



West Coast Legal Education and Action Fund

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January 23, 2020

BC Ministry of Health Medical Services Commission

RE: Letter in Support of Amending the Commencement of Enrolment Policy

Dear Medical Services Commission (MSC):

We are writing to show our support for the removal of the waiting period from the Commencement of Enrolment Policy for new and returning residents.

West Coast LEAF is a BC-based legal advocacy organization. Our mandate is to use the law to create an equal and just society for all women and people who experience gender-based discrimination. In collaboration with community, we use litigation, law reform, and public legal education to make change. In particular, we aim to transform society by achieving: access to healthcare; access to justice; economic security; freedom from gender-based violence; justice for those who are criminalized; and the right to parent.

In July 2015, we wrote a letter to the Honourable Minister Lake calling on the government to eliminate the waiting period of healthcare coverage in BC (hereinafter “the 2015 letter”).¹ We are once again highlighting the disproportionate harm the three month waiting period has on people who experience marginalization on the basis of gender and calling for the elimination of the waiting period for healthcare coverage in BC.

The waiting period is not supported by medical or policy rationale

In the 2015 letter, we shared our concern that there was no evidence indicating a reasonable connection between the purported intention of the policy – to prevent “medical tourism” – and the policy’s impact. Instead, the research indicates an inverse relationship between the policy and the costs to our healthcare system. The 2015 letter states:

Rather than producing outright savings, the current system incentivizes new residents to delay seeking healthcare because they cannot pay for it. As a result, the savings generated by the waiting period are likely more than negated by increased “downstream costs,” as delays in treatment can potentially lead to serious and costly medical complications and the progression of disease. Individuals lacking health insurance tend to go to hospital emergency departments for treatment; provision of hospital care rather than preventative care burdens the system with unnecessary costs, and burdens individuals who are forced to allow their health to deteriorate before accessing appropriate healthcare services.

¹ Milne, K. “Residency Requirements for Provincial Healthcare Coverage” (2015) West Coast LEAF.



The waiting period has a disproportionately negative impact on people who experience marginalization on the basis of gender

As set out in our 2015 letter, people that experience marginalization on the basis of gender are more vulnerable to the harmful effects of the MSP waiting period because of their specific health care needs. Many cis and trans women, trans men, gender non-binary, and gender non-conforming people who migrate to Canada have experienced trauma resulting from discrimination, persecution and victimization on the basis of their gender, gender identity, or gender expression.² Research has shown that there are strong links between discrimination, persecution and victimization, and the healthcare needs of newcomers.³ Delays in meeting these healthcare needs, which can include accessing treatment for post-traumatic stress disorder (PTSD), complex trauma, depression, and even suicidal ideations, can exacerbate these conditions at a time of significant turbulence in a person's life. In our 2015 letter we noted that Quebec's waiting period policy included exceptions for services required by victims of domestic violence or sexual assault. While the exceptions set out in Quebec's policy are insufficient to address the needs of newcomers they are undoubtedly indicative of a recognition of the gendered impact of health care waiting periods.⁴

Furthermore, the waiting period policy disproportionately impacts cis and trans women, trans men, gender non-binary, and gender non-conforming people because of their additional health care needs. In our 2015 letter we noted the impact that the waiting period has on newcomers who are pregnant. Our letter states:

Waiting to access care until late in a pregnancy may mean missing important screening tests that can help prevent complications for the [parent] or the baby, both during and after birth. Research has shown that a lack of adequate prenatal care results in a higher incidence of premature births, low birth weight, and longer stays in the neonatal intensive care unit, resulting in significantly higher costs and potentially creating future complications.

Trans, gender non-binary, and gender non-conforming people also face significant harm when they are unable to access the gender affirming care they need upon arrival to Canada. For those that have been

² Alessi, E. J., S. Kahn, and S. Chatterji. 2016. "The Darkest times of My Life: Recollections of Child Abuse among Forced Migrants Persecuted because of Their Sexual Orientation and Gender Identity." *Child Abuse & Neglect* 51 (3): 93–105; Kahn, S. 2015a. "Cast out: Gender Role Outlaws Seeking Asylum in the West and the Quest for Social Connections." *Journal of Immigrant & Refugee Studies* 13: 58–79; Shidlo, A., and J. Ahola. 2013. "Mental Health Challenges of LGBT Forced Migrants." *Forced Migration Review* 42: 9–11 <<http://www.fmreview.org/en/fmr42full.pdf>>.

³ Porter, M., and N. Haslam. 2005. "Predisplacement and Postdisplacement Factors Associated with Mental Health of Refugees and Internally Displaced Persons: A Meta-Analysis." *Journal of the American Medical Association* 294 (5): 602–612; see also Sutter, M. and P. B. Perrin, *Discrimination, Mental Health, and Suicidal Ideation Among LGBTQ People of Color* 2016 Vol 63 No 1, 98-105 ("Lesbian, gay, bisexual, transgender, and queer identified (LGBTQ) individuals are approximately twice as likely to report suicidal ideation [...] and have higher rates of attempted suicide compared to their heterosexual and cisgender counterparts (5-32% vs. 2@ respectively...")

⁴ 2015 Letter, *supra* note 1.



unable to access gender affirming care in their previous place of residence, any further delay to accessing care is not only a violation of their fundamental human rights but can also perpetuate the trauma they may have experienced and can have serious consequences for their mental health.⁵

Furthermore, research indicates that forced cessation of hormone therapy and other forms of gender affirming care can be highly traumatic. While Health Canada regulation allows those moving to Canada to bring with them a 90-day supply of hormones where there is proof of a doctor's prescription,⁶ because discrimination and persecution on the basis of gender identity or expression remains common in many places around the world, there are many newcomers who will not be able to bring with them a 90-day supply of hormones because they may have had to obtain their medication without a doctor's support. These newcomers will be left without a safe supply of hormones for the duration of the waiting period.

