
SEX SELECTION ACT

Model Legislation & Policy Guide



We *Need* a Law

*because all human beings
have human rights*

INTRODUCTION

Canada is firmly committed to equality which includes ensuring women are not the victims of sex-based violence. Adopting appropriate legislation to end discrimination against women is a part of Canada's efforts to promote and protect the rights of women as demonstrated through its legislative and legal history,¹ as well as through its international obligations.² This model legislation, which prohibits sex selection abortion, is a continuation of that commitment.

There is a growing concern both internationally and in Canada of the practice of targeting women before they are born because of their sex. The Canadian Medical Association Journal published two research papers in 2016 that studied the imbalanced sex ratio at birth and linked it to induced abortions.³ Reflecting a commitment to equality, this legislation aims at preventing and condemning this gendercide.

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¹ Section 15 of the *Canadian Charter of Rights and Freedoms* constitutionally ensures equal protection and benefit of the law without discrimination based on sex. In Canadian jurisprudence, this commitment is reflected as far back as the "Persons" case in 1929 which decided women were eligible to be senators (*Henrietta Muir Edwards and others v The Attorney General of Canada* [1929] UKPC 86).

² International efforts are demonstrated through Canada's involvement with the United Nations' *Commission on the Status of Women*, the *Convention on the Elimination of All Forms of Discrimination against Women*, and the *Feminist International Assistance Policy*.

³ Urquia, Marcelo L *et al*, "Variations in Male-Female Infant Ratios among Births to Canadian-and Indian-Born Mothers, 1990-2011: a Population-Based Register Study" (2016) *Canadian Medical Association Journal*, 4(2).

Urquia, Marcelo L *et al*, "Sex Ratios at Birth after Induced Abortion" (2016) *Canadian Medical Association Journal*.

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This Bill amends the *Criminal Code* by adding sections 318.1-318.4 in order to prohibit sex selection abortion. This law punishes a medical practitioner who performs a sex selection abortion and has the effect of informing the pregnant person of the prohibition of sex selection abortion.

Highlights of this legislation include:

1. Prohibiting a medical practitioner from performing a sex selection abortion.
2. Requiring the medical practitioner inform the pregnant person that sex selection abortion is illegal.
3. Requiring the medical practitioner obtain a statement confirming that the abortion is not being obtained due to the sex of the fetus.
4. Prohibiting the use of active diagnostic device (including ultrasounds) for the sole use of fetal sex determination.

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Definitions

318.1 The following definitions apply in this section.

abortion means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to end the clinically diagnosable pregnancy of a person with knowledge that the termination by those means will cause the death of a fetus.

active diagnostic device means an active device that, whether used alone or in combination with another medical device, is intended to supply information for the purpose of detecting, monitoring or treating a physiological condition, state of health, illness or congenital deformity.

medical practitioner means a person who is entitled to practise medicine under the laws of a province.

Performing a Sex Selection Abortion

318.2 (1) No medical practitioner shall recommend an abortion, refer for an abortion, or perform an abortion where they know or reasonably ought to know that the sex of the child is a significant motivating factor for obtaining the abortion.

Safeguards

- (2)** Before a medical practitioner performs an abortion, the medical practitioner must
- a) Be of the opinion that the abortion is not being obtained because of the sex of the fetus;
 - b) Inform the pregnant person of the prohibition of abortion as a method of sex selection;
 - c) Require a written statement from the pregnant person stating that the reason for the abortion is not due to the sex of the fetus;
 - d) Be of the opinion that the statement set out in (c) is given voluntarily and not as a result of external pressure; and
 - e) Ensure that the written statement set out in (c) is signed and dated by the person obtaining the abortion.

Failure to comply

318.3 A medical practitioner who fails to comply with the requirements set out in 318.2 (1) and (2) is guilty of an offence and is liable

- a) On conviction on indictment, to a term of imprisonment of not more than five years; or
- b) On summary conviction, to a term of imprisonment of not more than eighteen months.

Use of active diagnostic devices to determine sex

318.4 (1) Anyone who uses an active diagnostic device for the sole purpose of fetal sex determination:

- a) Is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or
- b) Is guilty of an offence punishable on summary conviction.