

Reproductive Rights Lesson Aid

Reproductive rights timeline

(Canadian emphasis)

- 1800s/1900s Rhythm method recommended, but inaccurately, as they counseled intercourse in middle of cycle.
- 1839 Goodyear makes rubber condoms available.
- 1842 Oliver Wendell Holmes calls for obstetricians to wash hands and use sterile procedures; this radically reduces maternal death rates. (US)
- 1847 Dr. Simpson of Edinburgh is the first to use chloroform to relieve the pain of childbirth. This was protested by many people who saw birthing pain as a religious act. (Scotland)
- 1869/92 Early on in Canada, acts were adopted to prohibit abortion and the dissemination of any information on birth control and the sale of contraceptive and abortifacient products.
- 1873 Passing of *Comstock Law* and serious enforcement of law preventing “obscene” material through the mail.
- 1910 Emma Goldman speaks out for birth control. Condoms, douching, and withdrawal were the only birth control methods available. (US)
- 1915 Dutch invent the diaphragm and encourage public health use. (Netherlands)
- 1917 First birth control clinic opened in Brooklyn. Margaret Sanger arrested for operating this clinic under *Comstock Law*; serves 30 days. (US)
- 1923 First advocacy organization in Canada was formed in Vancouver.
- 1932 The first birth control clinic in Canada was started in Hamilton.
- 1960 Oral contraception approved in US.
- 1962 First International Conference on Intrauterine Contraception promoted the IUD.
- 1969 Canada legalizes abortions and homosexuality.
- 1973 Roe vs. Wade invalidates state laws against abortion. (US)
Henry Morgentaler sets up an abortion clinic in Montreal, contrary to law. He is arrested, charged, found innocent, decision appealed, found guilty. He later expands his clinics to other provinces.
- 1983 Henry Morgentaler is charged with illegal abortion, along with abortionists Dr. Leslie Smoling and Dr. Robert Scott.
- 1988 The Supreme Court of Canada, in a split decision, strikes down Section 251 of the *Criminal Code*, declaring it unconstitutional. Provinces respond by setting up their own regulations on the performance of abortion.
- 1989 Barbara Dodd in Toronto and Chantal Daigle in Quebec go to court to try to get abortions after their boyfriends got injunctions to prevent them from doing so. Presently, no father can prevent abortion of his child.
A new abortion law, Bill C-43, is presented in the House of Commons. It passes on May 29, 1990 and is sent to Senate. Bill C-43 retains abortion as a criminal offence but permits it on very broad grounds.
- 1991 Nova Scotia government appeals to the Supreme Court to reverse two lower court decisions which acquitted Henry Morgentaler of illegally performing abortions in his unlicensed abortion centre in Halifax.

- Quebec's civil code is revised to allow girls, as young as 14 years old, to have an abortion without parental knowledge or consent.
- 1994 NDP Attorney General of Ontario, Marion Boyd, is granted an interim injunction which prohibits pro-life demonstrations and picketing closer than 500 feet from the homes of abortionists (bubble zones).
- Dr. G. Romalis of Vancouver, BC was shot and seriously wounded by a sniper at his home.
- 1997 Canada signed the UNESCO *Declaration on the Human Genome and Human Rights* thus rejecting human cloning.
- 1999 Preven, a morning-after pill, is approved by Health Canada.
- 2000 Dr. Romalis stabbed by an unidentified assailant in his clinic. He continues to perform abortions and speaks out about abortion rights.
- 2004 *Assisted Human Reproduction Act* outlaws commercial surrogacy but reimbursement for medical fees is not specifically outlawed.
- 2005 Winnipeg judge, Jeffrey Oliphant, rules that the failure for government to pay for private clinic abortions was a "gross violation" of women's rights.
- 2006 A Quebec judge orders the province to pay the full costs of private clinic abortions. The province had been covering a portion of these costs.
- 2010 The Supreme Court of Canada concluded that the provinces should have power over the regulation of human embryos, eggs, and sperm, such as how many embryos can be implanted within a prospective mother and how reproductive material can be gathered and sorted. Many were hoping for a national standard.
- Conservative government's G8/G20 maternal health plan excludes funding for important components of contraception and family planning, as well as abortion.
- 2012 Conservative back bench attempts to reintroduce a bill granting rights to the fetus. Bill is defeated.

