risk bringing the administration of justice into disrepute. This, in turn, could undermine public respect for the rule of law itself.

—*When Freedoms Collide*, 1988

STRIKING OUT ON ABORTION LAW—1988–91

The Progressive Conservative government of Brian Mulroney attempted to craft abortion laws between 1988 and 1991 and failed three times. The first bill proposed in July 1988 would have made first-term abortions legal and late-term abortions illegal. It was defeated in the House of Commons by a vote of 147 to 76, because it satisfied neither those MPs who opposed abortion outright nor those who opposed the use of the *Criminal Code*. Women MPs of all parties voted against this bill.

The second bill, Bill C-43, was not introduced in the House of Commons until November 1989. But between the two bills, public interest in abortion was galvanized (CCLA joined a coalition of twenty-five pro-choice groups), first by the still-outstanding Borowski SCC appeal and then, over four midsummer weeks, by the first SCC challenge on abortion in which a pregnant woman was the protagonist.

Chantal Daigle was a twenty-one-year-old resident of Val-d'Or, Quebec. After living for several months with Jean-Guy Tremblay, Daigle discovered that she was pregnant; but because (she averred) Tremblay had become jealous and physically abusive, Daigle decided to end both the relationship and the pregnancy and asked her doctor for an abortion. On July 7, 1989, Tremblay filed for an injunction to prevent the abortion. The injunction was granted, first by the Quebec Superior Court and second by the Quebec Court of Appeal, both of which found that the fetus had either legal rights, under the *Quebec Charter of Human Rights and Freedoms*, and/or "natural" rights, and a right determined by "custom." (Three similar injunctions were filed in 1989 by men in Alberta, Manitoba, and Ontario, but they were dismissed by lower courts.)

Daigle appealed to the Supreme Court of Canada and in her affidavit gave specific reasons for wishing to terminate the pregnancy: Tremblay "became dominant, jealous and possessive and... abused her physically." And despite knowing that she was pregnant Tremblay pushed her to the floor, threatening to "bring her into line once and for all." Daigle feared for her future "psychological and moral health" and declared, "I do not wish to have a child at the present time in light of my age, my social situation as a single person and my moral values as I want to provide for a child in a serene stable family environment in which there is no violence."

But the day before her case was to be heard by the Supreme Court—its members called back for an unprecedented emergency

sitting—Daigle went secretly to Boston to have her twenty-two-week pregnancy terminated. Despite this action (for which Daigle could have been charged with contempt of court), the SCC decided to proceed with the hearing and granted three interveners on both sides ten minutes each to state their case.

The CCLA intervention made by John B. Laskin addressed the issue of whether "coercing a woman to keep a fetus in her body against her will" was in accordance with "legal principles" and, secondly, if an injunction was appropriate—noting that dealing with these two questions did not require the court to address the issue of whether or not a fetus was a human being. CCLA argued for the principle of "individual autonomy," noting that medical procedures such as organ donation require informed consent, and expressed concern that injunctions were not appropriate in the case of abortions, because, if a precedent was created, injunctions might be used to delay and interfere with abortions at any stage in a pregnancy.

The SCC heard all arguments, retired, and very quickly returned a unanimous decision to overturn the injunction; the written decision was not issued until November 16, 1989. Daigle's appeal was upheld because the SCC found that neither the *Civil Code of Lower Canada* nor the Quebec Charter makes reference to fetal rights, nor does the Quebec Charter "include any definition of the term 'human being' or 'person'.... If the legislature had wished to accord a foetus the right to life, it is unlikely that it would have left the protection of this right in such an uncertain state. As this case demonstrates, a foetus' alleged right to life will be protected only at the discretionary request of third parties." And further that the injunction "must be set aside because the substantive rights which are alleged to support it—the rights accorded to a foetus or a potential father—do not exist."

The SCC also stated that "the Canadian Charter cannot be invoked in this case to support the injunction. This is a civil action between two private parties and there is no state action which is being impugned.... This Court should generally avoid making any unnecessary constitutional pronouncement."

In his 1992 book, *Morgentaler v. Borowski: Abortion, the*

Charter, and the Courts, F.L. Morton notes that the cases of Daigle and Borowski were "equally moot" by the time they were considered by the SCC, but they were treated very differently: "Joe Borowski had spent ten years and nearly half a million dollars to bring the issue of the rights of the unborn before the Supreme Court. He was told to try again if and when a new abortion law was enacted. Chantal Daigle had spent thirty days and had won."

Furthermore, argued Morton, the SCC had a very different mindset when it dealt with Morgentaler: "Why had the Court exercised the techniques of judicial self-restraint when ruling on the rights of the unborn, but the tools of judicial activism when dealing with the rights of the mother?"

The theme of "judicial activism" emerged persistently over the subsequent twenty-five years, with reference to the SCC's interpretation of the Charter, and was discussed in the previous chapter of this book. But both the *Morgentaler* and the *Daigle* decisions were clearly made by the SCC with the expectation that Parliament would very soon enact new legislation to deal with abortion.

Bill C-43, introduced on November 3, 1989, was considered to be a compromise bill; abortion would be dealt with in the *Criminal Code*, but it would be legal if performed by a doctor of the woman's choice; mental and psychological health were to be considered, and abortions were not restricted to accredited hospitals. But still, much of the debate over the bill was focused on the question of the rights of the fetus.

Borovoy, in a September 1989 op-ed in the *Toronto Star,* argued that "the emphasis should shift from the mysteries of embryonic life to the limits of governmental power.... The law should allow the pregnant woman herself to determine when her suffering is unbearable." He stated that "a democracy does not have to embrace the moral merits of an abortion in order to rule out state coercion as an appropriate remedy."

In classic civil libertarian style, Borovoy also defended the anti-abortionists' right to make their case: "As long as they believe what they do, they should demonstrate, remonstrate, advocate and educate. In such matters, the norms of democracy encourage persuasion but not coercion." But "despite the rights that fetuses

might otherwise have, they should not be able to invoke the power of the state to keep them in the bodies of their non-consenting mothers."

Bill C-43 was passed by the House of Commons on May 22, 1990, by a vote of 140 to 131—a "free vote," except for Cabinet. But intense activism from both sides over the next seven months resulted in a tie vote (43 to 43) in January 1990 in the Senate, where a tie vote means that the legislation dies. The Progressive Conservative government announced that it would not make any further attempts to create abortion legislation, and no federal government has attempted to do so since.

Between 1988 and 1996, however, there were numerous attempts by provincial governments to limit or control abortions, either by withholding funding or by redefining medical services; in all cases—B.C., Nova Scotia, and New Brunswick—the actions taken by provincial governments were found to be unconstitutional, mostly by reason of jurisdiction.

ACRIMONIOUS AFTERMATH—RIGHTS OF THE FETUS, RIGHTS OF PICKETERS

In 1997, the issue of fetal rights surfaced in another guise—that of the right to protect a fetus from the addictions of the woman bearing the fetus, addictions that had caused two previous children to be born permanently disabled and to become wards of the state. In the case of *Winnipeg Child and Family Services (Northwest Area) v. D.F.G*, CCLA was one of sixteen interveners, and it argued that to restrain the rights of a pregnant woman would represent a "dramatic rewriting of the law, a rewriting with vast ramifications for the civil liberties of pregnant women." The argument acknowledged the difficulty of the situation but stated: "On balance…it is less undesirable that the law and Canadian society accept the consequences for the foetus of non-interference with the woman's freedom of choice and liberty than that it expose others in less severe circumstances to unwarranted encroachments."

The SCC ruled that the court did not have the right to assume parental responsibility, and that:

A pregnant woman and her unborn child are one and to make orders protecting fetuses would radically impinge on the fundamental liberties of the mother, both as to lifestyle choices and how and as to where she chooses to live and be. The invasion of liberty involved in making court orders affecting the unborn child is far greater than the invasion of liberty involved in court orders relating to born children.

The woman did, in fact, receive some treatment for her addictions during the course of the pregnancy and delivered a healthy child.

The CCLA argument also anticipated a later case, that of *Dobson v. Dobson*, 1999, in observing that extending the court's duty of care to a fetus could "expose the woman to an action by her child after its birth for damage suffered *in utero*." In *Dobson v. Dobson,* a woman in the twenty-seventh week of pregnancy was involved in a motor vehicle accident that resulted in an immediate Caesarean delivery of the fetus, which suffered permanent mental and physical impairment as a result of the collision. The argument in favour of allowing liability was inspired by practical insurance-claim considerations (although interpreted as a fetal rights issue by two religious groups intervening), but was denied by the SCC. The two women justices, McLachlin and L'Heureux-Dubé, chose to make the following additional comments in agreeing with the majority:

> The intrusion upon the pregnant woman's autonomy worked by the proposed common law rule would also violate her right to equal treatment. Canadians generally enjoy the full right to decide what they will eat or drink, where they will work and other personal matters. Pregnant women, however, would not enjoy that right. In addition to the usual duties of prudent conduct imposed on all who engage in life's various activities, pregnant women would be subject to a host of additional restrictions.... To say women choose pregnancy is no answer. Pregnancy is essentially related to womanhood. It is an inexorable and essential fact of human history that women and only women become pregnant.

Women should not be penalized because it is their sex that bears children....

