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**THE EVANGELICAL FELLOWSHIP OF CANADA**  
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and identity in ministry and public witness.

## **PROVINCIAL DECISIONS: ABORTION FUNDING IN CANADA**

### **A Brief Examination of the Provincial and Territorial Governments' Roles in Determining Abortion Funding in Canada**

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Abortion was illegal in Canada until 1969, when the government decriminalized abortion in certain circumstances.<sup>1</sup> In 1988, by means of the Supreme Court of Canada’s decision in *R. v. Morgentaler*, abortion was fully decriminalized.<sup>2</sup> Currently, physicians in every province perform abortions, with the exception of Prince Edward Island (PEI) which has no abortion facilities. Women who obtain two doctor referrals can have abortions in another province and the procedure is paid for by the PEI government.<sup>3</sup>

As a result of the *Morgentaler* decision, abortion access became unrestricted in Canada. An abortion may be sought at any time throughout the nine month pregnancy and for any reason.<sup>4</sup> This is a reality that renders many Canadians uncomfortable and the majority express that some restrictions should be placed on access. A 2011 Environics poll discovered that when Canadians were provided with information about fetal development prior to being asked at what point the law should protect human life, 72% of respondents identified a point in time prior to birth.<sup>5</sup>

A great number of Canadians also express that tax dollars should not pay for every abortion procedure. In a 2010 Angus Reid Public Opinion poll, only 44% of respondents felt that the “health care system should fund abortions whenever they are requested.” However, 39% felt that the system should only pay for abortions in cases of medical emergencies and 10% said that abortions should not be funded at all.<sup>6</sup>

It may be asked then, under existing Canadian law, who is required to pay for abortions and who can decide whether or not the procedures should be funded? This discussion paper seeks to answer those questions.

Contrary to popular political mythology, provinces are not required to fund abortion procedures. Given the broad jurisprudential definition of “medically necessary services” and the constitutionally-granted jurisdiction of provinces over health care, provincial governments determine for themselves whether to fund abortion procedures and in which circumstances.

However, the federal Minister of Health may interpret the *Canada Health Act (CHA)* in a way that requires full provincial funding, partial provincial funding or no provincial funding of abortion procedures and choose to withhold a certain amount of federal funding from its transfer payments to provinces that refuse to comply with its interpretation and its policies.<sup>7</sup> As such, the meaning of these policies may change with shifts in parliamentary leadership, which is a natural consequence of the democratic process in Canada.

### **1. Who pays for Canadians’ medical services?**

In essence, funding of health care in Canada is shared by both the federal and provincial governments. The provincial governments were assigned the responsibility to regulate health services when *The Constitution Act, 1867* was enacted.<sup>8</sup> The federal government’s involvement in funding health care was initiated when the federal government stated the desire for all provinces to have equal access to health services, which began prior to and has been affirmed in the *Constitution Act, 1982*.<sup>9</sup>

The federal government provides approximately 40% of Canadian health care funding by distributing funds to the provinces according to their respective provincial health costs.<sup>10</sup> The provinces are responsible for providing the remaining funds.

## **2. Can the federal government refuse to provide health care funding to a province?**

The federal government may withhold funding from a province if the federal Minister of Health determines that a province is not conforming to the criteria established within the *CHA*.<sup>11</sup>

If the federal Minister of Health concludes that a province is not conforming to one of the criteria, he/she will meet with the provincial Minister of Health to assess the situation and determine whether the matter can be quickly and informally resolved between them. If the matter cannot be resolved, the federal Minister of Health is required to send the provincial Minister of Health a letter outlining the concerns that the federal government has with the province's administration of health care. If the provincial Minister does not address the federal Minister's concerns to his/her satisfaction, the federal Minister is required to refer the matter to the Governor in Council<sup>12</sup> (GIC), who is defined in the *Interpretations Act* as being the Governor General of Canada on advice of the Queen's Privy Council (i.e., the federal cabinet).<sup>13</sup>