Global history of abortion laws

Reproductive laws are not a 21st century concept; in the 10th century Islamic law permitted abortion within 120 days of pregnancy or after if the mother's life is threatened. During the 17th and 19th century many countries outlawed abortion following a 1765 British law that deemed "post-quickening abortion" to not be considered homicide. In 1873, the *Comstock Act* was passed in the United States making it illegal to send any "obscene, lewd, and/or lascivious" materials through the mail; the delivery of contraceptive devices and information on contraception or abortion became illegal. During the period of 1816–1916 the American Medical Association and some suffragettes opposed abortion.

In 1918 Margaret Sanger was legally charged for disseminating contraceptive information for women. On appeal, her conviction was overturned allowing the distribution and promotion of contraceptive devices for the prevention of disease. In 1919, Lenin legalized all abortions in Russia. In 1936, the United States rules in *United States vs. One Package of Japanese Pessaries* that the federal government could not interfere with physicians' distribution of contraception. Abortion laws began to shift after a legal precedent was set in Britain. In 1938, Dr. Aleck Bourne was acquitted after facing charges for aborting a pregnancy of a young girl who had been raped by soldiers. In 1938, Sweden legalized abortion in a variety of cases, as did Japan in 1948 in its *Eugenic Protection Act*. In 1965, the *Griswold vs. Connecticut* case in the US overturned the *Comstock Laws* that banned contraception. In 1966, Mississippi became the first state to allow abortions in the case of rape. In 1967, the *Abortion Act* legalized abortion in the United Kingdom with the exception of Ireland.

The US Supreme Court case of Roe vs. Wade declared all state bans on abortion during the first and second trimesters to be unconstitutional, and legalized third trimester abortions when the woman's mental or physical health were at risk. In 2000, Mifepristone (RU-486) the "morning after pill" for abortion was approved by the US Food and Drug Administration (FDA). In 2003, President George W. Bush enacted the *Partial Birth Abortion Ban Act* which the US Supreme Court later declared unconstitutional. In 2004, the House of Representatives passed the *Unborn Victims of Violence Act* of 2003, which determined that a fetus is a legal "person," with individual rights separate from those of the pregnant woman. In 2006, Mississippi's House Public Health Committee voted to approve a ban on abortion, but the bill failed; North Dakota sought to enact the *Personhood of Children Act* aimed to allocate rights to "the pre-born, partially-born"; and several states have enacted "trigger laws" if Rove vs. Wade were to be overturned. Abortion laws remain contested across the globe.

Canadian history of abortion laws

Prior to 1969 a woman in Canada could obtain a legal abortion only if continuation of her pregnancy threatened her life. This changed August 26, 1969, when a new abortion law was introduced allowing women to obtain an abortion if a committee of at least three doctors determined that the pregnancy was a risk to the woman's health or life (including mental health). In 1969, a bureau was established to monitor all abortions taking place, and provinces were required to submit reports monthly. At this time the *Criminal Code* permitted abortions to take place in hospitals only, so no clinics were allowed to legally operate. In 1971, several US health departments situated near Canadian borders reported that a substantial number of their patients were arriving from Canada (6,309; 1971); this number declined substantially by 2000. Canada continued to monitor abortions and collected data on such determinants such as: province of residence, marital status, age, previous deliveries, previous abortions, date of last menses, abortion procedure, sterilization, complications, and days in hospital.

In 1973, Henry Morgentaler illegally set up an abortion clinic in Montreal and was charged for doing so. He was arrested, found innocent, the case was appealed, he was then found guilty. Morgentaler resumed his challenge three times and each time faced the same legal processes. Eventually, the Quebec government stopped charging him. Morgentaler later challenged other provinces by opening clinics in such places as Toronto, Newfoundland, and Edmonton. By 1974, all provinces and territories were submitting these individual case reports. Quebec began to submit counts of clinic abortions in 1978; Prince Edward Island discontinued its reporting in 1983. Due to budget cuts, the Therapeutic Abortion Survey program at Statistics Canada was cancelled; the program was resurrected in 1987, but with substantial cutbacks.