Though the current policy does provide discretion to MSC to review an individual's request for a waiver of the waiting period, it is simply unrealistic to expect that this process would be accessible for most newcomers let alone those that may be experiencing intersecting forms of marginalization, as is the case with cis and trans women, gender non-binary, and gender non-conforming people. For example, many trans, gender non-binary, and gender non-conforming people may face additional barriers to navigating the healthcare system because they may not be able to rely on their diaspora community for fear of discrimination.⁷

It is equally unrealistic to expect newcomers to Canada to access private insurance that will adequately meet their healthcare needs. We identified some of the challenges newcomers face in navigating the healthcare system and attempting to access private insurance in our 2015 letter. The letter states:

The stress of attempting to navigate the healthcare system while avoiding exorbitant hospital bills exacerbates the anxieties faced by all new families when they arrive in Canada. Recent immigrants may lack both the resources and [English language skills] to deal with these challenges adequately. They are often advised to seek out private insurance, which can be complex and difficult to arrange and will likely not meet [their healthcare needs]. In fact, the BC Ministry of Health has acknowledged that "private insurance companies have an almost universal policy of not covering pre-existing conditions, including pregnancy." Individuals determined to have pre-existing medical needs, including pregnant [people], are most likely to need public healthcare coverage and the most vulnerable without it.

⁵ Trans Case BC Provincial Health Service Authority "Puberty Blockers for Youth" (accessed on January 23, 2020) <<http://www.phsa.ca/transcarebc/child-youth/affirmation-transition/medical-affirmation-transition/puberty-blockers-for-youth>>.

⁶ Mosaic BC "Trans Newcomers Resource Hub: New to BC?" (accessed on January 23, 2020) <<https://www.mosaicbc.org/resources/trans/bc/>>.

⁷ Lee, E. O. J., and S. Brotman. 2011. "Identity, Refugeeness, Belonging: Experiences of Sexual Minority Refugees in Canada." *Canadian Review of Sociology* 48 (3): 241–274.



Furthermore, the experience of being denied services by a healthcare professional who may be a newcomer's first point of contact in Canada can perpetuate the feeling of rejection that many newcomers, and in particular trans, gender non-binary, and gender non-confirming newcomers, may have experienced in their previous place of residence.⁸ As we noted in our 2015 letter, rather than meet its policy objectives, the current waiting period has the unintended impact of furthering the marginalization of newcomers to Canada.

Domestic and International Human Rights Law Support Eliminating the Waiting Period

Given the disproportionately harmful impact the waiting period has on cis and trans women, trans men, gender non-binary, and gender non-confirming people, the current policy may be in violation of the equality protections set out in the *Canadian Charter of Rights and Freedoms*.⁹ The harm that can be caused by state-imposed delays in accessing healthcare treatment has also been found to amount to a violation of the constitutional right to security of the person.¹⁰ Furthermore, in our 2015 letter we noted that the Federal Court of Canada has found that “cuts to refugee healthcare constituted unconstitutionally cruel and unusual treatment, and amounted to the intentional targeting of a vulnerable group”.¹¹

Canada also has obligations under international law which require it to take all legislative, administrative and other measures to ensure that everyone is able to enjoy the highest standard of health without discrimination on the basis of gender¹² and gender identity¹³. This includes ensuring that everyone has access to treatment facilities¹⁴ and appropriate care including pre-natal and post-natal care¹⁵, and gender affirming care¹⁶. Canada's international obligations also require it to develop programs to address factors that undermine people's health because of their gender or gender identity.¹⁷ As set out above, the current MSP waiting period policy fails to address the factors that undermine the health of people experiencing marginalization on the basis of gender.

Conclusion

The current waiting period policy deprives newcomers and, in particular, cis and trans women, trans men, gender non-binary, and gender non-confirming people of their right to access the highest

⁸ Lahn et al Promoting the wellbeing of lesbian, gay bisexual and transgender forced migrants in Canada *Cult Health Sex*. 2017 Oct;19(10):1165-1179 <<https://www.ncbi.nlm.nih.gov/pubmed/28322629>> at p. 1170.

⁹ *Andrews v Law Society of British Columbia* [1989] 1SCR 143.

¹⁰ *Chaoulli v Quebec (Attorney General)*, 2005 SCC 35.

¹¹ *Canadian Doctors for Refugee Care v Canada (Attorney General)*, (2014) FCJ 679, at para 1078.

¹² OHCHR, *Convention on the Elimination of All Forms of Discrimination Against Women*, GA res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, art. 12.

¹³ International Commission of Jurists. “Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.” (2007): prin. 17 (a).

¹⁴ UNGA, *Convention on the Rights of the Child*, GA res. 44/25, 20 November 1989, art. 24.

¹⁵ *Ibid*.

¹⁶ Yogyakarta, *supra* note 13 at prin. 17(g).

¹⁷ *Ibid* at prin. 17(d).



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standard of health care as well as their constitutional rights to equality and security of the person. Accordingly, we call on the MSC to eliminate the waiting period for accessing healthcare in BC. Thank you for your attention to this matter. We would be pleased to meet with you to discuss this matter further.

Sincerely,

Elba Bendo
Director of Law Reform West Coast LEAF