

SOCIAL ISSUES

Abortion case headed for Human Rights Tribunal

by Newsroom Staff 07/10/2018

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Six women who sought abortion services are presenting their experiences to the Human Rights Tribunal, saying they were treated poorly by health professionals. Photo: Getty Images

Six women who have sought abortion care and the Abortion Law Reform Association have taken a complaint to the Human Rights Commission alleging abortion laws discriminate against women and pregnant people.

ALRANZ's complaint to the commission on behalf of the women alleges "people who seek abortion care receive different and demonstrably worse treatment than other people seeking health care", according to ALRANZ president Terry Bellamak.

She says current abortion laws breach the human rights of pregnant people because no other people need approval of two certifying consultants to get healthcare, can be denied healthcare if they don't meet grounds listed in the Crimes Act; are subject to arbitrary and unpredictable withholding of healthcare; and only people seeking abortions and contraception can be refused service on the grounds of the provider's conscience with no warning, and no recourse.

The Human Rights Commission is part of New Zealand's dispute resolution framework. Instead of complainants taking their case to court, the HRC provides mediation. If that fails, complainants can proceed to the Human Rights Review Tribunal. ALRANZ has completed the HRC process, and their complaint now rests with the Office of Human Rights Proceedings, Bellamak says.

This is the first time in New Zealand case law that abortion has been the subject of a complaint to the HRC.



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Bellamak says ALRANZ sought individual complainants to join the action, because their experiences demonstrate how the current laws discriminate against women, and how that discrimination harms them and affects their lives. “We believe their lives and their stories matter.”

Each of the women told *Newsroom* their stories and why they believe their human rights were breached.

Kate’s story

Despite being on the oral contraceptive pill, Kate*, 28, was overseas on holiday when a local doctor said she was within the first trimester. As it turned out, she was 18 weeks pregnant when she came back to New Zealand.

She had two weeks to fit within the current cut-off of 20 weeks to get an abortion. Instead, two outlets refused to make referrals, and she was told she would have to go to Australia for the procedure. She didn’t know that the advice was illegal and deceptive, and at \$9000, her only option at this point was financially beyond her means.

Kate carried the baby to term, but says the pregnancy, and her “horrific experience with health professionals” has come at a great cost.

“The pressures of having a baby exacerbated our problems. I went from having a very well paid job, to no income. I’ve had to move back to my parents house, and I’m financially dependant on them. It’s so undignified.

“There are still days when I grieve for the life I used to have and the life plans I used to have. I still grieve over the experience I had in the health system. I grieve for the other girls in this country who have had this same experience.”

Rachel’s story

Rachel* told *Newsroom* she was completing her law degree at Canterbury University in 2011 when she became pregnant.

She went to a doctor who pushed the idea of adoption. Rachel asked the doctor to take her through the process of obtaining an abortion. Using conscientious objection, the doctor refused to relay abortion options, and refused to refer her to another doctor.

“I was stunned and angry. Why was this person working at a university medical centre if she wouldn’t provide all kinds of treatment that young women might need? The appointment felt like a complete waste of time. It felt like she thought I was making the wrong choice.”

A second doctor provided a referral to a hospital to see two certified consultants who would decide whether she would qualify for a termination.

With her mother by her side, Rachel explained to the first certified consultant why she didn’t want a baby. She was too young, hadn’t finished her qualification, and wasn’t financially stable. But she felt uncomfortable to lie about her mental health. “I relented and told the consultant what they needed to hear” The procedure took about 10 minutes.

Sally’s story

Sally* was in her first year of art school when she became pregnant. She knew she didn’t want to have a baby; abortion was not a moral issue for her. But she says it was an extremely difficult process.

“Because of all the appointments, all the counsellors, the ultrasound, the blood tests, the signing off by two certified consultants – all of which seemed like arbitrary hoops – my abortion was delayed until I was 10 weeks pregnant.

“The bureaucracy plays with people’s lives. It was 10 weeks of my life that were horrific. I suffered really bad morning sickness, so I couldn’t go to uni. I was also showing early, so I didn’t want my friends to see me.”

Like Rachel, Sally was also told the only way to get an abortion was to declare herself mentally unwell. “I’ve never had to tell my doctor that I’m mentally incapable in order to receive healthcare for any other reason.”

To falsely declare suffering from mental illness to access an abortion “is extremely offensive to people who do truly suffer from mental health problems because with that comes the assumption that people with mental illness will not be functional, healthy, loving parents”.

She had tried to get the morning after pill at her local pharmacy. They wouldn’t give her the pill, citing conscientious objection. “The pharmacist looked at me as if I was a devil’s slut. I look back now, and if it weren’t for that pharmacist, I could’ve avoided a lot of stress.”