In 1988, the Supreme Court of Canada abolished the 1969 abortion law, thus removing abortion from the *Criminal Code* which had mandated the collection and publication of abortion statistics, and private clinics began to emerge. In 1989 a new abortion law, Bill C-43, which retains abortion as a criminal offence but permits it based on very broad ground, was presented in the House of Commons, but it was defeated in 1991. By 1994, most provinces were operating abortion clinics; no clinics were operating in the Yukon or the Northwest Territories. Reporting structures varied across provinces, but a 2000 report documented 41,919 cases in Canada. In 1996, BC instituted the "bubble zone" around abortion clinics to protect abortion clinics, while also allowing protest and permitting freedom of expression.

The Supreme Court of Canada said that the section of the *Criminal Code* which made abortion a crime was of no force or effect. The Supreme Court can overrule Parliament when the laws are incompatible with the *Charter of*

Rights and Freedoms. The *Charter* (Section 7) says that “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.” In 1988, Chief Justice Brian Dickson ruled that section 287 of the *Code* offended section 7 of the *Charter* and that “Forcing a woman, by threat or criminal sanction to carry a fetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman’s body and this violation of her security of the person.” Abortion is not a crime in Canada, but it is an area of law that is rather murky and contested.

Despite the controversy that surrounds adolescents’ sexual and reproductive rights, international and human rights treaties have been designed to protect their right to health, including sexual and reproductive health. The most far-reaching protection for adolescents’ right to reproductive health comes from the UN *Children’s Human Rights Convention* (Article 24):

- Adolescents have the right to access sexual and reproductive health information “regardless of their marital status and whether their parents or guardians consent.” (Paragraph 28)
- Adolescents of “sufficient maturity” have the same rights to privacy and confidentiality with respect to health care counselling and advice as adults. As such, health care providers cannot disclose information about this counselling to others (including parents) without adolescents’ consent, or under the same circumstances where violating this right would apply to adults. (Paragraph 11, 32)
- Adolescents, who are mature enough to receive confidential counselling, are also entitled to privacy and to request confidential health care services, including treatment and sexual and reproductive health services, without third-party consent. (Paragraph 11, 32-33)
- They also note that governments must take certain actions to protect adolescent’s right to sexual and reproductive health, including to “provide adolescents with access to sexual and reproductive information, including family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted diseases (STDs).” (Paragraph 28, 12)
- “Develop effective (HIV/AIDS/STI) prevention programmes, including measures aimed at changing cultural views about adolescents’ need for contraception and STD prevention and addressing cultural and other taboos surrounding adolescent sexuality.” (Paragraph 30)
- “Develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception, and safe abortion services where abortion is not against the law, adequate and comprehensive obstetric care and counselling.” (Paragraph 31)
- “Take measures to remove all barriers hindering the access of adolescents to information, preventative measures such as condoms, and care.” (Paragraph 30)

“The *Children’s Rights Convention* is the most widely ratified human rights treaty in history; every country in the world, with the exception of the US and Somalia, has expressly recognised their obligation to protect adolescents’ right to sexual and reproduction health.”

Source: The Youth Coalition’s *A Youth Activist’s Guide to Sexual and Reproductive Rights*. Classroom discussion questions related to human rights. (www.youthcoalition.org)

The rights to education and information

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. (Article 19.2, *Civil and Political Rights Covenant*)

1. **How is access, or the lack thereof, to information about contraception, sexual health, and reproductive rights significant to discussions about abortion?** Consider regions where such information is unavailable because of economics, politics, or cultural tradition.
2. **How is education, or the lack thereof, significant to the issue of abortion?** Consider not only being educated about health and sexual reproduction, but also the importance that education plays in a young girl's future opportunities or predisposition to risk.

The right to privacy

1. "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."
2. "Everyone has the right to the protection of the law against such interference or attacks."
(Article 17, *Civil and Political Rights Covenant*)
3. **How do privacy laws interlock with sexual health, choices, and abortion—and especially in terms of youth?** What rights do teens in Canada have in regards to patient/doctor confidentiality; contrast this to other areas in the world where teens may have very limited rights.
4. **How does privacy play into arguments regarding pro-life vs. pro-choice?** Consider privacy rights and the right to abortion.

