

CONSENT IN THE CANADIAN CONTEXT

The Criminal Code of Canada sets out the laws regarding consent¹ to sexual acts (amended May 1, 2008); this includes any sexual behaviour, not just intercourse.

- 16 is the age of consent to sexual acts.*
- Children under 12 can never legally consent to sexual acts.
- The Criminal Code recognizes that adolescents engage in exploratory sexual behaviour (i.e., “youthful sexual experimentation”), and 12 and 13 year-olds may not be charged criminally if consent for sexual involvement is mutual, and there is no more than 2 years difference in age between the individuals. However, if one of the youth is in a position of trust or authority over the other youth, then consent is not valid. For example, it would not be against the law for a 15 year-old and a 13 year-old to be involved sexually if they have both consented, unless the 15 year-old is in a position of trust or authority (e.g., a babysitter or coach).
- Children who are 14 and 15 years old may consent to sexual involvement that is mutual, with a person who is a maximum of 5 years older. For example, it would be legal for a 15 year-old and a 19 year-old to be involved sexually if they have both consented, unless the 19 year-old is in a position of trust or authority.
- The Criminal Code further tries to protect teens who are 16 & 17 years of age from sexual exploitation by a person who is in a position of trust or authority. Teenagers in this age range may legally consent to sexual acts with someone who is not in a position of trust or authority. For example, a 16-year-old can legally consent to sexual involvement with a 20 year-old. However, if the 20 year-old were his/her tutor, then s/he would be committing an offence if they engaged in sexual behaviour, even if the 16-year-old consented. The 20 year-old is in a position of trust or authority over the 16-year-old and therefore, consent is not valid. When someone is in a position of trust or authority, s/he is responsible for not taking advantage of anyone under the age of 18.

A Person Cannot Consent to Child Pornography

¹ Consent – to voluntarily give permission. The ability to give consent implies that the person understands what s/he is agreeing to, societal standards for what is being proposed, that agreement or disagreement will be equally respected, and the implications of such an agreement (i.e., possible consequences and alternatives). Mental competence is also a factor in consent.

Consent should not be confused with compliance, which implies that the person submitted because of pressure, threats, blackmail, fear of consequences or trickery. For example, a boy has an erection and the offender comments to the child about how it feels good; because it does feel good like the offender said, the child thinks this is consent. In actuality, the child is complying with the offender and has been tricked into thinking it is consent.

An alleged offender may claim that the child/youth consented, but such a claim cannot justify sexual acts with a child/youth. Under no circumstances should a child's physical reactions to sexual stimulation (e.g., an erection) or lack of any signs of distress (e.g., complaints) be interpreted as consent or that the child/youth is enjoying the interaction. Physical reactions to sexual stimulation indicate only that the child's biological functions are healthy.