The GIC may choose to withhold a certain amount of the federal government's financial contribution from the province, an amount determined at the GIC's discretion. The GIC may continue to withhold any portion of the contribution from the province each year until the federal Minister (after consulting with the provincial Minister) is satisfied that the issue has been resolved.<sup>14</sup>

## **3. Does an alternative dispute resolution process exist for resolving the conflicts discussed above? If so, how does the process work?**

When faced with non-compliance, Health Canada has stated that it considers the application of financial penalties through deductions, as described above, to be a last resort. In order to achieve collaborative resolutions, an alternative dispute resolution process has been developed. In keeping with the *Social Union Framework Agreement of 1999*, a *Dispute Avoidance and Resolution Process* was created in 2002 and the details of that process were formalized in the *First Ministers Accord of 2004*.<sup>15</sup> This process was agreed upon through a series of letters exchanged between the federal, provincial and territorial governments of Canada, with the exception of Quebec.<sup>16</sup>

While the federal and the various provincial governments largely agree on the *CHA* principles and requirements, this process was created to help prevent as well as manage the rare instances of disagreement. The process consists of two parts, a Dispute Avoidance process and a Dispute Resolution process.<sup>17</sup>

The Dispute Avoidance process seeks to improve communication and understanding between governing bodies so as to prevent conflict from occurring. This process includes activities such as "government-to-government information exchange; discussions and clarification of issues as they arise; active participation of governments in ad hoc federal/provincial/territorial committees on *Act*-related issues; and *CHA* advance assessments, upon request."<sup>18</sup> This part of the process serves the federal, provincial and territorial government interest of avoiding disputes over the interpretation of principles within the *CHA*.

The Dispute Resolution process begins if, despite avoidance measures, conflict arises between the federal and provincial or territorial governments. The resolution process may be initiated by either party concerned by letter, where either party would write

their counterpart detailing the matter in dispute. From there relevant facts are to be compiled by both parties and negotiations scheduled. If negotiations fail, a third party panel would be initiated by either Minister concerned in order to have the dispute assessed impartially. This panel would be comprised of three members; one would be a provincial/territorial appointee, the second would be a federal appointee and together the two appointees would select the chairperson. The panel would proceed to collect and review the relevant facts and, within 60 days of being appointed, report to both governments on their findings and recommendations. The federal Minister of Health then has the responsibility of making the final decision on whether to enforce the non-compliance measures of the *Act* while taking the recommendations of the third party panel under advisement.<sup>19</sup>

In 2004 the Dispute Resolution portion of the process was initiated by former federal Minister of Health Ujjal Dosanjh when he "...sen[t] a letter to New Brunswick's provincial Department of Health and Wellness, initiating an official dispute avoidance resolution process to attempt to settle the issue of the province not funding the Fredericton Morgentaler clinic."<sup>20</sup> The Morgentaler Clinic in New Brunswick was a "fully private" clinic as it did not receive government funding.<sup>21</sup> However, Minister Dosanjh's pursuit ended the following year when a change in government resulted in Tony Clement taking over the role as Minister of Health. Clement chose not to pursue the matter further.<sup>22</sup> The two federal ministers exercised discretion in different ways, where Minister Dosanjh's discretion led him to determine that the initiation of the Dispute Resolution process was warranted and, presumably, Minister Clement's did not.

Had the matter been pursued by Minister Dosanjh, he might have argued that a refusal to fund the clinic prevented a medically necessary service from being accessible to all, thus violating the accessibility criteria of the *CHA*. However, the province would have been able to rely upon legislation in support of its position. New Brunswick's health regulations state that abortions are not deemed to be "entitled services" and that the procedure's medical necessity must be determined by two physicians on a case-by-case basis.<sup>23</sup>

As has been stated, the federal Minister of Health renders the final decision in disputes involving *CHA* provisions, but provinces determine which services are funded within their province and may consequently face financial penalties through deductions to their transfer payment from the federal government.

