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# INTERNATIONAL STANDARDS ABORTION LAW

Model Legislation & Policy Guide



**We *Need* a Law**

*because all human beings  
have human rights*

# INTRODUCTION

The Abortion Rights Coalition of Canada estimates that there were over 100,612 abortions in 2015.<sup>1</sup> The Canadian Institute of Health Information reported that, of abortions for which we know the gestational age (some abortion providers do not report), 2.4% are done after 20 weeks.<sup>2</sup> This means in Canada there are at least 2,500 abortions performed every year after 20 weeks gestation. Canada has no legal restrictions on abortion whatsoever.

Canada is way out of line with our international counterparts when it comes to protecting pre-born human rights. A few examples:

France has an abortion law which protects pre-born children after 12 weeks' gestation. The only exceptions are if the "pregnancy poses a grave danger to the woman's health or there is a strong probability that the expected child will suffer from a particularly severe illness recognized as incurable."

Spain has a law that bans abortion after 12 weeks' gestation. In cases of foetal impairment there is an exception, but only up to twenty-two weeks. Two specialists, other than the doctor performing the abortion, must certify that the child would suffer from severe physical or mental defects.

Germany allows abortions on request until 12 weeks, provided the woman receives proper counselling three days before the procedure. The state-regulated counselling is required to inform the woman that the pre-born have a right to life and to try to convince her to continue her pregnancy.

It has been nearly 30 years since the Supreme Court of Canada struck down Canada's abortion legislation. Madam Justice Bertha Wilson, who served on the bench at the time and rendered the most liberal opinion of the Justices in favour of a legalized abortion, advocated an approach that balances abortion access with the "state's interest in protecting the unborn."

We have drafted model legislation we believe is a comprehensive response to the legal void that currently exists. This draft law has three key components: a requirement for independent counselling, a 48-hour waiting period between the time a woman requests an abortion and when she can receive one, and a prohibition on abortion after 13 weeks gestation.

The "International Standards Abortion Law" will bring Canada into line with every other democracy in the world by protecting both women and pre-born children.

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<sup>1</sup> <http://www.arcc-cdac.ca/backgrounders/statistics-abortion-in-canada.pdf>

<sup>2</sup> <https://www.cihi.ca/en/types-of-care/hospital-care/induced-abortions-reported-in-canada-in-2014>

# INTERNATIONAL STANDARDS ABORTION LAW

This bill repeals and replaces section 287 of the *Criminal Code* in order to bring Canadian law in line with international standards and our obligations under the United Nations Declaration of the Rights of the Child (1959) and the Convention on the Rights of the Child (1990). It is largely based on the German Criminal Code. Its limits on the intentional termination of pregnancy are comparable with the limits enforced by many other European countries.

Some of the key changes compared to the current (constitutionally invalid) section 287 are:

1. changing the term “procure a miscarriage” to “terminate a pregnancy”;
2. decreasing the penalties;
3. distinguishing cases where abortions are performed recklessly or without consent;
4. removing references to Therapeutic Abortion Committees (TACs) and approved hospitals;
5. adding a 13-week gestational limit (with an exception for cases of extreme trauma or where life is endangered);
6. requiring independent counselling 48 hours before an abortion;
7. requiring provider to determine with reasonable certainty that termination is not coerced;
8. adding a sexual assault exception (up to 13 weeks);
9. mandating reporting to the Minister of Health;
10. adding definitions of “termination of pregnancy” and “unborn child”;
11. adding penalties for breach of medical duties.

**What section 287 would look like in the *Criminal Code*, if all proposed amendments were made:**

*Terminating pregnancy*

**287.** (1) Everyone who uses or attempts to use any means to terminate a pregnancy is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

(2) An act, the effect of which occurs before the implantation of the fertilized egg in the uterus, shall not qualify as termination of pregnancy within the meaning of this section.

*Serious cases*

(3) Every person who commits an offence under subsection (1) and

(a) acts without the informed consent of the pregnant person except in cases of medical emergency when the pregnant person is unable to consent; or

(b) recklessly causes danger of death or serious harm to the pregnant person;

is guilty of an indictable offence and liable to imprisonment for life and to a minimum punishment of imprisonment for a term of five years.

*Person terminating their own pregnancy*

(4) Everyone who, being pregnant, uses or attempts to use any means to terminate their own pregnancy is guilty of an offence punishable on summary conviction.

*Definition of "means"*

(5) In this section, "means" includes

(a) the administration of a drug or other noxious thing;

(b) the use of an instrument; and

(c) manipulation of any kind.

*Exceptions*

(6) Subsections (1) and (4) do not apply where a qualified medical practitioner before using or attempting to use any means to terminate a pregnancy has confirmed by certificate in writing that

(a) not more than thirteen weeks have elapsed since the first day of the person's last menstrual period;

(b) the pregnant person had independent counseling at least 48 hours before the operation pursuant to subsection (12) and has provided the qualified medical practitioner a certificate pursuant to subsection (13);

(c) the pregnant person is not being coerced to terminate the pregnancy; and

(d) the qualified medical practitioner has explained the significance of the intervention, especially about the order of events, risks, and possible physical or psychological consequences.

(7) The limitations in paragraph (6)(a) and (b) do not apply if the qualified medical practitioner has, by certificate in writing, stated that in their opinion, the termination of the pregnancy is necessary

(a) to save the life of a person whose life is endangered by a physical disorder, physical illness, or physical injury, including a physical condition caused by or arising from the pregnancy itself; or

(b) to prevent severe pathological physical morbidity of the person.

*Exceptions for unlawful acts*

(8) Subsections (1) and (4) do not apply where a qualified medical practitioner before using or attempting to use any means to terminate a pregnancy has confirmed by certificate in writing that according to the *bona fide* opinion of a qualified medical practitioner

(a) an unlawful act has been committed against the pregnant person under Sections 151-155, 265 or 271-273 of the *Criminal Code*;

(b) the pregnancy resulted from the unlawful act; and

(c) not more than thirteen weeks have elapsed since the first day of the person's last menstrual period.

*Information requirement*

(9) The Minister of Health must by order annually require a medical practitioner who has terminated the pregnancy of any person to furnish them with a copy of all certificates required in subsections (6), (7), and (8) and such other information relating to the termination of the pregnancy as they may require.

(10) Everyone who knowingly contravenes subsection (9)

(a) is guilty of an indictable offence and liable to a term of imprisonment of not more than two years; or

(b) is guilty of an offence punishable on summary conviction.

*Requirement of consent not affected*

(11) Nothing in subsection (6), (7), or (8) shall be construed as making unnecessary the obtaining of any authorization or consent that is or may be required, otherwise than under this Act, before any using or attempting to use any means to terminate the pregnancy of a person.

*Counseling of pregnant persons*

(12) The counseling referred to in paragraph 6(b) must take place through a counselor, social worker or psychologist licensed by the province in which the procedure takes place.

*Idem*

(13) After the conclusion of the counseling referred to in subsection (12), the counseling agent must issue the pregnant person a certificate including the date of the last counseling session and the name of the pregnant person.

*Idem*

(14) The physician who performs the termination of pregnancy and their staff are excluded from being a counselor for the purpose of paragraph 6(b).

*Definitions*

(15) For the purposes of this section,

“qualified medical practitioner” « *médecin qualifié* »

“qualified medical practitioner” means a person entitled to engage in the practice of medicine under the laws of the province in which the termination of pregnancy occurs;

“termination of pregnancy” « *interruption de grossesse* »

“termination of pregnancy” 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 the unborn child.

“unborn child” « *enfant à naître* »

“unborn child” means the offspring of human beings from conception until birth.