

# A Look Through History: The Evolution of Abortion Rights

Student Workbook

Name: \_\_\_\_\_





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# Comprehension questions

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Answer  
key

1) What is abortion?

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2) Can an abortion be performed at any time during the pregnancy?

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3) What is the right to abortion?

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4) What is the Supreme Court of Canada?

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# Activity – Judge for a Day: You Get to Decide!

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## Context

In this activity, you're asked to play the role of a Supreme Court judge!

The activity is based on the *Morgentaler* decision that removed the ban on abortion in 1988. The activity will allow you to learn about:

- a key moment in the evolution of abortion rights in Canada.
- the *Canadian Charter of Rights and Freedoms*.
- the role of a Supreme Court judge.

## Instructions

Your teacher is the chief justice of the Supreme Court of Canada. They assigned you an important case and you must write a decision and give it to them.

Don't worry, you'll have the opportunity to discuss the case with the other "judges" in the class and with the chief justice before writing your decision.

### 1 Read the court file

Like a real judge, before writing your judgment, you must read the **court file**. Court files are important for judges. They contain the information they need to make a decision. You'll find it on pages 9 to 15 of this Workbook. You also have to answer the comprehension questions at the end of each document.

### 2 Answer the questions and consult the other judges in class

Answer the questions on the following page before giving your judgment to the chief justice. You can consult the other judges in the class and discuss your point of view before giving your decision in writing.



### From an interview with Dr. Henry Morgentaler

“No one is *for* abortion just like no one is *for* brain surgery or tonsillectomies. We support women’s right to get an abortion in good medical and psychological conditions. Some people are against abortion because of religion or other reasons. Neither I nor my supporters, people who fight to make decent abortion conditions accessible, are *for* abortion.”

Dr. Henry Morgentaler, December 14, 1976<sup>1</sup>

1. Statement made by Dr. Henry Morgentaler in an interview given on December 14, 1976 on the show 60, on Radio-Canada television, consulted online on [May 29, 2013: décès du docteur Henry Morgentaler | Radio-Canada](#) (August 23, 2024).

- 1) Read the text in the box above. In this passage, Dr. Morgentaler states that he isn’t for abortion, but supports the right to abortion. Share your thoughts about this statement.

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- 2) In your own words, summarize the rights that are protected by section 7 of the *Canadian Charter of Rights and Freedoms*.

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# Court files

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## Document 1 – Introduction to the Canadian Charter

To make your decision, it's important that you become familiar with the *Canadian Charter of Rights and Freedoms*. You must use its principles to justify your judgment.

### What is a charter?

Charters are laws that contains written rules. It guarantees people's rights and freedoms. It protects people from abusive laws or decisions.

Here are a few examples of rights and freedoms protected by the charters:

- The right to freedom of expression
- The right to privacy
- The right to be treated equally without discrimination
- The right to life and security of the person

The protections offered by charters are not unlimited. For example, a person's rights don't allow the limitation of other people's rights. Another example: freedom of expression does not allow someone to call for violence or hate. A person whose rights and freedoms are violated can take action to make sure their rights are respected. They can file a complaint or ask a judge for compensation (payment for harm suffered).

### The charters applied in Quebec

In Quebec, the two main charters that protect our rights are:

- the *Canadian Charter of Rights and Freedoms*
- the *Charter of Human Rights and Freedoms*

### The Canadian Charter

Governments in Canada, such as the Canadian government and the Quebec government, have to respect the *Canadian Charter of Rights and Freedoms*. This also applies to government departments, municipalities, public schools, police forces, etc.



In general, governments and government agencies cannot introduce laws that don't respect the rights and freedoms protected by the *Canadian Charter of Rights and Freedoms*. If a law violates one of those rights, it can be declared invalid.

The Canadian Charter also protects people from unfair decisions that could be made by government agencies. For example, a public-school principal cannot violate the students' right to privacy by searching their lockers without a valid reason.

### The Quebec Charter

The *Charter of Human Rights and Freedoms*, also known as the Quebec Charter, only applies in the province of Quebec. Unlike the Canadian Charter, the Quebec Charter also has to be respected by non-governmental groups, organizations and the general population.

### Interpretation of the charters

At first sight, the rights and freedoms protected by the charters seem to be clearly written. But when the time comes to actually apply them to decisions, more specific questions come up. For example, we might wonder if someone's garbage could be protected by the right to privacy.

When judges make their decisions and write their judgement, they often have to interpret the charters to define their scope. That was the case when the Supreme Court of Canada decided to overthrow the section on the right to abortion. How charters and other laws are understood is shaped over the years through court decisions.

### Comprehension questions

1) What is a charter?

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2) Who has to respect the *Canadian Charter of Rights and Freedoms*?

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## Document 2 – The Role of a Supreme Court of Canada Judge

### What do judges do?

Judges have a lot of work to do! They read and analyze court files, make difficult decisions and present their decision in judgments.

#### Step 1: Approve the appeal

The Supreme Court does not accept to hear all of the cases submitted to them. Generally, the Supreme Court judges only agree to hear cases that are important to the nation as a whole or that relate to areas of law that are unclear.