#### **4. What criteria must provinces satisfy in order to receive federal funding?**

There are several criteria that must be satisfied by a provincial government in order to receive a full federal financial contribution to its health care fund. These criteria are:

1. the health care insurance plan must be administered by a public agency;
2. the insured health care offered must be:
  - a. comprehensive,
  - b. universal,
  - c. portable, and
  - d. accessible;

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“The *CHA* does not explicitly state that abortions must be funded by medicare.”

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3. the province cannot be paid for “insured health services that have been subject to extra-billing by medical practitioners or dentists”;
4. the province cannot facilitate user charges;
5. the province must be willing to provide any information required by the federal government (upon request) in relation to their healthcare costs and;
6. the province must give recognition of the federal government’s contribution where appropriate.<sup>24</sup>

To clarify, a province’s health care is comprehensive when the province’s health insurance covers all insured health services whether provided by health practitioners, hospitals or dentists, as well as other services that may be considered insured health services when appropriate.<sup>25</sup> To say that the care must be universal means that the insured healthcare must be available to all those insured within the province.<sup>26</sup> For the care to be considered portable the province must not withhold health services from those who may not be within the province in the moment of needing healthcare. This requirement includes those who find themselves in another province or outside of national borders when requiring health care from their province of residence, provided that they have lived in the province of residence for at least three months.<sup>27</sup> In order for the care to be considered accessible, the health insurance of a province must pay for all insured health services that are required by those within the province.<sup>28</sup>

There is a measure of interpretation involved in the consideration of these criteria. Former Health Minister Jake Epp (1985), who was involved in devising the *CHA*, clarified how the criteria listed within the *CHA* were intended to be interpreted. In terms of comprehensiveness, he stated that the criteria are not intended to expand or reduce the number of services that are to be provided for as insured services. The services that should be provided are “...medically necessary hospital care, physician services and surgical-dental services which require a hospital for their proper performance...”<sup>29</sup> This again raises the question of what is considered to be medically necessary (which will be discussed later). Regardless of the above guidelines, the final decision is left with the federal Minister of Health as well as the GIC to judge whether or not the province is conforming to the criteria.<sup>30</sup>

Another interpretive tool was provided by Diane Marleau (the federal Minister of Health in 1995) when she wrote to all provinces regarding the federal policy on private clinics. Marleau held that “...facility fees charged by private clinics for medically necessary services...constitute user charges [which violate section 19 of *CHA*] and, as such, contravene the principle of accessibility set out in the *CHA*.”<sup>31</sup>

### **5. Does the *Canada Health Act* require that abortions be funded procedures?**

The *CHA* does not explicitly state that abortions must be funded by medicare. Instead, through the *CHA*’s expressed guidelines for both federal and provincial responsibility towards healthcare, provinces are required to meet the “comprehensiveness” criterion of the *CHA*,<sup>32</sup> which includes the coverage of all “medically necessary” services. The provincial governments, in conjunction with their colleges of physicians, are tasked with creating their own insurance plans, including defining “medically necessary” for purposes of their plans. This objective is clearly outlined in Health Canada’s overview document entitled “Canada’s Health Care System”:

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“What renders a service ‘medically necessary’ has not been clearly determined in Canadian law.”

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Medically necessary services are not defined in the Canada Health Act. *It is up to the provincial and territorial health insurance plans, in consultation with their respective physician colleges or groups, to determine which services are medically necessary for health insurance purposes.* If it is determined that a service is medically necessary, the full cost of the service must be covered by the public health insurance plan to be in compliance with the Act. If a service is not considered to be medically required, the province or territory need not cover it through its health insurance plan.<sup>33</sup> [our emphasis]

Practically, this means if a province deems abortion medically necessary, all of its costs will be funded by the province. If a province decides the procedure is not medically necessary, it is not required to fund abortion, but can choose to fund it at-will. However, the process of deciding whether a procedure is medically necessary is not straightforward.