• • •

Over time, the CCLA board came to support the principle of a woman's right to choose, and thus to proceed with ease in the pro-choice movement. But there was one issue related to the abortion debate on which CCLA found itself greatly at odds with other activists and with some of its own members. This had to do with the right to protest against both abortion clinics and abortion practitioners. In April 1993, the government of Ontario ordered a complete ban on all abortion protests—outside abortion clinics, hospitals, and in proximity to the homes of doctors who performed abortions. Ontario Attorney General Marion Boyd applied for a court order permanently barring such protests "within 500 feet" in specific cities—Toronto, London, Brantford, Kingston, and North Bay. The injunction detailed actions such as "assaulting, harassing... intimidating" and "using insulting abusive or defamatory language or gestures." The government sought damages of $500,000 against members of the anti-abortion movement.

In a letter to Marion Boyd in June 1993, CCLA protested the injunction, despite expressing sympathy with much of what the government was attempting to achieve, and noting that, indeed, many of the pickets had been unacceptable and their actions should be curbed. But CCLA questioned "whether the government should be taking the unusual step of applying for civil remedies in a dispute among citizens...." Actual offences, acts of mischief, intimidation, or vandalism should simply be prosecuted. But injunctions are "particularly contentious instruments" and cast too wide a net; this was often the case with labour injunctions: "the terms of the proposed injunction in this case are so broad that they could arguably prohibit even silent, peaceful, informational picketing...." And "at what point do unkind words become 'insulting' or 'abusive'? Imagine the impact of such a precedent on the picket lines of environmentalists, consumer boycotters, and Aboriginal activists."

CCLA recommended the use of criminal prosecutions instead of injunctions and suggested that "peaceful, non-obstructive picketing" be permitted within 500 feet of premises and that there should be no injunctions against picketing the homes of abortion practitioners.

The draft of the CCLA letter to Boyd was circulated to board members before it was sent, and it was the subject of a special board meeting. The position received strong and contradictory responses from CCLA Board members:

> —What if a particular group were suddenly to object to doctors who treat AIDS patients, or Black patients, or native peoples, or Jewish patients. Should a civilized and civil libertarian government allow doctors to be intimidated...that smacks too much of Nazi Germany.
>
> —Is the picketing to communicate or is the picketing to harass?...A one person picket is communicating information. Six, seven, eight or more pickets can be intimidation and harassment. It is not the message, but rather the method.

Michele Landsberg, columnist for the *Toronto Star*, was outraged. In her April 27, 1993, column she wrote: "Maybe these free-speech advocates, who are so worried about the rights of the anti-choice militants, suffer from a reality deficit. Maybe they've never been "free-speeched" by a praying, shrieking, fetus-wielding crowd of vigilantes...." CCLA stuck to the high road: "...it is worth re-stating our commitment to ensuring that clinic staff and patients are fully protected in the exercise of their lawful rights. But those rights were won, in the very recent past, largely because the "pro-choice" movement was able to exercise a vigorous right of free speech and assembly. These freedoms remain the best hope there is that fairness will prevail."

In September 1994, Boyd was granted the right to impose temporary injunctions limiting protesters to 150 metres from the homes of nine abortion providers in Ontario, and limiting pickets to a distance of between 9 and 18 metres from some clinics (the Morgentaler clinic already had a 150-metre distance guaranteed). In 2014, in downtown Toronto, there are still small huddles of

protesters holding placards across the street from one modest "women's clinic" at the corner of Parliament and Gerrard streets, and on May 9, 2014, the annual March for Life drew approximately 7,000 people to Parliament Hill in Ottawa.

"LET SLEEPING DOGS LIE"—THE ABORTION ISSUE IN 2014

> The decision [to have an abortion] is one that will have profound psychological, economic and social consequences for the pregnant woman. The circumstances giving rise to it can be complex and varied and there may be, and usually are, powerful considerations militating in opposite directions. It is a decision that deeply reflects the way the woman thinks about herself and her relationship to others and to society at large. It is not just a medical decision; it is a profound social and ethical one as well. Her response to it will be the response of the whole person.
>
> It is probably impossible for a man to respond, even imaginatively, to such a dilemma not just because it is outside the realm of his personal experience (although this is, of course, the case) but because he can relate to it only by objectifying it, thereby eliminating the subjective elements of the female psyche which are at the heart of the dilemma.
>
> —Justice Bertha Wilson, 1988 *Morgentaler* SCC Decision

Canada is currently the only country in the world in which abortion is simply a legal medical procedure, no more and no less. There remains access to abortion issues, notably in Prince Edward Island, where no hospitals perform abortions and there are no abortion clinics. New Brunswick, in defiance of federal law, does not pay for abortions performed in private clinics. The statistics concerning abortion indicate that the number of abortions performed has consistently declined since 1997, with approximately 70,000 abortions performed annually, approximately fourteen abortions per 1,000 women of childbearing age, and that 90 per cent of abortions are performed within the first twelve weeks of pregnancy. According to the Abortion Rights Coalition of Canada (ARCC) there are virtually no maternal deaths during legal abortions.

As Justice Wilson's comments above suggest, no one wants to have to undergo an abortion. But there remains consistently strong support in Canada for abortion rights, and a firm resistance to the idea of introducing legislation to control abortion. "Canadians have mixed feelings about abortion but the attitude is: 'Let sleeping dogs lie,'" said Mario Canseco, vice-president of Angus Reid Public Opinion, in January 2013, twenty-five years after the *Morgentaler* decision. The Angus Reid poll showed that many Canadians, 45 per cent of those surveyed, erroneously believe that (as is the case in the United States), a woman can have an abortion in Canada only during the first twelve weeks of pregnancy. A very small number (5 per cent) of Canadians think abortion should be illegal; 35 per cent said there should be no restrictions on a woman's access to abortion. Roughly 50 per cent of the individuals polled indicated that they thought there should be some restrictions on abortions (related either to fetal defects, cause of pregnancy, such as rape, or viability of the fetus).

And yet, since 1989, there have been forty-five attempts to introduce legislation via private member's bills into the House of Commons on the subject of abortion or fetal rights. For example, in 2010, a private member's bill (called Roxanne's Law, in reference to a young woman who was murdered) tried to make it unlawful to "coerce" or attempt to "coerce" a female into getting an abortion. "Coercion" was defined to include "conduct that is intentionally and purposely aimed at directing the female person who has not chosen to have an abortion to have an abortion." CCLA expressed opposition to this bill, as "not helpful in addressing the question of violence against women." It described the proposed legislation as redundant: "A young pregnant woman has the right to choose whether to carry a pregnancy to term *or* to terminate it. Whichever option she chooses, she should not be subjected to harassment, intimidation, threats or the removal of financial support. The *Criminal Code* already prohibits all of these activities."

As recently as November 2012, a motion was introduced putatively to deal with the "problem" of sex-selective abortions in Canada. In the spring of 2013, pressure from Conservative Party MPs to be able to address the issue of abortion in the House of

Commons resulted in a rift in the ranks of the party. In spring 2014, Liberal leader Justin Trudeau declared that all Liberal candidates would be required, if elected, to support a woman's right to choose; historically, abortion votes in Parliament have been free votes.

The current debate in Canada is coloured by events south of the border. In March 2013, the Arkansas House of Representatives passed the *Human Heartbeat Protection Act*, which bans abortions after twelve weeks (which is when a fetal heartbeat is detectable), except to save the mother's life, or in pregnancies resulting from rape or incest. This act, and similar "personhood" bills in other states—which would protect the rights of the zygote (the first four days after sperm and ovum have united)—directly contravene *Roe v. Wade*, which sets the date at which a fetus can survive outside its mother (between twenty-three and twenty-four weeks) as the point at which states have the power to ban abortions outright. The rapidly evolving sophistication of reproductive and fetal technologies will undoubtedly create increased pressures on the definition of fetal viability. Anti-abortion activism in Canada follows closely such trends in the United States and has become extremely sophisticated, imbedding its message in websites with anodyne names such as Abortion in Canada and The Interim.

Henry Morgentaler (who had controversially been awarded the Order of Canada in 2008) died in May 2013, and his final SCC appeal, concerning the funding of abortions in New Brunswick, died with him. Even at the moment of death, Morgentaler was a polarizing figure. One straightforward tribute to Morgentaler came from long-retired Conservative Cabinet Minister Barbara McDougall, who took the issue right back to where it started, in the lives of girls and women:

> Henry Morgentaler changed things. Not many mortal men (or women) can make that claim, but the changes he set in motion in Canada have had a profound effect on virtually the whole of Canadian society, no more so than on women in their child-bearing years.
>
> I remember back when dark whispers of back alley and coat hanger abortions haunted the dreams of teenagers who

were, or wanted to be, sexually active—promiscuous, our parents would have called it; daring, the rest of us would have claimed.... It is not "society" or the church and almost never the father who will see the fetus through babyhood and childhood to adulthood—it is the mother, the woman who bears the child, sometimes with help, sometimes not.

Without question there is a profoundly moral decision to be made on whether or not to end a pregnancy. The only issue is who makes it. The State, that bears no responsibility? The father, who may or may not involve himself in the consequences? I fervently believe it is the Mother's decision alone, after discussing it (or not) with people she respects. Do we honestly think so little of a woman's ability to judge for herself that we would remove from her control over the most important moral choice she will make in her lifetime?

—*The Globe and Mail*, May 30, 2013

Abortion for half the population is not a theoretical issue, but a life and death matter. Like other life and death matters—capital punishment and euthanasia—abortion has implications that run far deeper than civil liberties and freedoms that might seem more theoretical, or matters of principle in democratic societies where, when there is clash of values (on issues such as freedom of speech for example, or police malfeasance) resolution does not involve body and soul.

