

# What the U.S. overturning *Roe v. Wade* means for Canada

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The United States Supreme Court may soon strike down its landmark ruling in *Roe v. Wade*, ending constitutional protections for abortion, according to a draft decision leaked to *Politico*.

The ruling would mean that states can decide whether and how to restrict abortion — or ban it outright.

Nearly two dozen Republican-led states are expected to issue immediate bans, 13 of which have “trigger laws” on the books that would automatically kick in once the Supreme Court overturns *Roe v. Wade*.

Abortion will probably remain legal in Democrat strongholds. At least a dozen states, including California, have passed laws protecting access.

Canadian experts say that striking down *Roe v. Wade* is a devastating setback to reproductive rights with potentially wide-reaching implications.

Outlawing abortion won’t stop people from terminating pregnancies, but it will make it riskier and more expensive, said Roopan Gill, an obstetrician-gynecologist with Médecins Sans Frontières and the University of Toronto. “The people who are going to suffer most from this are not wealthy, white, cis-hetero women. It’s going to be Black women, people of colour, people with low-socioeconomic status, LGBTIQ.”

## Attention to access

What’s happening in the U.S. also “puts a magnifying glass” on abortion rights and access in Canada, Gill told *CMAJ*.

Although abortion is safe, publicly funded and relatively accessible in Canada, “we shouldn’t get comfortable,” Gill said. “We have work to do as well.”

Abortion is decriminalized but not a constitutional right in Canada. Like other

health services, abortion procedures are regulated under the *Canada Health Act*, but access varies greatly depending on provincial policies.

Ottawa withheld federal funding from New Brunswick earlier this year because the province refused to cover abortions outside three hospitals. In Quebec, restrictions on prescribing the abortion pill hampered access during the COVID-19 pandemic compared to other provinces. Other provinces, like Nova Scotia, have only one abortion clinic.

Despite a more permissive legal environment in Canada, the hurdles to care are “not so different from the U.S.,” Gill said.

Post-*Roe v. Wade* bans in border states like Idaho and North Dakota may also limit options for people in Canada who would normally travel to the U.S. for later abortions or closer providers.

Meanwhile, Canadian providers may see an uptick in Americans crossing the border for care, although it’s unclear how many could afford the trek. Roughly three in four abortion-seekers in the U.S. are living in poverty or have low incomes.

## Advocates on guard

Some health advocates worry that anti-abortion momentum in the U.S. will galvanize efforts to restrict access in Canada.

“We sense that these anti-abortion groups will be emboldened,” Meghan Doherty of Action Canada for Sexual Health and Rights told CTV News. “We must be vigilant. We can’t be complacent in Canada.”

Others are concerned that the American abortion debate will mislead Canadians about their options. “I do fear that there can be spread of misinformation and the

public being told through social media or through what they hear in the U.S. that abortion is not available to everyone in Canada — and that just isn’t the case,” said Sarah Munro, an assistant professor in the department of obstetrics and gynaecology at the University of British Columbia.

Munro said it’s “chilling and disheartening” to see states rolling back reproductive rights. However, it’s unlikely such a dramatic reversal could happen here. Canadian reproductive health policy has “historically been very evidence-based,” she explained.

Canada’s Supreme Court is less ideologically polarized than its American counterpart, and when it overturns past decisions, it usually does so to expand rights.

Any federal legislation on abortion could run up against interference from the provinces on the grounds that health care is their jurisdiction. However, although provinces can and do create obstacles to abortion because they control the delivery of care, they can’t ban it entirely.

## Will Canada codify abortion rights?

Canada hasn’t had any laws governing abortion since its decriminalization in the 80s.

In the early 90s, Brian Mulroney’s Progressive Conservative government tried to ban abortions except in life-or-death cases, but the Senate blocked the bill after a Toronto woman died from a coat-hanger abortion — the first such death ever recorded in Canada.

Since then, there hasn’t been much political appetite in Canada to change or codify the status quo, but alarm over the situation in the U.S. has pushed the issue again.

Both the federal Liberals and New Democrats affirmed the right to abortion following the recent Supreme Court leak.

Prime Minister Justin Trudeau said his government is examining a legal framework to ensure “the rights of women are properly protected.”

On the campaign trail last year, Trudeau promised to introduce regulations under the *Canada Health Act* to make clear that abortion is medically necessary and publicly funded.

Liberal House Leader Mark Holland told reporters that it’s “too early to hypothesize” if the government will go further than the promised regulations. “I think we need to take a step back and make sure we do it right and that it’s not reactionary.”

Interim Conservative Leader Candice Bergen said her party will not “reopen the abortion debate,” although members subsequently refused to support a Bloc Québécois motion to recognize “freedom of choice on abortion for any reason.”

Meanwhile, Conservative leadership candidate Leslyn Lewis has promised to criminalize coerced abortions and sex selection, cut foreign aid for reproductive health, and increase funding for anti-abortion “pregnancy centres.”

Anti-abortion activists once considered Lewis’ fellow leadership candidate Pierre Poilievre to be a reliable vote for their cause, but he has since moderated his

stance. Other Conservative leadership candidates Patrick Brown and Jean Charest stated they would not support legislation restricting reproductive rights.

### Medical abortion boom

If *Roe v. Wade* is overturned, experts expect to see increasing acceptance and demand for virtual abortion care across North America — including remote prescribing and mail delivery of the abortion pill.

In Canada, access to medical abortions has increased dramatically since health Canada waived the need for routine ultrasounds and other requirements to allow clinicians to prescribe mifepristone like any other medication.

Laura Schummers led a *NEJM* study of 315 000 abortions that found prescribing the abortion pill without restrictions was safe and did not lead to increases in adverse events or the overall abortion rate.

Canada has benefited from “really strong” federal leadership on access to medical abortion, Schummers said.

“Health Canada went out on a limb to make this restriction removal happen, which is such a good sign because they were talking to the experts and following the best available evidence,” she told *CMAJ*. “The remaining barriers to access are not coming from a federal regulatory perspective but might be more provincial.”

Outside Quebec, most provinces made a rapid switch to no-touch or low-touch virtual abortion care during the pandemic. “That’s great for people who can’t travel because they have kids at home, or they live in a rural community,” said Munro.

Canadian prescribers and pharmacies may also be insulated from the legal consequences of providing telemedicine abortions to Americans, as extradition rules would require both countries to regard abortion as a crime.

However, not all Canadian health professionals who could be offering abortion via telemedicine are doing so. The Canadian Abortion Providers Support website offers resources for prescribers and pharmacists.

“Anybody who has the ability to prescribe abortion should be taking up this practice, especially if they’re involved in reproductive and sexual health already,” Munro said.

**Lauren Vogel and Diana Duong, *CMAJ***

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