What renders a service “medically necessary” has not been clearly determined in Canadian law. Some court decisions have provided broad definitions of the term, which does not assist in discernment between medically necessary and unnecessary services.<sup>34</sup> Others have deemed some specific medical practices as being either medically necessary or not, which again does not allow for the assessment of services that have not been specifically addressed by the courts.<sup>35</sup> On an international level, legislation has been created that gives examples of what is medically necessary, but existing legislation does not appear to define the term explicitly.<sup>36</sup>

A primary example of a case that provides a broad definition of “medically necessary” is the 2004 case of *Auton v. British Columbia*, where the Supreme Court noted the lower court’s finding that “the term ‘medically necessary’ to mean, in a general way, a medical service that is essential to the health and medical treatment of an individual”.<sup>37</sup> A similarly broad definition can be found in the 1995 case of *Morgentaler v. Prince Edward Island*, where the judge found medically necessary services to be “that which is physician performed”.<sup>38</sup>

These definitions are too broad to be of use when attempting to discern between medical practices in that there is no definitive quality present in these definitions that could serve to separate medically necessary services from those that are unnecessary. One case worth noting is *Jane Doe 1 v. Manitoba*, where Justice Oliphant ruled that Manitoba’s exclusion of abortion from their health insurance coverage violated sections 2(a), 7 and 15 of the *Canadian Charter of Rights and Freedoms*. However, on appeal it was ruled that the constitutional implications required a full trial, which has not taken place.<sup>39</sup>

Examples of decisions that have identified certain practices to be medically necessary or unnecessary are *Auton v. British Columbia*<sup>40</sup> and *Elder Advocates of Alberta Society v. Alberta*.<sup>41</sup> They qualify certain services as being either medically necessary or not, which serves to resolve the immediate action before the bench. However, qualifying or disqualifying specific procedures fails to assist those needing to assess the medical necessity generally of a variety of procedures. Given that there is no specific test or criteria provided by or to the courts, there is a great likelihood for inconsistent rulings.

While jurisprudential definitions remain vague or unhelpful, various members of the legal community and other interested parties have commented on the issue. During the *Morgentaler* (1988) trial, the Chief Justice of the Supreme Court of Canada

referred to his comments from the 1975 *Morgentaler* decision that, given Parliament's expressed values, a woman's desire to have an abortion is not in and of itself a desire that makes an abortion medically necessary.<sup>42</sup> The Abortion Rights Coalition of Canada states that whether or not a procedure is medically necessary is "a matter of professional medical judgment, based on the patient's particular circumstances and needs".<sup>43</sup> Jake Epp, the former federal Minister who participated in the creation of the *CHA*, adopted a similar position when he stated that "...provinces, along with medical professionals, have the prerogative and responsibility for interpreting what physician services are medically necessary."<sup>44</sup>

While a clear definition has not been provided in law, there appears to be a measure of consensus that what is "medically necessary" may be determined on a case-by-case basis by physicians. This line of logic is reflected by New Brunswick's regulation, which states that abortions will only be funded by the province if the two physicians affirm in writing that the procedure is medically necessary.<sup>45</sup>

However, it is noteworthy that an association of physicians has recently released a public statement which challenges the notion of the medical necessity of abortion procedures, and "it is [their] belief that no abortions are medically necessary."<sup>46</sup> In its *Statement on Provincial Funding of Abortion*, Canadian Physicians for Life recognizes that the definition of "medically necessary" has never been clearly defined and they address the arguments for which it is most often considered a necessary procedure:

The reasons given for abortion being necessary have traditionally centered around the notions of the emotional well-being of the woman, the potential physical harm to a mother surrounding certain complications during the pregnancy, as well as the possibility of fetal abnormalities identified during pregnancy for which termination is the common "treatment".<sup>47</sup>

The statement identifies the dearth of "good scientific evidence that says abortion positively impacts mental health outcomes for women in crisis pregnancies" and notes that the contrary is likely true. It also challenges the notion that in the infrequent circumstances where the mother's health may be in jeopardy due to the pregnancy, that induced abortion, often considered "the sole treatment," is not the only option. The underlying condition should be treated, though it may result in the pregnancy being lost. This approach is far different than "an induced abortion which *targets* destruction of the fetus as its end." Lastly, aborting the fetus in cases where abnormalities are identified, fails to recognize that "in any pregnancy, there are two patients." Identification of health problems should lead to treatment, where possible. In their words, "Abortion does not *treat* a medical condition of the fetus, rather it simply removes the patient who has the condition."<sup>48</sup>

Regardless of how the term "medically necessary" is interpreted by experts, what prevails is each provincial government's understanding of the term. Their interpretation and their chosen method of managing health services is the one that is determinative as a result of the constitutional responsibility granted to the provinces for health care generally.<sup>49</sup>

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“As such, a provincial Minister of Health may determine which medical practices are funded within the province.”