But at the same time, abortion as an issue is a virtual template for the evolution of civil rights in Canada over the last fifty years. It is emblematic of the nexus of personal and political values, a war of competing rights, when a deeply felt, most intimate moment in someone's life is laid bare in courtrooms and in placards on street corners. With the two Morgentaler SCC cases bookending the creation of the Charter, abortion, as much as any single issue, illustrates how profoundly our society and the tenor of public debate and the playbook for legal and political engagements changed over two decades, and yet, at the same time, how the values we hold as Canadians, which find their most extreme opposition on the matter of abortion, are curiously immutable.

For CCLA abortion was a test of the organization's maturity, its capacity for embracing competing views, its ingenuity at finding the best path through a forest of possibilities. It was a test of convictions, personal and legal. It pitted individual activists and like-minded organizations against one another; for women who were both feminists and defenders of civil liberties, for example, defending the rights of anti-choice protestors was a crucible on which ideologies and loyalties and deep friendships faltered. This would not be the last time that CCLA would find itself championing a difficult and unpopular cause, and making enemies of friends—the defence of obscenity and pornography was also a battlefield imbedded with landmines.

[148] CCLA factum in *R. v. Latimer* (2001) at para 3.

[149] A. Alan Borovoy, *The New Anti-Liberals* (Toronto: Canadian Scholars Press, 1999) at 69–70.

[150] *R. v. Latimer* [2001] 1 S.C.R. 3.

[151] A. Alan Borovoy, *At the Barricades* (Toronto: Irwin Law, 2014) at 197.

[152] Two useful books on abortion in Canada are by Anne Collins, *The big evasion: Abortion, the issue that won't go away*, Toronto: Lester & Orpen Dennys, 1985; and a biography of Henry Morgentaler by Catherine Dunphy, *Morgentaler, A Difficult Hero,* Toronto: Wiley, 2003.

[153] Useful Government of Canada document on history of abortion in Canada: publications.gc.ca/Collection-R/LoPBdP/CIR/8910-e.htm#D.%20The%20Badgley.

[154] The two key SCC Morgentaler cases can be confused with one another. The first, heard by the SCC from 1974, with the decision published in 1976, is known as *Morgentaler v. the Queen*. The second, 1988, is known as *R. v. Morgentaler*. There is also *R. v. Morgentaler* (1993).

[155] The Morgentaler/Borowski battles from the perspective of Borowski: F.L. Morton, *Morgentaler v. Borowski: Abortion, The Charter, and The Courts,* Toronto: McClelland & Stewart, 1992.

[156] A useful summary of Canadian obscenity/pornography law: The Evolution of Pornography Law in Canada: www.parl.gc.ca/Content/LOP/researchpublications/843-e.htm.

[157] Brenda Cossman, "Censor, Resist, Repeat: A History of Censorship of Gay and Lesbian Sexual Representation in Canada," *Duke Journal Of Gender Law & Policy* Volume 21:45 2013.

THIS IS **EXHIBIT "C"** REFERRED TO IN THE

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8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Sharkey

CANADIAN CIVIL LIBERTIES ASSOCIATION
360 Bloor Street West, Suite 506
Toronto, ON M5S 1X1
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E-mail: mail@ccla.org

ASSOCIATION CANADIENNE DES LIBERTÉS CIVILES
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Courriel : mail@ccla.org

November 11, 2011

The Honourable Doug Currie
Minister of Health and Wellness
PO Box 2000
105 Rochford Street, 4th Floor North
Charlottetown, PE, C1A 7N8

Fax: (902) 368.4121

Via Mail and Facsimile

Dear Mr. Currie,

I am writing to express the concern of the Canadian Civil Liberties Association about the lack of access to abortion services in Prince Edward Island.

It is of course understandable, as you stated in the press, that a province of 144,000 people cannot provide every possible health service, and that costs must be considered.

However in the case of abortion procedures, we would ask you to consider that young women and girls may not be in a position to travel to access this basic medical service, nor afford the expense of this travel. Moreover, some women and girls who are unable to access safe, affordable abortions may try to induce abortions on their own, at great risk to their health and safety.

In addition, the costs of offering abortion services in the province must be weighed against those of *not* offering them: the significantly higher costs for prenatal and neonatal care, labour and delivery services; mental health treatment for some unable to terminate unwanted pregnancies; and the

costs of treating injured women and girls who try to induce abortions on their own.

Abortion is generally a simple procedure that requires limited resources, is short in duration, and low-risk. Very little investment would be needed to create abortion services on the Island, as training for family doctors can be completed within 2-4 weeks, and the equipment needed is used in other medical procedures and therefore already within the possession of your hospitals or clinics, or can be acquired at very little cost.

We urge you to reassess the issue of the appropriateness of providing access to abortion services on Prince Edward Island. Such an assessment should include consideration of the impact of not providing this service to the women and girls who desperately need it. We understand that there is a need for such medical services on the Island.

In addition, we urge you to remove the requirement for doctors' referrals as a condition for funding abortion services out-of-province. Setting up procedural barriers, such as requiring doctors' referrals in advance of such a time-sensitive medical procedure, is prohibitive and discriminatory.

Yours truly,

Nathalie Des Rosiers
General Counsel

Noa Mendelsohn Aviv
Director, Equality Program

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8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Shirley

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The Honourable Jane Philpott,
Minister of Health,
70 Columbine Driveway, Tunney's Pasture
Postal Location: 0906C
Ottawa, ON K1A 0K9

Email: Jane.Philpott@parl.gc.ca

August 10, 2016

Dear Dr. Philpott,

***Re*: Rules Governing Access to Abortion Pill Mifegymiso**

We are writing on behalf of the Canadian Civil Liberties Association (CCLA) with respect to the unusual rules restricting the prescription, dispensing, and administration of the combination drug product Mifegymiso to women seeking abortion care.

CCLA was founded in 1964 and is an independent, non-profit, non-governmental organization dedicated to protecting and promoting fundamental human rights and civil liberties.

CCLA has questions about these rules, and concerns about the impact they might have on women's access to reproductive healthcare, particularly in rural and remote communities, where access is currently more limited. The approval and availability of Mifegymiso, a safe and effective medication, has the potential to singularly improve this access. Removing unnecessary restrictions will increase access in meaningful ways.

We appreciate that you have reportedly discussed the possibility that adjustments to these rules and restrictions may be made in the future. We would ask that you make every effort to address these matters without delay. In particular, CCLA would ask you to consider the reasons, if any, underlying the unusual restrictions governing the prescription, dispensing, and administration of Mifegymiso. What, if any, special dangers or risks exist with respect to this medication in contrast to the many

potentially fatal or cytotoxic drugs without such restrictions. Put differently, is there a medical or scientific justification that makes Mifegymiso more difficult to prescribe, dispense, and administer? Absent such justification, we would urge you to take swift action to lift these restrictive rules and bring this important medication in line with other medications in Canada.

As you know, women's rights to equality and liberty include sexual and reproductive rights. And essential to these rights is reproductive *choice*. For women to have choice, access to reproductive healthcare must be available in an accessible and meaningful way.

Dispensing authority

Information on the Health Canada website,[1] and in other reports, suggests that in contrast to most other medications which are dispensed by pharmacies, Mifegymiso may only be dispensed by physicians. This is an unusual restriction, and according to reports, it may not be practicable for physicians and clinics in certain locations, in small practices, and in particular in remote and rural communities already ill-equipped to store and stock medicines. It may also affect access to Mifegymiso, a safe and well-established form of abortion care, in communities with limited access to physicians.

We understand that a similar dispensing requirement exists in several other countries. Nonetheless, we would be grateful if you could help us understand the *medical reasons* for this requirement for Mifegymiso in contrast to other, potentially more risky medications, where no such requirement exists. If unjustified, we would urge you to take immediate steps to bring Mifegymiso in line with other drug products in order to provide women safe and effective reproductive choices.

Prescription Requirement – Special Training

Based on the Summary Basis of Decision for Mifegymiso[2] available on the Health Canada website, in order for physicians to prescribe this drug product, they will be required to register and complete a mandatory education program. Reports suggest the training component will involve 6 modules, which may amount to a full day. For most medications and treatment, no such training is required, as doctors have a great deal of medical knowledge, and are generally expected to educate themselves about relevant new treatments and developments.

---

[1] Government of Canada, Health Canada, *Summary Basis of Decision (SBD) for Mifegymiso* (8 January 2016) [*Summary Basis of Decision*], § 2 ("Why was Mifegymiso approved?"), online: <http://www.hc-sc.gc.ca/dhp-mps/prodpharma/sbd-smd/drug-med/sbd-smd-2016-Mifegymiso-160063-eng.php>.

[2] *Summary Basis of Decision*, *supra* note 1, § 1 ("What was approved?"), § 2 ("Why was Mifegymiso approved?"), online: <http://www.hc-sc.gc.ca/dhp-mps/prodpharma/sbd-smd/drug-med/sbd-smd-2016-Mifegymiso-160063-eng.php>.

While knowledge and training are inherently beneficial, it is not clear to us why this unusual mandatory training has been applied to Mifegymiso, a drug product much safer than many other medications which are more serious and have more harmful potential side effects. This requirement appears unduly onerous and excessive in contrast. For example, there is no mandatory training for doctors who administer blood pressure medication, despite the fact that this is a complicated and difficult medical task, and that blood pressure medication has many more serious and potentially harmful side effects. To the extent that physicians in small practices or in smaller locations may have difficulty finding time to meet this unusual requirement, this will negatively affect the availability of Mifegymiso for women patients of those physicians and in those locations. As such, here too we would ask that you reconsider without delay the medical necessity of this training requirement.