The right to decide the number and spacing of one's children

- States parties are countries that have ratified the United Nations Committee on the Elimination of Discrimination against Women (CEDAW).
 - States parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular shall ensure, on a basis of equality of men and women: "...(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights."
(Article 16(e), *CADAW Convention*)
1. **How is access to birth control significant to sexual health, reproduction, and abortion?** Consider the history timeline in this package.
 2. **How important is the number and spacing of one's children to the quality of life for a family?**

The right to consent to marriage and to equality within marriage

1. Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
(Article 16, *Universal Declaration of Human Rights*)

1. **How does the right to consent to marriage, or lack thereof, relate to abortion issues and rights?** Consider such things as sex trafficking and child brides.
2. **How does equality within a marriage relate to sexual health, reproduction, and abortion?** Consider religious and cultural traditions that may affect a woman's right to refuse sex.

The right to be free from discrimination

"Everyone is entitled to all the rights and freedoms set forth (in the *Universal Declaration of Human Rights*), without distinction of any kind, such as race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status." (Article 2, *Universal Declaration of Human Rights*)

1. **If poor economic status is a form of discrimination, how are those living in poverty possibly discriminated against in regards to sexual health, reproduction, and abortion?** Consider the significance of cost as related to abortion.
2. **How might forced sterilization and discrimination tie into sexual, reproductive, and abortion rights?** Consider situations where forced sterilization has occurred.
3. **How might gender discrimination tie into sexual, reproductive, and abortion rights?**

The right to be free from harmful practices

"[State Parties shall] take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority to either of the sexes or on stereotyped roles for men and women." (Article 5(a) *CEDAW Convention*)

1. **How does forced marriage possibly affect sexual health and reproduction?** Consider what physical and emotional damage might result?
2. **What other harmful practices can affect sexual health and reproduction?** Consider such things as female genital mutilation and sex trafficking.

The right to be free from violence

Every woman has the right to be free from violence in both the public and private spheres. (Article 3 *Convention of Belém do Pará*)

1. **How does rape tie into abortion debates? (or even a rape drug?)**
2. **How does the fact that violence increases women's risk of unwanted pregnancy, HIV/AIDS and other sexually transmissible infections, complications during pregnancy, and chronic reproductive health problems (Youth Coalitions': *A Youth Activists' Guide to Sexual and Reproductive Rights*) affect sexual health, reproduction, and abortion rights?**

Adolescents' right to health

The Children's Rights Convention:

Article 24.1: "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services."

Article 24.2: “States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measure:... (d) To ensure appropriate pre-natal and post-natal health care for mothers:... (f) To develop preventive health care, guidance for parents.”

1. **How does sexuality, pregnancy, and birth control relate to adolescents’ right to health?**
2. **How does abortion relate to the *Children’s Rights Convention*, or does it?**

Adolescents’ right to have a political voice

“The right to express views freely and have them duly taken into account (Article 12) is also fundamental in releasing adolescents’ right to health and development. States parties need to ensure that adolescents are given a genuine chance to express their views freely on all matters affecting them, especially within the family, in school, and in their communities. In order for adolescents to be able safely and properly to exercise this right, public authorities, parents and other adults working with or for children need to create an environment based on trust, information-sharing, the capacity to listen and sound guidance that is conducive for adolescents’ participating equally including in decision-making processes.” (*Convention of the Rights of the Child*)

1. **How important do you feel it is that adolescents have a voice in government affairs regarding sexual health, reproduction, and abortion?**

Student activities

1. Copy the “types of reproductive rights” from this document and have small groups of students choose one of the types, research it, and create a display concerning their material. Have students set-up their material around the room on a chosen day. Each student carousels around the room marking the other student work and learning more about the vast spectrum of reproductive rights.
2. Have students choose five particular dates that interest them and have them explain why they found the dates interesting.
3. Have students compare the “why is it important?” section of Section 15 of the *Charter of Rights and Freedoms* in regards to equality.
4. Use the statistics on page two of the booklet to explain the many facets of reproductive rights. Have students break into small groups to brainstorm what factors are involved in issues with reproductive rights.
5. Have students choose a country other than their own and investigate the climate of reproductive rights in that country.
6. Have students create a chart outlining arguments for and against reproductive rights.