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## **6. Can a province refuse to fund abortion procedures? If so, what are the consequences it might face?**

A provincial government may refuse to fund abortion procedures for its citizens. By means of *The Constitution Act, 1867*, a province has the constitutional jurisdiction to manage health care generally. As such, a provincial Minister of Health may determine which medical practices are funded within the province.<sup>50</sup>

If a provincial government refuses to fund abortions, and the federal Minister of Health is convinced that this is a violation of the criteria listed in the *CHA*, then the federal government may initiate the process to withhold funding from that province through the process that has been outlined in the previous section.

## **7. Has a provincial government ever refused to fund abortions?**

Abortions in Canada have been legal to one degree or another since 1969, and unrestricted since 1988. In recent years there have been cases where provinces have been penalized for not funding abortions.

In 2001, the Nova Scotia Department of Health did not cover the facility fee for the province’s only private abortion clinic, though it paid for the clinic’s physician fees.<sup>51</sup> The federal government considered this to be non-compliant with the federal policy on private clinics,<sup>52</sup> which is outlined in the user charge sections of the *CHA*.<sup>53</sup> Accordingly, the province had \$39,000 deducted from their transfer payments under the Canada Health and Social Transfer.<sup>54</sup> The province responded that it would gladly forgo the funds rather than adhere to the government’s interpretation of the *CHA* in regard to the provision of “medically necessary services”.<sup>55</sup> In November 2003, the clinic closed and the province was again found to be in compliance with federal policy.<sup>56</sup>

In 1995, the federal government deducted \$3,585,000 from Alberta’s healthcare transfer payments as the province was charging facility fees at places that performed abortions as well as clinics providing surgical and ophthalmological services, all the while paying for the physician fees through the provincial health insurance plan.<sup>57</sup> To charge facility fees was considered a violation of section 19, the user charge section, of the *CHA*.<sup>58</sup> In October 1996, the government of Alberta addressed the matter by prohibiting private clinics from charging facility fees for medically necessary services, and as such, it ceased to experience deductions from its annual transfer payment.<sup>59</sup>

## **Conclusions and Action Steps**

Provincial governments are not required to conform to the position of the federal government on the medical necessity of abortion procedures. However, provinces may be persuaded to abide by the federal government’s stance through the withholding of federal transfer payments for non-compliance. This is demonstrated by the different responses that Nova Scotia and Alberta made to their deductions, where Nova Scotia was willing to refuse compliance and Alberta took measures to ensure compliance.<sup>60</sup>

For Canadians who, like The Evangelical Fellowship of Canada, believe that life is a gift from God that should be protected through all its stages, beginning at conception, tax-payer funded abortions are unconscionable. Those who hold this position are



encouraged to engage with elected provincial representatives and party leaders as well as the federal Minister of Health, when the circumstances warrant it, to advocate for the defunding of abortion procedures.

For more information, please contact The Evangelical Fellowship of Canada's Centre for Faith and Public Life at [ottawa@theEFC.ca](mailto:ottawa@theEFC.ca) or visit our website at [www.theEFC.ca](http://www.theEFC.ca)  
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(Endnotes)