Dose in Presence of a Physician or as Directed

Based on Health Canada's materials, it appears that patients may be required to take the first of Mifgeymiso's two doses (mifepristone) in the presence of the prescribing physician [3] or, as decided by the doctor, in their presence or that of other medical staff.[4] Physicians may indeed be authorized (or even required) to ensure that such supervision takes place.

Given the slightly conflicting materials on the website, we would be grateful if you could clarify the aforementioned administration requirement. In any event, to the extent that doctors may have discretion to decide how the dose will be administered, on what basis will they exercise this discretion? Permitting individual doctors discretion to create more stringent requirements for all or certain patients is concerning, given different values and approaches to women's reproductive rights. A mandatory requirement that a physician or medical staff supervise the administration of the first dose is even more problematic, when such a requirement does not exist for almost any other medication. One notable exception is methadone, an addictive and widely abused substance whose restrictive administration can be more readily understood. While we understand that a supervised administration requirement exists in a number of countries where Mifegymiso is available, this alone does not, in our view, constitute clear *medical justification* for a requirement that may stigmatize and humiliate a woman seeking medical abortion care. If adequate justification does not exist, we would urge you to lift

---

[3] *Summary Basis of Decision*, *supra* note 1, *§* 2 ("The Restricted Distribution Program would necessitate that only registered physicians, having successfully completed the education program, would prescribe and provide Mifegymiso to patients, and would supervise the patient's administration of mifepristone"); Linepharma International Limited, "Product Monograph Including Patient Medication Information: Mifegymiso" (28 July 2015) [Product Monograph] at 14, online: Health Canada (Drug Identification Number (DIN) 02444038) <http://webprod5.hc-sc.gc.ca/dpd-bdpp/index-eng.jsp> ["Mifegymiso Product Monograph"].

[4] *Summary Basis of Decision*, *supra* note 1, *§* 2 ("The Restricted Distribution Program would necessitate that only registered physicians, having successfully completed the education program, would prescribe and provide Mifegymiso to patients, and would supervise the patient's administration of mifepristone"); *ibid.* But see *ibid* at 38.

this restriction in order to destigmatize abortion care and enhance access to this important treatment and women's reproductive rights.

Conclusion

CCLA understands the need to ensure the safety of people in Canada, and appreciates the need to protect patients' health. We appreciate, as noted above, that you have reportedly discussed the possibility that adjustments to these requirements may be made in the future. We would ask that you consider issues of stigma and patient care without delay, and reconsider whether there is in fact sufficient medical justification for the unusual or onerous restrictions established for Mifegymiso at this time. After all, patient health includes the right to access safe and effective reproductive healthcare. Women in Canada should not have to and sometimes cannot wait to access this important medical treatment.

We would be happy to meet with you to discuss this important matter, and look forward to hearing from you.

Sincerely,

Sukanya Pillay
Executive Director and
General Counsel

Noa Mendelsohn Aviv
Director, Equality Program

Dr. Debby Copes,
Medical Director,
Choice in Health Clinic
1994-2015
Board Member

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8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Hurley

CANADIAN CIVIL LIBERTIES ASSOCIATION
ASSOCIATION CANADIENNE DES LIBERTES CIVILES

CCLA Statement of Support
Abortion Access and LGBTQ+ Healthcare Now Protest – 27 August 2020

While we cannot be with you in person, the Canadian Civil Liberties Association is with you in spirit today to support the call for reproductive justice in New Brunswick.

We would like to thank and commend the organizers of this important event and the many activists who have worked to promote access to abortion in this province.

The Canadian Civil Liberties is a national, independent organization that fights for the rights and freedoms of all people in Canada. As such, choice and access to abortion have been areas of longstanding concern for us at CCLA.

After all, the right to healthcare is a fundamental human right that belongs to all people. And abortion is a basic, critical form of healthcare that must be available, publicly funded, and accessible to women, girls, and trans individuals.

And yet in 2020, contrary to legal precedent and good policy, women, girls and LGBTQ+ individuals still face blatant discrimination through Regulation 84-20 of the *Medical Services Payment Act*, which denies funding for abortion outside of hospitals (and these exist in 2 cities), making abortion either inaccessible or entirely unavailable in most parts of New Brunswick.

This anti-Choice regulation has operated in the province for far too long, and it is high time for the government to repeal it.

The role of the government is to protect the health of its citizens. It is not to erect barriers that hurt vulnerable women, girls, and trans folks, or to interfere with their rights.

By maintaining the anti-Choice Regulation:

1. Girls, women, and trans individuals who are unable to access safe, affordable abortions may seek unsafe options at great risk to their health and safety, or end up with unwanted pregnancies – causing serious personal and societal harms; and

2. Clinic 554 will almost certainly close, which will deprive vulnerable and marginalized minority groups of a crucial safe space, abortion healthcare, and other sensitive treatments that may be difficult to obtain elsewhere for impecunious and marginalized individuals who may need it most.

It is no answer to say – as the government has tried to do - that the province does not fund private clinics. This is simply false. New Brunswick can and does fund healthcare provided at doctors' offices and clinics across the province.

Indeed, there is no justification at all for denying women, girls and trans folks the right to choose, and the ability to access abortion – a basic form of healthcare.

That is why we are speaking out today. Together with you and the many reproductive justice activists across New Brunswick, we demand, as a matter of law and conscience, that the anti-choice regulation restricting abortion funding must be repealed immediately.

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Commissioner for Taking Affidavits

Emily Sherkey

CANADIAN CIVIL LIBERTIES ASSOCIATION

ASSOCIATION CANADIENNE DES LIBERTES CIVILES

CCLA Statement of Support
Vigil for Clinic 554 – 25 September 2020

Reproductive justice – and the right to abortion – is critical for ensuring the fundamental rights of women, girls, and trans people.

Recently departed United States Supreme Court Justice Ruth Bader Ginsburg said it plainly:

> "Abortion prohibition by the State… controls women and denies them full autonomy and full equality with men."

What is at stake, she asserted, is "the roles women are to play in society. Are women to have the opportunity to participate in full partnership with men in the nation's social, political, and economic life?"

Without reproductive rights, RGB taught, there can be no real gender equality.

And it is critical to ensuring privacy, liberty, autonomy, and other fundamental freedoms.

Today, New Brunswick stands at a critical juncture. If Clinic 554 closes at the end of the month, many marginalized and vulnerable women, girls and trans people will lose access to abortion, access to gender-affirming healthcare, and along with these losses, healthcare that underlies the attainment of many other rights.

This is dangerous and unacceptable. The role of the government is to protect the health of its citizens. It is not to erect barriers that hurt vulnerable women, girls, and trans folks, or to interfere with their rights. It is not to send people in need of abortion into desperate situations where their health and safety may be endangered.

The Canadian Civil Liberties Association supports the activists and protesters who will gather today to celebrate the achievements of Clinic 554 and its predecessor, the Morgentaler Clinic.

We join with them and continue to demand that the province amend the blatantly discriminatory Regulation 84-20.

CCLA continues to demand that the province and federal government meet their obligations to protect the women, girls, and trans people in New Brunswick.

We demand they take urgent measures to ensure that abortion is recognized as a basic, critical form of healthcare, and ensure that it is made available, publicly funded, and accessible to women, girls, and trans people.

CCLA commends the organizers of this important event and the many activists who have worked to promote access to abortion in this province. We support you and stand with you.

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8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Shirley

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

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8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Sturkey

xplore

ettings

Thread

Canadian Civil Liberties Association ✓
@cancivlib

Today we launched litigation to fight for abortion access in New Brunswick.

11:40 AM · Jan 7, 2021 · Twitter Web App

146 Retweets **21** Quote Tweets **938** Likes

Canadian Civil Liberties Association ✓ @cancivlib · Jan 7
Replying to @cancivlib
A New Brunswick regulation restricts access to abortion unless done in approved hospitals, even though this restriction is not medically necessary or justified.

5 11 57

Canadian Civil Liberties Association ✓ @cancivlib · Jan 7
The New Brunswick law has creates a serious issue for New Brunswick women, girls and trans people who need access to abortion, a basic form of health care.

Read more about the case here:

Reproductive Justice - CCLA
Reproductive justice The issue CCLA is grateful for the support and pro bono contribution of our excellent ...
ccla.org

8 16 54

Jada D @thordora · Jan 7
Replying to @cancivlib and @AbortionRights
Thank you! As a woman with two children, THANK YOU for fighting ensure access for them and their families in the future.