Curriculum connections

- **Elementary**
Health and Career Education (HACE).
- **Grade 8 and 9**
Healthy Living and Healthy Relationships.
- **Planning 10**
Prescribed Learning Outcomes C5–C9 in the Health section under the subsection Healthy Decisions.
- **Family Studies 10–12**
Prescribed Learning Outcomes A1–A11 in the Decision to Parent and Pregnancy sections, also D1–D5 Families in a Changing World and D9–D11 in Facing Family Challenges.
- **Social Justice 12**
Appropriate in all three areas of Prescribed Learning Outcomes: Defining Social Justice, Recognizing and Analyzing Social Injustices, and Moving Toward a Socially Just World.
- **Law 12**
Prescribed Learning Outcomes A6 of Foundations of Law.
- **Social Studies 11**
Prescribed Learning Outcomes under the section *Society and Identity*:
 - describes the roles of women in terms of social, political, and economic change.
 - assesses the development and impact of Canadian social policies and programs related to immigration, the welfare state, and minority rights.
 - explains economic cycles with reference to the Great Depression and the labour movement in Canada.
 - describes the role of women in terms of social, political, and economic change in Canada.
 - assesses the impact of the conscription crises, Quebec nationalism, bilingualism, and regionalism on Canadian unity.
 - demonstrates knowledge of the challenges faced by Aboriginal people in Canada during the 20th century, and their responses, with reference to: residential schools, reserves, self-government, treaty, and negotiations.
 - represents what it means to be Canadian with reference to distinctive Canadian programs and policies, important Canadian cultural, and scientific achievements.

Possible websites for lesson plans and resources

- **International Women’s Health Coalition.** Positively Informed: Lesson Plans and Guidance for Sexuality Educators and Advocates.
www.iwhc.org/index.php?=&content&task=view&id=2594
The booklet contains 12 specific chapters and is appropriate for 10–19 year olds. Chapters 11 and 12 are of greatest interest in regards to reproductive rights and abortion. The lessons are ready to use and the authors offer suggestions for adapting the lessons to meet the needs of specific groups (secondary classes).
- **ProQuest K–12.** Women’s Pursuit of Gender Equality: (Reproductive Rights)
www.proquestk12.com/bulleins/11MAR?TM_ProQuest.shtml
This is a simple straightforward lesson plan that has students examine reproductive rights and the ongoing pursuit of such rights. It includes reproducible worksheets.
- **Rutgers.** Lesson Plans about Abortion (Grade 10–12)
answer.rutgers.edu/page/abortion
These lesson plans are accompanied by linked-in articles and videos and they have students examine difficult “should” questions related to abortion. The questions are suitable for senior classes that can respectfully discuss controversial issues.
- **United Nations.** Adding It Up. The Benefits of Investing in Sexual and Reproductive Health
Retrieved from:
www.unfpa.org/publications/detail.cfm?ID=162&filterListType=3
This is a United Nations publication that provides a framework for teachers to present the benefits of investing in sexual and reproductive health (Grade 10–12).
- **Safe Healthy Schools.** Community and Schools Promoting Health.
www.safehealthyschools.org/sexualityeducation/gateway.htm
The website includes a list of sexual health lesson plans (e.g., social barriers to condom use, I have been date raped, I think I’m pregnant) and cross-references them according to grade appropriateness (K–12 depending on the lesson).
- **Abortions in Canada**
www.abortionincanada.ca
A website that offers some straight facts about abortions in Canada.
- **Advocacy for Youth**
www.advocatesforyouth.org/
A website that talks about sex education frankly and gives students a place to expand their thinking into action. There are very practical lesson plans as well.
- www.leaf.ca/education/documents/EdHO-ReproductiveRights.pdf
- www.optionsforsexualhealth.org