

IN THE COURT OF QUEEN'S BENCH OF
NEW BRUNSWICK

COUR DU BANC DE LA REINE DU
NOUVEAU-BRUNSWICK

TRIAL DIVISION

DIVISION DE

JUDICIAL DISTRICT OF FREDERICTON

CIRCONSCRIPTION JUDICIAIRE DE
FREDERICTON

B E T W E E N:

E N T R E:

**CANADIAN CIVIL LIBERTIES
ASSOCIATION**

Plaintiff/Moving Party

demandeur

- and -

- et -

THE PROVINCE OF NEW BRUNSWICK

Defendant/Respondent

défendeur

**NOTICE OF MOTION
(Rule 37 of the Rules of Court)**

**AVIS DE MOTION
(Règle 37 des Règles de procédure)**

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

DESTINATAIRE:

The Plaintiff will make a motion to the Court at
427 Queen Street, Fredericton, New Brunswick,
on a date to be determined by the Court for an
Order that:

The Applicant demandera à la Court à 427 Queen
Street, Fredericton, New Brunswick, le,
_____2020, à _____h,
d'ordonner:

(a) The Plaintiff, the Canadian Civil Liberties
Association (“CCLA”), be granted public-
interest standing in relation to the above-
referenced action.

The Grounds for the Motion are as follows:

1. The Canadian Civil Liberties Association meets the established legal test for standing as a public interest litigant. There is a serious justiciable issue raised. CCLA has a real stake or genuine interest in the issue. In all the circumstances, the lawsuit is a reasonable and effective way to bring the issue before the Court.

2. **Serious justiciable issue raised.** In this action, CCLA has challenged 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 medical insurance coverage and improperly deems clinical abortions as non-essential services. CCLA seeks declarations that Schedule 2(a.1) of *Regulation 84-20*: (a) violates sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*; (b) is *ultra vires* the powers of the Province of New Brunswick as it is in pith and substance criminal law falling within the exclusive jurisdiction of the Parliament of Canada; and (c) is inconsistent with and in violation of the *Canada Health Act*, R.S.C., 1985, c. C-6.

3. **Real stake or genuine interest.** 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 freedom 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 rights and dignity of people in Canada.

4. CCLA has a long history of dedication to promoting and protecting the rights of women, girls and trans individuals to abortion in Canada. CCLA has been engaged with access to abortion since 1974, when it intervened in the Supreme Court of Canada's first ruling on the abortion practice of Dr. Morgentaler. Since then, it has been involved in three court proceedings and

significant advocacy work focused on a woman's right to access abortion. Given CCLA's history and *raison d'être*, it has a genuine interest in the issue.

5. **Reasonable and effective way.** The decision to terminate a pregnancy is a personal health issue, and as such is intimate and private. An abortion carries heavy stigma in many communities across Canada, making it difficult for individuals to speak publicly about their healthcare needs and experiences with abortion. Furthermore, there is an extremely short window (typically mere weeks) between when a person finds out she is pregnant and when she must obtain an abortion. Given this tight timeframe and the stigma associated with abortions, it is unreasonable and unrealistic to expect a person seeking access to abortion services and directly affected by *Regulation 84-20* to assume the role of plaintiff in a court challenge to the legislation.

6. CCLA is a suitable alternative person to bring this challenge. CCLA's mandate as a public interest organization devoted to the protection of civil liberties, generally, and the rights of women, girls and trans individuals and people from marginalized backgrounds in particular, the organization's legal resources and institutional capacity, and its experience acting as a party and intervener in hundreds of 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.

7. CCLA makes this motion pursuant to the Court's inherent jurisdiction and Rules 1.03, 37 and 39 of the Rules of Court, and sections 9(1) and 21 of the *Judicature Act*, R.S.N.B. 1973, c J-2.

Upon the hearing of the preliminary motion, the following affidavits or other documentary evidence will be presented:

À l’audition de la motion préliminaire, les affidavits ou les autres preuves littérales suivantes seront présentées:

- a) The Affidavit of Noa Mendelsohn Aviv sworn on the 8th day of February, 2021.
- b) Such further and other affidavits and other documentary evidence as counsel for the CCLA may advise and this Honourable Court may permit.

You are advised that:

Sachez que:

- | | |
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| <ul style="list-style-type: none"> a) You are entitled to issue documents and present evidence at the hearing in English or French or both; b) CCLA intends to proceed in the English language; and c) If you intend to proceed in the other official language, an interpreter may be required, and you must so advise the clerk at least 7 days before the hearing. | <ul style="list-style-type: none"> a) vous avez le droit d’émettre des documents et de présenter votre preuve à l’audience en français, en anglais ou dans les deux langues; b) le demandeur (ou selon le cas) a l’intention d’utiliser la langue
.....; et c) si vous avez l’intention d’utiliser l’autre langue officielle, les services d’un interprète pourront être requis et vous devrez en aviser le greffier au moins 7 jours avant l’audience. |
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DATED at Fredericton, New Brunswick, this 12 day of February, 2021

FAIT à _____, _____, le jour de _____, 2021.

Per: _____

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