Tracy’s story

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Tracy* had just split from her partner, when she found out she was pregnant, despite being on the oral contraceptive pill. He wanted no part in raising a child. She was 21, on minimum wage, and had no support so felt confident an abortion was the best option. She went to her local doctor, and was given a lecture about God.

“That doctor, and the two more that followed, were more than happy to tell me how immoral I was, but gave me no viable second option, no ideas or advice on how to care for a child as a young single mother.”

Once she got the referral, the process was straightforward, albeit like Rachel and Sally, she had to lie to fit within the grounds of mental health to qualify.

Tracy is now in her mid-thirties, and a married mother of two “very much wanted, children”. “I think about my abortion as an incredibly positive choice I made for my life. Everything I had read or heard made me feel like it would haunt me forever, but this is a decision I am proud of and do not regret in the slightest.”

Beth's story

Beth* had an IUD and was in a stable, monogamous relationship, so finding out she was pregnant was a real shock.

From starting the process at Family Planning, and ending it at hospital, she had to have over five appointments, with various professionals, over a month-long period.

After encountering negativity from a local pro-life group Beth went to counselling. She wasn't targeted per se, but the stress of waiting for each appointment combined with “this social push-back against abortion that still exists took a fairly heavy psychological toll on me”.

She says if she hadn't had a compassionate boss at the time, a supportive partner, and a friend who drove her to and from appointments, things would've been much more difficult. “I'm lucky to have a supportive social system, but I worry for those who do not.”

Jane's story

Jane* had two abortions, one after the other, four and a half years ago. As it turns out, her doctor didn't know that St John's wort interferes with contraception. For the first, she was told that she had to wait after nine weeks because doctors needed to be able to hear the heartbeat. This was untrue.

The delays and hostile questioning by medical professionals was unnecessary and stressful in both situations, she says.

One doctor told her she needed to be more careful not to get pregnant, despite having no knowledge of the circumstances, she says.

“The whole experience made me feel as though I was doing something terrible. I can't imagine what it would be like for a person who comes from a community that is opposed to abortion.”

What the Human Rights Commission and Law Commission have to say

A Human Rights Commission spokesperson says it cannot comment on the case but the United Nations has repeatedly called for States to remove abortion from their criminal laws; remove regulatory and administrative barriers that impede women's access to safe abortion services; and provide comprehensive sexual and reproductive health information and services to women.

“It is not possible for us to speculate on the timing of a case that is currently before a judicial body but the indications are that it could be quite a while before the matter is heard by the Tribunal.”

Meanwhile, in July, the United Nations Committee on the Elimination of Discrimination Against Women recommended that the New Zealand Government remove abortion from the Crimes Act 1961 and incorporate the treatment of abortion into health services legislation.

The Law Commission, on the request of the Government, will present its review of abortion laws to the Government this month.

Law Commissioner Belinda Clark told *Newsroom* the commission is finalising its briefing paper, and cannot comment further.

“The Commission will not be making any recommendations. As requested by the Minister, the briefing paper will advise on what alternative approaches could be taken in New Zealand's legal framework if the Government decides to treat abortion as a health issue.”

Where to from here?

Bellamak says if Justice Minister Andrew Little accepts the Law Commission's findings, it could mean the breaches brought before the Human Rights Tribunal may be put to rest.

“I don’t think the Government would have gone as far as they have if they didn’t think law reform is necessary. I’m hopeful, but I fear the political process could hijack meaningful outcomes and prevent the issues we raise from being addressed, with terrible consequences for lasting reform.”

As far as the case is concerned, ALRANZ expects to hear back from the Office of Human Rights Proceedings in the next few months whether or not ALRANZ and friends will have representation.

If so, the case will go before the Human Rights Tribunal, which may be a couple of years away, given the Tribunal’s backlog, she says. Going before the Tribunal could mean each of the six women may have to give evidence, Bellamak says.

“It will be a couple of years before the case is heard at this point, so we’ve got a bit of time to see how law reform works in practice, and whether it addresses the fundamental breaches of which we complain,” she says.

Reforming conscientious objection is problematic, she says. “That’s going to be tough because it’s hard for a government to force doctors to make referrals for abortion care.”

Bellamak says ideally, reform should include self-referral, so that doctors are taken out of the equation entirely in the first instance. “This is also an equity and access issue, as it costs time and money for those first appointments.”

But she also believes that “the burden of a provider’s conscience must be rebalanced, so that it does not fall entirely on the patient to bear the cost in time, money, and trouble, which is how it currently stands. The status quo is absurd, because contraception is the means by which the number of abortions is reduced”.


Little declined to discuss the case.

****Names have been changed to protect the complainants’ identity***

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