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Relevant people

Canadian Civil Liber... ✓ Follow
@cancivlib
Defending Canadian rights and freedoms since 1964. media@ccla.org

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US Representative Ron Wright dies following COVID-19 diagnosis at 67
Trending with Ron Wright

Trending in Canada
Beijing
20.6K Tweets

Video games · Trending
Three Houses
1,912 Tweets

NFL · February 6, 2021
The Eagles are expected to trade Carson Wentz 'in the coming days,' ESPN reports
Trending with Eagles

The Weather Netw... ✓ · Yesterday
Canadians vs. the Polar Vortex

Thread

Jada D @thordora · Jan 7
Replying to @cancivlib and @AbortionRights
Thank you! As a woman with two children, THANK YOU for fighting ensure access for them and their families in the future.
8 9

Show replies

Gordon MacLean @GordonMacLean3 · Jan 7
Replying to @cancivlib
How about are liberties as Canadian citizens?
2

@itunes65 · Jan 7
Replying to @cancivlib
Lockdowns lockdowns lockdowns.
4

Donna Morris @MusingOnMovies · Jan 7
Replying to @cancivlib
Intended Charter litigation made the difference for Prince Edward Island. Good luck.
1 3

Yves Doucet @yvesdoucet · Jan 7
Replying to @cancivlib
Thank you!
1

Diana EH @nomine_Artemis · Jan 7
Replying to @cancivlib
👍

LA Legault @LALegault · Jan 9
Replying to @cancivlib
Thank you

Thread

LA Legault @LALegault · Jan 9
Replying to @cancivlib
Thank you 🙏

More replies

Y. Mian @y_mian · Jan 7
Replying to @cancivlib
What century is this? Pro-Choice activists should lobby IRVING family, one of richest in #Canada, for no provincial govt & legislature in #nbpoli can afford to ignore'em. Do MALE politicians advocating for restricting abortion rights plan to undergo VASECTOMY themselves? #cdnpoli
2

CIBERKNIGHT @THECIBERKNIGHT · Jan 7
Replying to @cancivlib
Don't you think there are bigger civil liberty problems currently being faced by ALL Canadians?
8

RPGさん @I_RPG_I · Jan 7
Replying to @cancivlib
oh yeah big f'in priority right now when all over Canada gov's push for unwarranted tyranical messures attacking people and fining them... pffff gfy

Dan Briand @DanBriand1 · Jan 7
Replying to @cancivlib
Yes because murdering the unborn so people have the freedom to be whores is a good thing. If abortion is legal then why isn't murder ?
1

Bernard of the House Mittens @kevlarbieska · Jan 7
imagine being a fascist and not being able to spell fascist. very funny shit

Bernard of the House Mittens @kevlarbieska · Jan 7
imagine being a fascist and not being able to spell fascist. very funny shit

3 6

Show replies

Lord Chimp @NeoLordChimp · Jan 7
Replying to @cancivlib
shouldn't you be fighting lockdowns, which are unprecedented attacks on our civil liberties? Oh sorry, that would require some courage.

1 1

Just a Concerned Citizen @Dudemancool3 · Jan 7
Replying to @cancivlib
You missed the forest for the sticks on this one.

2

Cory AB @trainvalet · Jan 7
Replying to @cancivlib
Ok I'm gonna be snarky. How is this possible in Justin Trudeaus Canada?

1

Dr Jillian getyourvaccine Demontigny @jilliandemo · Jan 7
Because healthcare is provincial jurisdiction.

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What's happening

In memoriam · 54 minutes ago
US Representative Ron Wright dies following COVID-19 diagnosis at 67
Trending with Ron Wright

Trending in Canada
Three Houses
1,856 Tweets

Trending in Canada
Dr. Fitzgerald

NFL · February 6, 2021
The Eagles are expected to trade Carson Wentz 'in the coming days,' ESPN reports
Trending with Eagles

Super Bowl LV · Last night
The Weeknd's close camera work delivered the meme of Super Bowl LV

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Thread

Dr Jillian getyourvaccine Demontigny @jilliandemo · Jan 7

Because healthcare is provincial jurisdiction.

1 1

Show replies

barube65 @bruce048 · Jan 7

Replying to @cancivlib

Really?? And what about what is happening in Quebec? The curfew. Are ya doing anything about that?

The Spoonless Kitchen @TheSpoonless · Jan 8

Replying to @cancivlib and @TheAgentNDN

Spy the GRU agents in the comments who can't tell the difference between New Brunswick and Quebec.....

1

CANADIAN_NAVALNY @alexpalen1 · Jan 8

Replying to @cancivlib

Keep fighting for Canadians, we need it!

Question: Is there any remedy for Canadian mistreated and humiliated at US border?

@realDonaldTrump @DHS_Wolf @CBPMarkMorgan refuse to notice any appeals to Justice and demands for Investigation for 750 days..

Is there anything you can do?

American people expect their law enforcement agencies to be honest.

I declare that CBP Officers, CBP Supervisor, CBP NEXUS Superintendent under your command disregard public trust, integrity and CBP training, abuse, mistreat and racially profile travelers, file false reports (untrue facts, false information, falsify time of events, misplace and deliberately change chain of events), force other CBP officers to falsify their reports, copy false and misleading statements (including misspellings and mistakes) in order to justify illegal actions and make an innocent party appear guilty, use force against travelers and use this false, misleading information filed to justify revocation of cross-border travel

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Trending with Eagles

Super Bowl LV · Last night

The Weeknd's close camera work delivered the meme of Super Bowl LV

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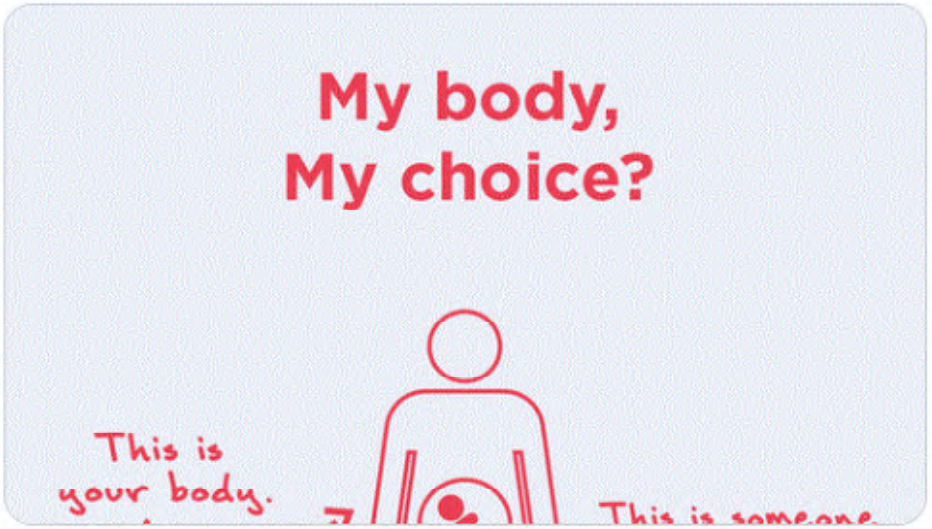
justin vung @852852hk · Jan 10
Replying to @cancivlib and @jilliandemo



Mike DuPuis @MikeDuPuis15 · Jan 7
Replying to @cancivlib
Youre a joke of an organisation.

3

Big D TX / CO @DoranOancia · Jan 7
Replying to @cancivlib
Unborn humans have no civil liberties eh? Y'all suck.

ThatGuyWithTheBlueberryPie @ThatGuy92679438 · Jan 7
Replying to @cancivlib
Canadians are experiencing the largest crackdown of their rights and freedoms EVER. But sure, we need to make sure people can kill their unborn children. This organization is a disgrace.

2 1 3

IncredulousMark @IncredulousMark · Jan 8
Aw, Guy, don't be upset. It's okay to not understand stuff.

1 3

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8 DAY OF FEBRUARY, 2021

Commissioner for Taking Affidavits

Emily Sherkey

Tweet

Canadian Civil Liberties Association
@cancivlib

SHARE WIDELY! Sign our petition for abortion access in New Brunswick. Women's bodies do not need to be regulated! Sign here: ccla.org/abortionpetiti...

12:08 PM · Jan 7, 2021 · Twitter Web App

57 Retweets **14** Quote Tweets **51** Likes

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@cancivlib
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What's happening

In memoriam · 34 minutes ago
US Representative Ron Wright dies following COVID-19 diagnosis at 67
Trending with Ron Wright

Trending in Canada
Beijing
20.4K Tweets

Tweet

12:08 PM · Jan 7, 2021 · Twitter Web App

57 Retweets **14** Quote Tweets **51** Likes

Mr.JerryK @JerryRi02465347 · Jan 8
Replying to @cancivlib and @thecaitdiaries
#AbortionIsMurder

1

Show replies

Ila @crazyzombienerd · Jan 8
Replying to @cancivlib and @logruhhhhh
Signed.

1

TranquilAura @MysticAura_ · Jan 7
Replying to @cancivlib
I remember when someone having an abortion wasn't a celebrated thing, by the person having it done or the public. It was a hard decision that was hard to get over.

Now you guys party in the street about murdering life, and want to be able to do it no matter what trimester. Sick

2

Logruhhhhh (Parker) @logruhhhhh · Jan 7
Sick there's an abortion bloc party? Must have missed the facebook event for that one. I've really been meaning to get out there and slam some 8-monthers to the curb.