#### Step 2: Read the case

Judges read cases submitted to them by the chief justice. Cases hold the testimonies, the evidence and all the previous court decisions.

At this step, lawyers usually don't present new information or new witnesses to the judges.

The case also includes what's referred to as the **memorandums**. Memorandums are prepared by both sides in the case and contain a written presentation of their arguments.

#### Step 3: The hearing

A Supreme Court hearing is a public session during which both sides in the case present their arguments orally, during which judges can ask questions and clarifications. The presentation of arguments takes about two hours.

Cases are usually presented to a minimum of five judges, but sometimes more. No matter what, there always has to be an odd number of judges so that a majority can decide. A Supreme Court decision doesn't need to be unanimous, unlike a jury's decision during a criminal trial for example.

The hearing usually happens in a special red room, where the judges sit on a bench facing the public and each parties' representatives.



### Step 4: Make a decision

After the hearing, judges return to their office to begin the tricky task of settling the debate and making a fair decision that respects the law. Most of the time, decisions are written, but sometimes judges present their decision orally.

This involves long hours of reading, reflection and writing! It's a huge responsibility because Supreme Court decisions have an impact across Canada. Before making their decision, judges meet to compare opinions.

The judges may have a unanimous opinion, but sometimes one or more judges do not share the majority's point of view. This is referred to as a **dissenting opinion**.

### Step 5: Write a judgment

Once each judge has made their decision, the chief justice chooses the judge who will write the **majority's decision**. If all judges don't agree to the decision, the minority judges that disagree will also write their conclusions. The majority's opinion and minority's opinion (if applicable) are presented in the same judgment.

In the judgment, the writing judge explains how the majority has arrived to their decision using legal arguments. This is also known as the "reasons" of the judgment. The legal arguments are based on laws, previous judgments and evidence presented during the hearing.

## Comprehension questions

1) What are the reasons of the judgment?

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2) What happens if the decision of the judges is not unanimous?

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## Document 3 – The *Morgentaler* Judgment

### A case overview

In 1982, Dr. Morgentaler and two other doctors were accused of aborting illegally. At the time, the *Criminal Code* forced women to get a special approval from a committee of doctors before getting aborted. Dr. Morgentaler and his companions performed abortions without committee approvals. This case went all the way to the Supreme Court.

### Context

#### The *Criminal Code*

In 1982, a section in the Criminal Code banned abortions except in situations when women's health or life were at risk. To abort legally, pregnant women had to ask for a special certificate given by a committee of doctors. The doctors were the ones to decide if the pregnancy put the women's health or life at risk.

#### Section 251 of the *Criminal Code* in 1982

(passages and summary)

- (1) Every one who, with intent to procure the miscarriage of a female person, whether or not she is pregnant, uses any means for the purposes of carrying out his intention is guilty of an indictable offence and liable to imprisonment for life.
- (2) Every female person who, being pregnant, with intent to procure her own miscarriage, uses any means or permits any means to be used for the purposes of carrying out her intention is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years. (...)
- (4) Excluded from these provisions: a qualified medical practitioner in an accredited hospital, a woman who permits a qualified medical practitioner to perform an abortion.



## The committees of doctors

Not every hospital in Canada had a committee of doctors. Sometimes, a woman who wanted to get an abortion had to travel for the procedure. Also, the wait times to get an abortion could be long.

## Abortion methods today

As the pregnancy progresses, the risks related to abortions increase for women. Many different medical techniques are used to perform abortions at every stage of pregnancy. The earlier the abortion is performed, the lower the risk of complications or death for women.

## The Canadian Charter

One of the arguments presented by Dr. Morgentaler and his colleagues was that their conviction was not valid. Their claim? The section of the *Criminal Code* on the right to abortion did not respect the *Canadian Charter of Rights and Freedoms*.

### **The Canadian Charter of Rights and Freedoms**

(passages)

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### **Life, liberty and security**

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.



## The question asked to judges

From a legal point of view, the main question the Supreme Court judges had to answer involved section 7 of the *Canadian Charter of Rights and Freedoms*:

Did the section of the *Criminal Code* about the right to abortion respect section 7 of the *Canadian Charter of Rights and Freedoms*?

The Charter bans governments from introducing laws that significantly violate the life, liberty and security a person.

To answer this question, the judges looked at the case file to understand how abortions were performed in Canada in the 1980s. The judges also wanted to know what were the impacts of the abortion section of the *Criminal Code* on section 7 of the *Canadian Charter of Rights and Freedoms*.

Judges do not always agree on interpretation questions.

## Comprehension questions

- 1) What was the main argument Dr. Morgentaler and his colleagues presented to support of their position?

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# Additional Resources

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- Dr. Henry Morgentaler



[Part 1 | The doctor who risked his life for abortion rights](#)

[Part 2 | The doctor who risked his life for abortion rights](#)

- Abortion: Free and Legal Throughout Pregnancy



<https://educaloi.qc.ca/en/capsules/abortion/>

- Abortion for People Under 18



<https://educaloi.qc.ca/en/capsules/abortion-for-people-under-18/>