- 1 Government of Canada, "Abortion: Constitutional and Legal Developments," prepared by Mollie Dunsmuir, Law and Government Division, reviewed August 18, 1998, <http://www.publications.gc.ca/Collection-R/LoPBdP/CIR/8910-e.htm>.
- 2 *R. v. Morgentaler* [1988] 1 S.C.R. 30, 1988 S.C.J. 1.
- 3 Tamsin McMahon, "P.E.I. abortion ban challenged by new pro-choice movement," *National Post*, November 16, 2011, <http://news.nationalpost.com/2011/11/16/p-e-i-abortion-ban-challenged-by-new-pro-choice-movement/>.
- 4 Andrew Coyne, "It's time to talk about abortion," *Macleans*, July 9, 2008, [http://www.macleans.ca/canada/national/article.jsp?content=20080709\\_112194\\_112194](http://www.macleans.ca/canada/national/article.jsp?content=20080709_112194_112194).
- 5 Environics Research Group, "Canadians' Attitudes Towards Abortion," performed for LifeCanada, September 13-25, 2011, <http://www.lifenews.com/wp-content/uploads/2011/10/lifecanada2.pdf>, 6.
- 6 Angus Reid Public Opinion, "Most Canadians Unaware of Lack of Restrictions on Abortion," July 7-8, 2010, [http://www.visioncritical.com/wp-content/uploads/2010/08/2010.08.03\\_Abortion\\_CAN.pdf](http://www.visioncritical.com/wp-content/uploads/2010/08/2010.08.03_Abortion_CAN.pdf), 7.
- 7 Stanley Tromp, "Cabinet Minutes, Ottawa, 1988: Discussions of Abortion," document created by journalist Stanley Tromp from an Access to Information Request, June 2009, <http://www3.telus.net/index100/1988cabinet>, 3.
- 8 *The Constitution Act, 1867*, (UK) 1867, c. 3, s. 92.7.
- 9 *Equalization and Regional Disparities*, Part III of *The Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982* (UK), 1982, c. 11, s. 36(1).
- 10 Howard Palley, "Canadian Abortion Policy: National Policy and the Impact of Federalism and Political Implementation on Access to Services," *The Journal of Federalism*, 2006, 36(4), 567.
- 11 Stanley Tromp, "Cabinet Minutes," 3; See also *Canada Health Act*, R.S.C. 1985, c. C-6, ss. 7-13.
- 12 *Canada Health Act*, s. 14.
- 13 *Interpretation Act*, R.S.C. 1985, c. I-21, s. 35(1).
- 14 *Canada Health Act*, ss. 14-16.
- 15 Health Canada, "Canada Health Act Annual Report 2010-2011," [http://www.hc-sc.gc.ca/hcs-sss/alt\\_formats/pdf/pubs/cha-ics/2011-cha-lcs-ar-ra-eng.pdf](http://www.hc-sc.gc.ca/hcs-sss/alt_formats/pdf/pubs/cha-ics/2011-cha-lcs-ar-ra-eng.pdf), 1.
- 16 *Ibid.*, 7.
- 17 *Ibid.*, 1.
- 18 *Ibid.*, 7.
- 19 *Ibid.*, 177.