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What´s happening

In memoriam · 43 minutes ago
US Representative Ron Wright dies following COVID-19 diagnosis at 67
Trending with Ron Wright

Trending in Canada
Beijing
20.6K Tweets

Video games · Trending
Three Houses
1,912 Tweets

NFL · February 6, 2021
The Eagles are expected to trade Carson Wentz 'in the coming days,' ESPN reports
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Canadians vs. the Polar Vortex

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Commissioner for Taking Affidavits

Emily Shurkey

Tweet

Canadian Civil Liberties Association
@cancivlib

"I would like to think that in 2021, no government would think it's remotely feasible to deny a group their basic equality rights - And abortion is a basic equality right, for women and trans people."- Noa Mendelsohn Aviv, CCLA

Canada: activists sue province over refusal to fund abortions in private clinics
Lawsuit argues that New Brunswick's refusal violates both the law and the Charter of Rights and Freedoms
theguardian.com

2:58 PM · Jan 8, 2021 · Twitter Web App

7 Retweets **2** Quote Tweets **22** Likes

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@cancivlib
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What´s happening

In memoriam · 34 minutes ago
US Representative Ron Wright dies following COVID-19 diagnosis at 67
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Beijing
20.4K Tweets

Video games · Trending
Three Houses
1,890 Tweets

NFL · February 6, 2021
The Eagles are expected to trade Carson Wentz 'in the coming days,' ESPN reports
Trending with Eagles

Canada: activists sue province over refusal to fund abortions in private clinics

Lawsuit argues that New Brunswick's refusal violates both the law and the Charter of Rights and Freedoms

theguardian.com

2:58 PM · Jan 8, 2021 · Twitter Web App

7 Retweets **2** Quote Tweets **22** Likes

More replies

Malicious Madness In Plain Sight @InMalicious · Jan 8

Replying to @cancivlib

You people are all crazy as f***. You don't even know what's going on. Wow

Malicious Madness In Plain Sight @InMalicious · Jan 9

Replying to @cancivlib

Gay and trans people are seriously f***** in the head. This is the main reason for the demise of mankind

David Cooke @DavidCookeCLC · Jan 9

Replying to @cancivlib

What great human rights! The right to butcher and dismember innocent preborn human beings. The right to keep women in the dark about their options, supports, and what abortion really does to them their babies.

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@cancivlib

Defending Canadian rights ar freedoms since 1964. media@

What´s happening

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20.4K Tweets

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NFL · February 6, 2021

The Eagles are expected to trade Carson Wentz 'in the coming days,' ESPN reports

Trending with Eagles

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Emily Hurley

Clinic 554

Like

About

See All

Patient-driven care centred upon caring, inclusiveness and respect

Clinic 554 is a family practice devoted to patient-driven healthcare. We aim to further the experiences of health and wellbeing of our patients throu... See More

2,476 people like this

2,616 people follow this

191 people checked in here

http://clinic554.ca/

+1 855-978-5434

Price Range · $

Open Now
2:00 PM - 7:00 PM

Medical Center · Doctor

Suggest Edits

Does this place offer curbside pickup?

Clinic 554
September [illegible]

We are sad to confirm that the Clinic 554 we have all grown to know and love, and nurture, and fight for... will all but close at the end of this month. Dr. Edgar has applied for an exemption to provide temporary visits for a small group of our most vulnerable family practice patients, including those who require specialized care like abortion access, over the coming weeks to months. If his application is approved, we will reach out to you.

Since Dr. Edgar publicly announced our imminent risk of closure in October 2019, we have had the terrifically sad task of slowly saying goodbye to you. In January, we stopped accepting new transgender patients because we didn't know if we would be open long enough to start you on a stable treatment path. We have now turned away nearly 70 trans people, and most of you have nowhere else to go. This has been heartbreaking for us.

In April, Health Minister Flemming wrote us to say he had no intention of reviewing Reg 84-20, even on an interim basis during the pandemic. Since then, we have felt compelled to stop taking on new prenatal patients, fearful we would not be here for you by the time you went into labour. To be clear, providing prenatal care is one of Dr. Edgar's greatest joys.

With your continued support, we have made every effort to stay open as long as possible, but our ability to do so is weakened by the New Brunswick government's persistent refusal to provide universal healthcare to ALL our patients, without discrimination.

We have tried to provide final visits to as many active family practice patients as possible, but our best intentions have been limited by the pandemic. For anyone who did not have a chance to say goodbye in person, we have truly appreciated being a part of your healthcare team for the last six years and we will miss you greatly!

If you haven't already, you should register with Patient Connect NB to be assigned a new primary care provider: https://www.pxw1.snb.ca/snb9000/product.aspx.... We will keep your medical record for ten years (or in the case of children under the age of 11, until they are the age of 21) and will forward your chart to a new provider when you are assigned one. We are still answering the phones but please bear with us at this busy time.

Yes | Unsure | No

Photos

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CLOSURE STATEMENT OF DR. ADRIAN E...

540

80.3K Views · a year ago

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For all those who are still rallying around us, thank you! Please, DO NOT STOP! This Clinic 554 may be coming to an end, but patients who have nowhere else to turn need and deserve your fighting spirit now more than ever! Will Mr. Higgs listen to the overwhelming advice from medical experts? Maybe the next Clinic 554 will be Canada's first Queer and Reproductive Care Institute (QRCI)? We like the ring of folks coming to a "quirky" clinic, but we'd settle for a Centre for Excellence in Gender and Sexual Health, too... just putting it out there!

In all honesty, we are grief stricken to be here. Thank you all for your understanding and support.

ervice
Brunswick

PXW1.SNB.CA

Patient Connect NB - Online Registrations

Patient Connect NB is designed to help New Brunswick residents find a primary health care provider - family doctor or nurse practitioner. T...

168 56 Comments 241 Shares

Like Comment Share

All Comments

Write a comment...

Janelle Copeland
Blaine Higgs

Like · Reply · 19w

1 Reply

Krista Gwen
Seriously shameful so sorry this is happening

Like · Reply · 19w

1 Reply

Sylvie France Gionet
How can one get a copy of his/her medical file?

Like · Reply · 19w

Vicky Cauley

Open Now
2:00 PM - 7:00 PM

Medical Center · Doctor

Suggest Edits

Does this place offer curbside pickup?

Yes | Unsure | No

Photos See All

Videos See All

CLOSURE STATEMENT OF DR. ADRIAN E...

Vicky Cauley
Having moved to New Brunswick from elsewhere in Canada, I have been stunned, appalled and at times downright horrified and disgusted by the health care here. Not concerning health care professionals by any means, rather, the system in which they are pl... See More
Like · Reply · 19w · Edited 8
2 Replies

Isalynn Marie
Abortion is murder , baby's can feel up to 10-12 weeks. And spread their fingers repent from your wickedness and turn to Jesus.
Like · Reply · 16w 1

Honey R Ryan
Adrian, Val, and Clinic 554 team, I am so sorry that this has been happening to you for many years now, and that it is still continuing. Absolutely disgusting. And, the fact that Mr.Higgs was voted in, again, despite his unwillingness to abide by the... See More
Like · Reply · 19w · Edited 3

Gina Ringer
Heartwarming to know that no more vulnerable lives will be brutally murdered at this facility.
Like · Reply · 19w 6
23 Replies

Sky Ann
Could you not take blaine higgs to human rights court for violating womens rights as determined by the suprem court of Canada?
Like · Reply · 18w

Janelle Copeland
Blaine Higgs
Like · Reply · 19w

Laura Steeves-Green
This is absolutely heartbreaking. I'm so sorry. You have done so much good for so many people.
Like · Reply · 19w

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Create Page

Like · Reply · 19w

Laura Steeves-Green
This is absolutely heartbreaking. I'm so sorry. You have done so much good for so many people.
Like · Reply · 19w

Amanda Joy Templeman
❤️ from Newfoindland. How is this happening in Canada in 2020 😔
2
Like · Reply · 19w

Chloë Zara
Thank you !!!! ❤️❤️❤️❤️❤️❤️
1
Like · Reply · 19w

Kirk Lewis
This absolutely sucks.
Thanks for the opportunity in being a patient at 554. It was just amazing having a doctor that understands me, and the community it had served. **Clinic 554**, you are loved and appreciated, and definitely will be missed.
Like · Reply · 19w

Andrea Mitchell
We will miss you so much thank you all for the amazing care you have given us when we were in need... the Mitchell family wish you all the very best for what ever the future holds and we hope that NB's loss is another progressive and forward thinking ... See More
Like · Reply · 19w

Rosey Peterson
I really am ashamed
Like · Reply · 19w

Lindsay Landsea
Dr. Edgar and Clinic 554 saved my life by access to abortion and compassionate care medicated IUD. Thank you
Like · Reply · 18w

Diane LeBlanc
So sad for those people needing their services
Like · Reply · 19w

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Medical Company
Like

Add Your Business to Facebook

Showcase your work, create ads and connect with customers or supporters.

Create Page

Diane LeBlanc
So sad for those people needing their services
Like · Reply · 19w

Jenny Jenny
I'm so sorry to all the patients that are losing their doctor and the doctors losing their facility. ❤️❤️
Like · Reply · 19w 1

Janelle Copeland
Brian Gallant
Like · Reply · 19w

Janelle Copeland
David Coon 1
Like · Reply · 19w

Janelle Copeland
Jenica Atwin 3
Like · Reply · 19w

Janelle Copeland
Dominic Cardy 1
Like · Reply · 19w

Janelle Copeland
Justin Trudeau 1
Like · Reply · 19w

Janelle Copeland
Dominic Cardy
Like · Reply · 19w

Janelle Copeland
Jenica Atwin
Like · Reply · 19w

Robert Ebony Thornberry
STOP KILLING INNOCENT BABIES!
Like · Reply · 18w 2

Marc Poirier
Hi. I'm a journalist and I'm writting a story about the aftermath of the closure of Clinic 554. I'd like to talk to someone to have an update. My email is:

Videos

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Janelle Copeland
Dominic Cardy

Like · Reply · 19w

Janelle Copeland
Jenica Atwin

Like · Reply · 19w

Robert Ebony Thornberry
STOP KILLING INNOCENT BABIES!

2

Like · Reply · 18w

Marc Poirier
Hi. I'm a journalist and I'm writting a story about the aftermath of the closure of Clinic 554. I'd like to talk to someone to have an update. My email is: caraquet7@gmail.com - phone number: 506 866-0215. Thank you.

