

June 27, 2022

Public Statement:

Don't tell us to stop clutching our pearls!

A cautionary tale from north of the Roe v. Wade decision.

The fallout from the overturning of Roe v. Wade in the United States is reverberating across the globe. We are all justifiably concerned about the impact of this ruling on women and people assigned female at birth in the U.S. But the U.S. is a huge global player, and its influence extends well beyond its borders.

Don't tell us it can't happen in Canada. We are not that different from the U.S. Those wishing to restrict access to abortion in Canada don't need to follow the U.S. playbook exactly. Even if they don't succeed in the attempt, they can cause a lot of harm. The rhetoric alone will further stigmatize vulnerable patient populations and make the provision of essential health care even more of a challenge.

The decriminalization of abortion in Canada did not establish a right to abortion. In *R v Morgentaler*, [1988] 1 SCR 30 the Court found that the abortion provision in the Criminal Code was unconstitutional and disproportionately infringed upon the security rights of women under section 7 of the Charter. Justice Wilson, in a concurring opinion, argued that section 7 and liberty rights encompassed the right to have an abortion as a fundamentally personal decision.

What does this mean? Opinion seems divided. The legal landscape has evolved a lot since 1988 and one can point to Justice Wilson's opinion and other subsequent court decisions as strengthening the view that abortion is a right. Some will disagree with that assessment. But the *Morgentaler* decision has left the door open to federal abortion legislation and *Roe v Wade* has shown that precedent can be overturned. Here at home, the Court in *Carter v. Canada* did not follow its own precedent in *R v. Rodriguez*. Changing circumstances can lead to a higher court decision being reconsidered, so calling a law "settled" seems to be more of a prediction than a statement of fact.

Practically though, regardless of the *Morgentaler* decision, there is no obligation to ensure that women and gender diverse people have equitable or even reasonable access to safe abortion provision. Access is and can be limited in several ways. Federal legislation is not required to limit access, a government just has to look the other way as provinces allow access to be further restricted.

Access to both surgical and medical abortion is geographically limited. In Alberta, it is concentrated in urban centers making it difficult for patients outside those regions to gain access.

Systemic barriers to abortion and the full range of reproductive health services are ingrained in our public health system. Institutional protections are allowed to outweigh a patient's right to access the full range of an established standard of reproductive care. This standard of care includes treatments for infertility, ectopic pregnancies, fetuses that are no longer growing, lethal fetal malformations (i.e. babies that could never live) and other pregnancy complications that can put a woman's life and health at risk if the pregnancy were to continue.

The current limited access is at risk of even more restrictions.



As recently as 2019 we had a UCP MLA private member's bill attempt to limit the role of professional regulatory bodies in setting acceptable limits to rights of conscience. Bill 207 sought to eliminate both the duty to effective referral and the risk of professional consequences for the harms patients suffer from these refusals. This same bill also attempted to strengthen institutional barriers to the standard of care by faith-based hospitals. The bill failed but it demonstrates the fragile nature of our existing limited access to abortion care.

As the Edmonton Zone Medical Staff Association executive, we echo the statement of the Alberta Medical Association. The decision by the US Supreme Court is an attack on the liberty and security of women and gender diverse people. It is an attack on the fundamental right to access the full range of reproductive medical care that they need and deserve. Limitations on any human rights, on the ability to decide what medical treatments are acceptable for one's own body, is an attack on all human rights. The EZMSA understands that here in Alberta and across Canada much work is required to protect the right to equitable access to the standard of reproductive medical care. We see the impact the Roe v. Wade decision can have on the political environment here in Canada and will continue to be vigilant and vocal.