

## Age of consent to sexual activity: What should you know about this topic and why?

Many countries have laws concerning the age at which a young person can legally consent to engaging sexual activity. In Canada, that age is 16.

So, what do these laws mean in practice and what are their implications for teens and young adults? To answer these questions, let's first get some background on this topic.

### Background and history

The laws regarding age of consent to sexual activity are designed to protect youth from exploitive situations involving older people. For example, at the start of Section 151 (sexual interference) of the Criminal Code of Canada (box below) you can see from the wording that it is the older person, not the younger person, who is breaking the law. Indeed, the government recently changed the terminology in the law from the "age of consent" to the "age of protection". You can also see that "sexual activity" is defined very broadly; it is not just sexual intercourse. Section 152 (invitation to sexual touching) has a similar emphasis.

In this context, "consent" implies a capacity to understand and agree to engaging in sexual activity. The law, with significant exceptions, says that youth under the age of 16 cannot be considered to have given that consent. Older people who engage in sexual activity with them are thus considered to have broken the law because the sexual activity was not legally consensual.

### Criminal Code of Canada: Section 151 (sexual interference)

Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years is guilty...

Source: Department of Justice: <http://laws.justice.gc.ca/en/C-46>

For many years, the age of consent in Canada was only applied to girls. In 1988 the law was changed to refer to both girls and boys. In May 2008, the Canadian government passed the Tackling Violent Crime Act which included an increase in the age of consent from 14 to 16. One reason put forward by the government for raising the age of consent was that it would increase the ability of law enforcement to protect young people from exploitation and harm. Another reason was that it would bring Canada in line with other countries such as England, where it is 16, and the United States where the age of consent in different states ranges from 16 to 18.

### Understanding the laws on age of consent to sexual activity and the exceptions

In broad terms, the legal age of consent to sexual activity is 16. However it is important to understand the exceptions. For example, there are two "close in age exemptions". One exemption is that 12 and 13 year-olds can consent to have sex with peers who are not more than 2 years older than themselves. The other is that 14 and 15 year-olds are able to consent to sex with partners who are not more than 5 years older than themselves.

It is also important to note that the age of consent for anal intercourse is 18, except if the two persons involved are legally married. For people aged 18 and over, anal intercourse is legal if it occurs in private, between two consenting adults. The fact that the age of consent is 16 for vaginal intercourse but 18 for anal intercourse is controversial. This aspect of the law has been challenged in provincial courts of appeal (the criminal code is federal law governing all Canadians) on the grounds that



it discriminates against gay, bisexual, and transgendered youth and therefore violates the Canadian Charter of Rights and Freedoms.

Another aspect of the laws on sexual consent concerns sexual activity between a teen and an older person who is in a “position of trust or authority” in relation to the teen. Here the age of consent is 18. In other words, it is illegal for people in positions of trust or authority such as teachers, counsellors, coaches, older family members, and doctors or other health professionals to be sexually involved with a person under the age of 18.

### Other sexual offenses where age is a factor

In 2002, the crime of internet luring was added to the Criminal Code of Canada. For example, it is against the law to use a computer to communicate with a person under the age of 16 or someone believed to be under the age of 16 for the purposes of arranging or encouraging sexual activity (as in Sections 151 and 152 discussed above). It is also illegal to engage in prostitution or in the creation of pornography with someone who is under the age of 18. It is not a defence that the accused believed that the young person was 16 or over in the case of internet luring or 18 or over in the cases of prostitution or pornography, unless every effort was made to confirm the person’s age.

Under the Criminal Code of Canada provisions on child pornography it is an offense to create, possess, or distribute pictures, films, videos or other visual representations that show persons under the age of 18 engaged in sexually explicit activities. These images can also be considered pornographic if they show the sexual organs or the anal region of a person under 18 for expressly sexual purposes. Child pornography can also include written or audio material that describes or records sexual activity with a person under the age of 18.

### Questions and concerns regarding age-related sexual offences

The government’s legislation to increase the age of consent from 14 to 16 has generated considerable discussion concerning its merits. On one hand, some people believe that the new law increases the ability of parents, caregivers, and the police to protect young people under the age of 16 from sexual exploitation. They argue that the internet and other communication technologies have made young people increasingly vulnerable to exploitation. On the other hand, some believe that increasing the focus on criminalizing the choices that a younger person and an older person (e.g., a 15 year-old and a 21 year-old) may make together is a less effective way of promoting and protecting the health and well-being of youth compared to focusing efforts on making sure that young people have access to high quality sexual health-related information, education, counselling, and services.

Some worry that youth who have a relationship with an older partner might be afraid to ask for sexual health information and medical treatment (e.g., STI testing/treatment, pregnancy counselling/care) because it involved sexual behaviour that was against the law (Note: A young person has the right to request and receive these services without disclosing the age of their partner). It is also argued that having a different age of consent for anal intercourse compared to vaginal intercourse is unfair (For discussion of different points of view on age of consent to sexual activity see the links below).

### Sexting

Another issue that is of concern to young people is how the Canadian laws on child pornography may apply to the practice of “sexting” among youth. For example, while a person under the age of 18 can, in many cases, legally consent to engaging in sexual activity, it is likely illegal for the same person to transmit pictures of themselves in a sexual situation, or for a sexual purpose, over the internet.



### What's The Take Home Message?

It's important for young people to understand their rights and responsibilities regarding sexual behaviour. This includes laws concerning age of consent to sexual activity. As noted above, if a criminal offense occurs as a result of sexual contact between a younger person and an older person, it is the older person who has broken the law. As you can tell from the description of age related sexual offenses presented here, the law is not always straight-forward. Hopefully, we have been able to clarify some of the different aspects of these laws, and different opinions on them, so that you have a better understanding of age of consent. If, after reading this information, you are thinking to yourself that you are being exploited or being taken advantage of in a sexual way by a person who is older than you, it's a good idea to talk it over with a person that you trust such as a parent or other family member, teacher, guidance counsellor, doctor or nurse.

### Links

Justice for Youth and Children. (2007).

*Submission of Justice for Children and Youth concerning Bill C-22.*

<http://www.jfycy.org/PDFs/Justice%20Committee%20Submission%20-%20age%20of%20consent.pdf>

Wong, J. (2006). Age of consent to sexual activity in Canada: Background to proposed new legislation on "age of protection".

*The Canadian Journal of Human Sexuality*, 15, 163-169

[www.Sieccan.org](http://www.Sieccan.org)