Like · Reply · 10w

Adam Kileel
What a blessing. Praise be to Jesus Christ.

Like · Reply · 14w

Tom Hamill
As the parent of a transgender child, this hurts our family BAD.

Like · Reply · 18w

Write a comment...

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Clinic 554

May 8, 2020 ·

We are appalled that women are being told that their closest access for a Medicare covered abortion if they are more than 13 weeks along is in Nova Scotia. The lack of funding for the only 2nd tri abortion provisions in the province has always been a problem, but during the COVID 19 pandemic when we want people to avoid travel and avoid hospitals, it's absolutely deplorable. We have reached out everyday to our government and COVID 19 response teams since the beginning of the pandemic. We told them that due to social distancing, women can't find child care that would allow them to travel, that women are not comfortable taking the bus to reach a hospital where an abortion could be covered by Medicare, and they are just not comfortable, even frightened, to go to a hospital during the COVID 19 pandemic. And we have been told repeatedly that abortion access "will not be brought forward as a COVID initiative". Why do they turn their backs on women in need of an abortion during a pandemic? At Clinic 554 we try to provide pro bono services for those in need, but it's not sustainable. We need support. Please make some noise to your MLA, public health, Minister of Health, and the Women's Equality Branch. Donations are accepted via paypal or e-transfer. All funds go towards direct care.

193 58 Comments 282 Shares

Like Comment Share

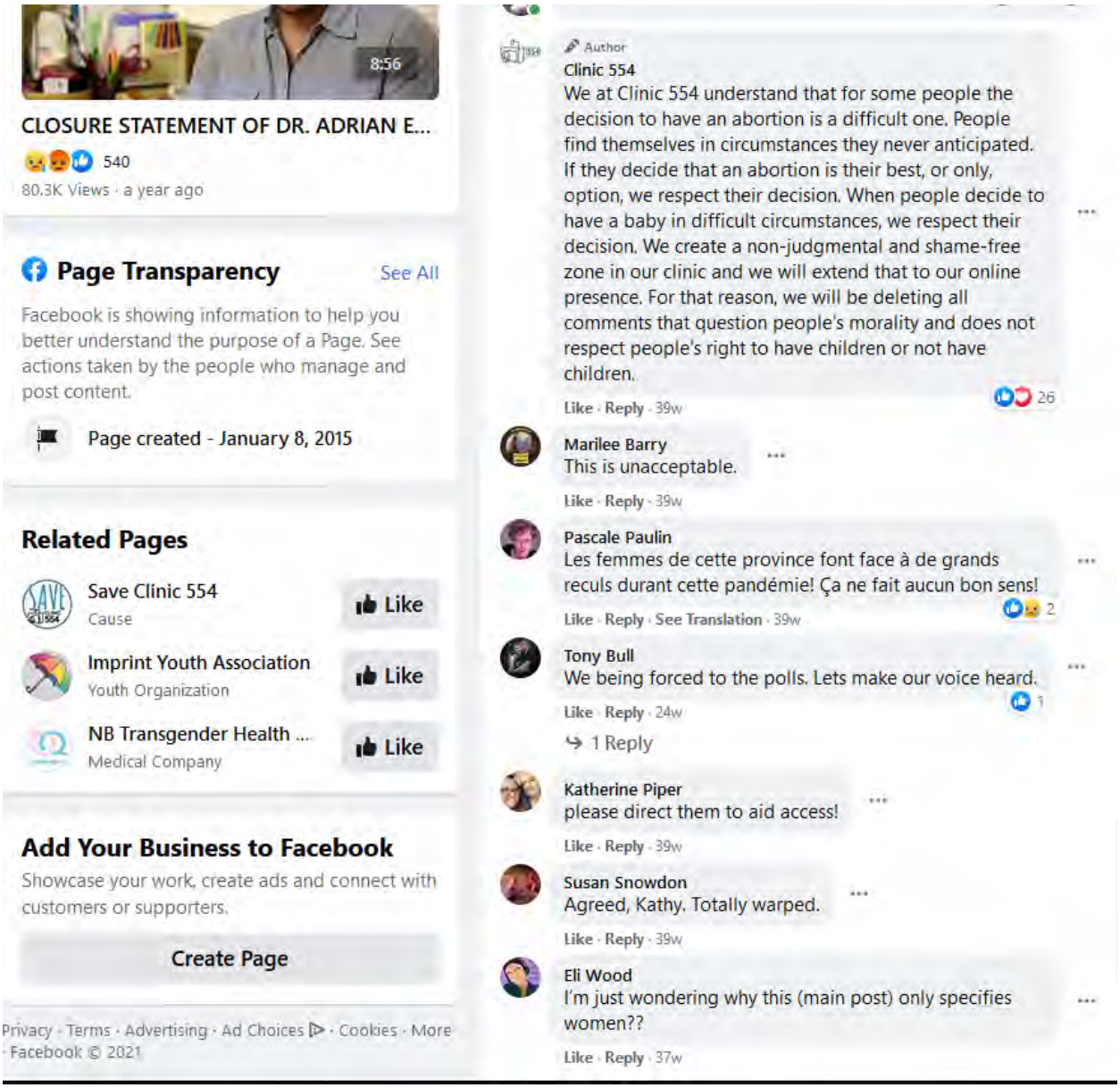
All Comments

Write a comment...