- 20 Abortion Rights Coalition of Canada, “Clinic Funding – Overview of Political Situation,” August 2007, <http://www.arcc-cdac.ca/postionpapers/03-Clinic-Funding-Overview.PDF>, 2.
- 21 Thaddeus M. Baklinski, “New Brunswick Government Continues to Oppose Morgentaler Abortion Funding,” October 4, 2010, <http://www.lifesitenews.com/news/archive/ldn/2010/oct/10100407>.
- 22 Abortion Rights Coalition of Canada, “Clinic Funding,” 3.
- 23 Schedule 2, s. (a.1), of the *New Brunswick Regulation 84-20*, under the *Medical Services Payment Act*, 1984, O.C. 84-64.
- 24 *Canada Health Act*, ss. 7-13, 18-20.
- 25 *Ibid.*, s. 9.
- 26 *Ibid.*, s. 10.
- 27 *Ibid.*, s. 11.
- 28 *Ibid.*, s. 12.
- 29 “Canada Health Act Annual Report 2010-2011,” 167.
- 30 *Canada Health Act*, ss. 14-16.
- 31 “Canada Health Act Annual Report 2010-2011,” 171.
- 32 *Canada Health Act*, s. 7.
- 33 Health Canada, “Canada’s Health Care System,” last modified October 9, 2012, <http://www.hc-sc.gc.ca/hcs-sss/pubs/system-regime/2011-hcs-sss/index-eng.php#a5>.
- 34 *Auton v British Columbia* [2004], 2004 S.C.C. 78, 3 S.C.R. 657 at para. 13, referring to *Auton et al. v. British Columbia (Attorney General)* [2000], 2000 B.C.S.C. 1142 at paras. 127, 139.
- 35 *Auton et al. v. British Columbia (Attorney General)* [2000], at para. 102; *Elder Advocates of Alberta Society v. Alberta* [2008], CarswellAlta 1104, 2008 A.B.Q.B. 490 at paras. 172-173.
- 36 Timothy Caulfield, “Wishful Thinking: Defining ‘Medically Necessary’ in Canada,” *Health Law Journal*, 1996, 63(4), paras. 16-20.
- 37 *Auton v British Columbia* [2004], at para. 13, referring to *Auton et al. v. British Columbia (Attorney General)* [2000], at paras. 127, 139.
- 38 Timothy Caulfield, “Wishful Thinking: Defining ‘Medically Necessary’ in Canada,” *Health Law Journal*, 1996, 63(4), para. 37, describing the reasoning in *Morgentaler v. Prince Edward Island (Minister of Health and Social Services)* [1995], 122 D.L.R. (4th) 728 (P.E.I.S.C.).
- 39 *Jane Doe 1 v Manitoba* [2008] M.J. No 292, 2008 M.B.Q.B. 217 at paras. 1-3. The EFC contacted relevant parties and at the time this article was published, the case has not yet proceeded.
- 40 *Auton et al. v. British Columbia (Attorney General)* [2000], at para 102.
- 41 *Elder Advocates of Alberta Society v. Alberta* [2008], at paras. 172-173.
- 42 *R. v. Morgentaler* [1988], 1 S.C.R. 30, 1988 S.C.J. 1, at para. 3, referring to *R. v. Morgentaler* [1976], 1 S.C.R. 616.
- 43 Abortion Rights Coalition of Canada, “Abortion is a ‘Medically Required’ Service and Cannot be Delisted,” January 2011, <http://www.arcc-cdac.ca/postionpapers/01-Abortion-Medically-Required.pdf>, 2.
- 44 “Canada Health Act Annual Report 2010-2011,” 167.
- 45 Schedule 2, s. (a.1), of the *New Brunswick Regulation*.
- 46 Canadian Physicians for Life, “Statement on provincial funding of abortion,” *Vital Signs*, Spring 2012, [www.physiciansforlife.ca/.../Vital%20Signs%20Spring%202012.pdf](http://www.physiciansforlife.ca/.../Vital%20Signs%20Spring%202012.pdf), 4.

- 47      Ibid.
- 48      Ibid.
- 49      *The Constitution Act, 1867*, s. 92.7.
- 50      Ibid.
- 51      Health Canada, “Canada Health Act Annual Report 2001-2002,” <http://publications.gc.ca/collections/Collection/H1-4-2002E.pdf>, 11.
- 52      Ibid.
- 53      *Canada Health Act*, ss. 19-20(5).
- 54      “Canada Health Act Annual Report 2001-2002,” 11.
- 55      Sanda Rodgers, “Abortion Denied: Bearing the Limits of Law” in C. Flood, ed. *Just Medicare: What’s In, What’s Out, How We Decide*, (Toronto: University of Toronto Press, 2006), 6, 14(note 85).
- 56      Health Canada, “Canada Health Act Annual Report 2010-2011,” [http://www.hc-sc.gc.ca/hcs-sss/alt\\_formats/pdf/pubs/cha-ics/2011-cha-lcs-ar-ra-eng.pdf](http://www.hc-sc.gc.ca/hcs-sss/alt_formats/pdf/pubs/cha-ics/2011-cha-lcs-ar-ra-eng.pdf), 11.
- 57      “Canada Health Act Annual Report 2010-2011,” 11.
- 58      Ibid., 171.
- 59      Ibid., 11.
- 60      Ibid.