Author

Clinic 554

We at Clinic 554 understand that for some people the decision to have an abortion is a difficult one. People find themselves in circumstances they never anticipated. If they decide that an abortion is their best, or only, option, we respect their decision. When people decide to have a baby in difficult circumstances, we respect their decision. We create a non-judgmental and shame-free zone in our clinic and we will extend that to our online presence. For that reason, we will be deleting all comments that question people's morality and does not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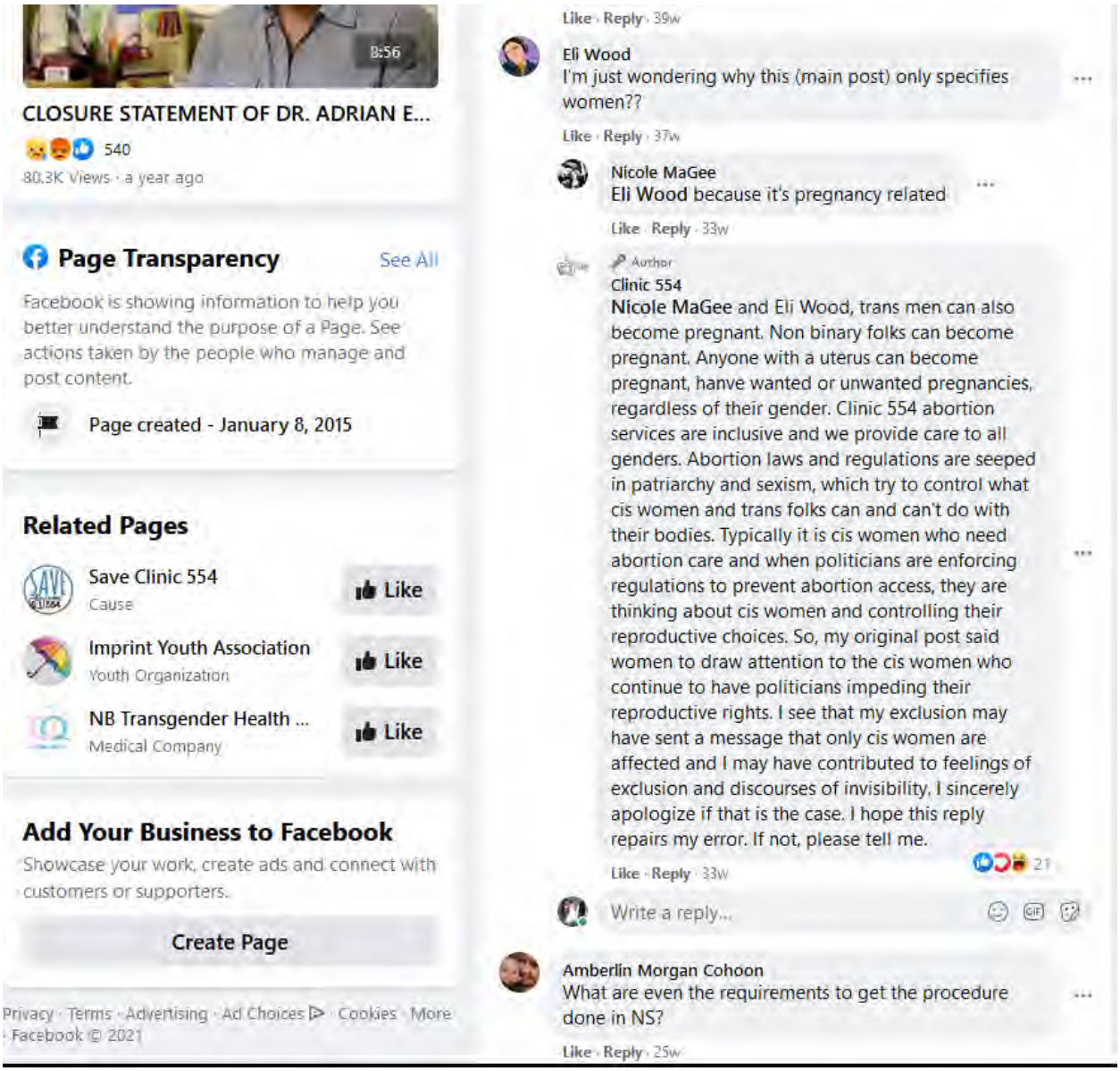
Like · Reply · 39w
26
Marilee Barry
This is unacceptable.
Like · Reply · 39w
Pascale Paulin
Les femmes de cette province font face à de grands reculs durant cette pandémie! Ça ne fait aucun bon sens!
Like · Reply · See Translation · 39w
2
Tony Bull
We being forced to the polls. Lets make our voice heard.
Like · Reply · 24w
1
1 Reply
Katherine Piper
please direct them to aid access!
Like · Reply · 39w
Susan Snowdon
Agreed, Kathy. Totally warped.
Like · Reply · 39w
Eli Wood
I'm just wondering why this (main post) only specifies women??
Like · Reply · 37w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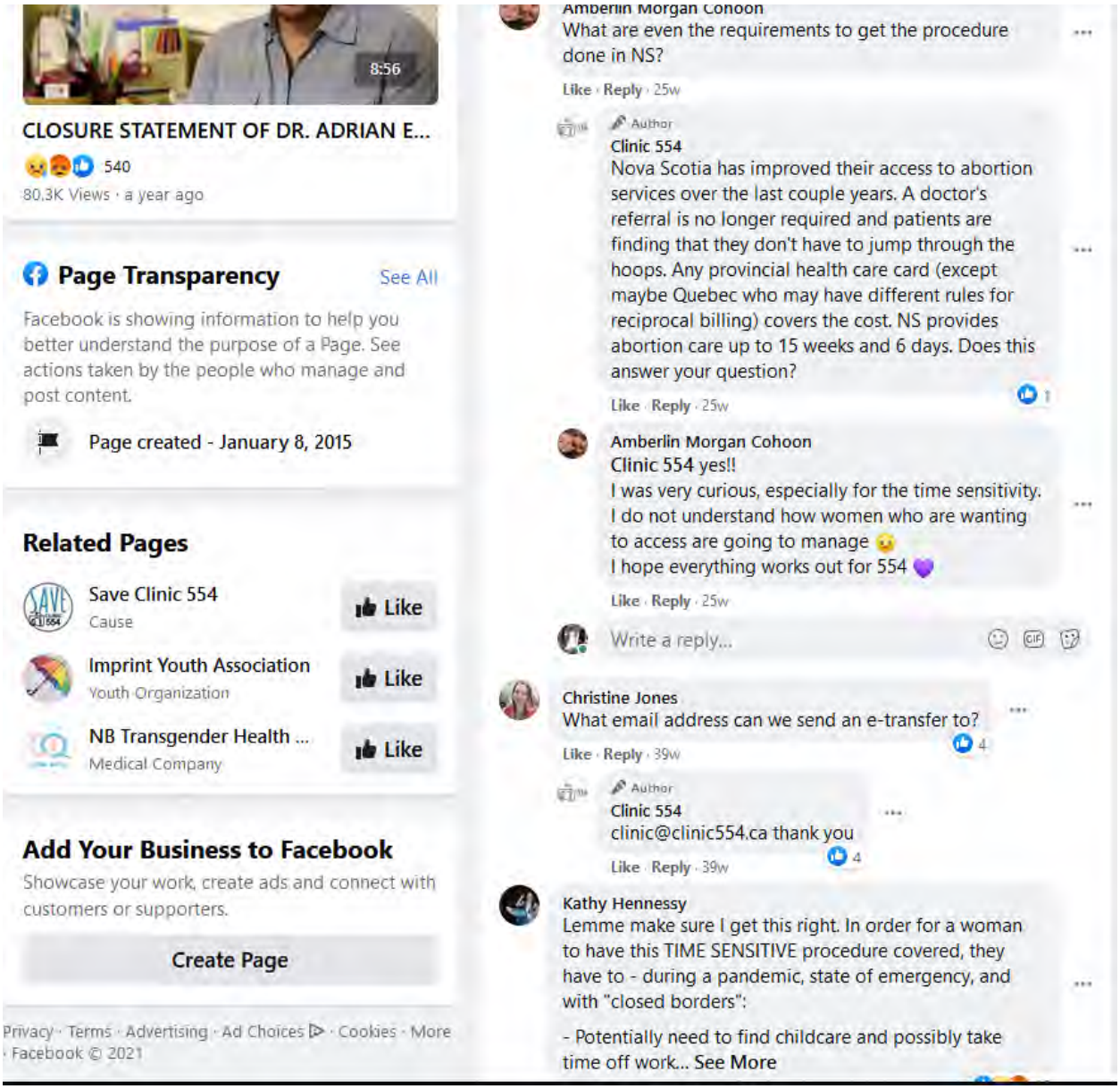
Facebook © 2021
Like · Reply · 39w
Eli Wood
I'm just wondering why this (main post) only specifies women??
Like · Reply · 37w
Nicole MaGee
Eli Wood because it's pregnancy related
Like · Reply · 33w
Author
Clinic 554
Nicole MaGee and Eli Wood, trans men can also become pregnant. Non binary folks can become pregnant. Anyone with a uterus can become pregnant, hanve wanted or unwanted pregnancies, regardless of their gender. Clinic 554 abortion services are inclusive and we provide care to all genders. Abortion laws and regulations are seeped in patriarchy and sexism, which try to control what cis women and trans folks can and can't do with their bodies. Typically it is cis women who need abortion care and when politicians are enforcing regulations to prevent abortion access, they are thinking about cis women and controlling their reproductive choices. So, my original post said women to draw attention to the cis women who continue to have politicians impeding their reproductive rights. I see that my exclusion may have sent a message that only cis women are affected and I may have contributed to feelings of exclusion and discourses of invisibility. I sincerely apologize if that is the case. I hope this reply repairs my error. If not, please tell me.
21
Like · Reply · 33w
Write a reply...
Amberlin Morgan Cohoon
What are even the requirements to get the procedure done in NS?
Like · Reply · 25w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Amberlin Morgan Cohoon
What are even the requirements to get the procedure done in NS?
Like · Reply · 25w
Author
Clinic 554
Nova Scotia has improved their access to abortion services over the last couple years. A doctor's referral is no longer required and patients are finding that they don't have to jump through the hoops. Any provincial health care card (except maybe Quebec who may have different rules for reciprocal billing) covers the cost. NS provides abortion care up to 15 weeks and 6 days. Does this answer your question?
Like · Reply · 25w
1
Amberlin Morgan Cohoon
Clinic 554 yes!!
I was very curious, especially for the time sensitivity. I do not understand how women who are wanting to access are going to manage
I hope everything works out for 554
Like · Reply · 25w
Write a reply...
Christine Jones
What email address can we send an e-transfer to?
Like · Reply · 39w
4
Author
Clinic 554
clinic@clinic554.ca thank you
Like · Reply · 39w
4
Kathy Hennessy
Lemme make sure I get this right. In order for a woman to have this TIME SENSITIVE procedure covered, they have to - during a pandemic, state of emergency, and with "closed borders":
- Potentially need to find childcare and possibly take time off work... See More

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Kathy Hennessy

Lemme make sure I get this right. In order for a woman to have this TIME SENSITIVE procedure covered, they have to - during a pandemic, state of emergency, and with "closed borders":

- Potentially need to find childcare and possibly take time off work for while she is traveling to Nova Scotia until she is back
- GET to Nova Scotia, but not driving herself because she wouldn't be allowed to drive herself following the procedure, so maybe have a friend drive her...oh wait, hopefully that person is part of her "two house bubble" otherwise that's not allowed. Or take a bus, which is super expensive, time consuming, and also risky as hell.
- I'm guessing the procedure will be booked for a morning and she'd have to arrive early. But buses leave during the day, so she probably has to leave the day before. So add that to the childcare situation, time off work, and also add hotel costs. Wait, are hotels are even open?
- Have the procedure, and somehow get BACK home, let's assume Fredericton. While recovering, uncomfortable, looped up on pain medication, and in pain. Let's hope that return bus schedule works out well otherwise here's another night of hotel, another day of maybe lost work, and extra childcare.
- Great, it's time to come home to NB! But now you have mandated 14 days of self isolation because you just came from another province so you can't go to work, can't go grocery shopping, can't go to the pharmacy to get pain medication or stock on surely needed female sanitation equipment.

Yeah, seems totally fair....
What. The. Fudge.

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Clinic 554

You got it right. For some people, the journey to Moncton is riddled with the same barriers. Clinic 554 spoke with NS Women's Choice Clinic and

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Yeah, seems totally fair....
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Author
Clinic 554
You got it right. For some people, the journey to Moncton is riddled with the same barriers. Clinic 554 spoke with NS Women's Choice Clinic and Montreal's Morgentaler Clinic and told them they could re-direct callers seeking an abortion to Clinic 554, regardless of financial situations. We are doing what we can to provide the health care people deserve. We desperately want the NB government to do the same. They swiftly made many COVID 19 amendments so we know that ensuring regional abortions access could be done. The Federal Government already claw backed $150 000 in health transfers to NB for their violation of the Canada Health Act., but Higgs & Flemming's heels are dug in so deep, in the already deep holes from the generations before them. It is disheartening. Thank you for sharing the ire with us.

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Morgan Cunningham
Who wouldnt wanna fund a place that commits cold blooded murder

Like · Reply · 24w · 1

1 Reply

Gareth William
How horrendous and unacceptable that women have to drive so far to murder an innocent, unborn baby!

Like · Reply · 25w · Edited · 1

6 Replies

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