



# Complexities of Youth Victimization and Criminalization

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Sexual Consent Conference

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# Overview

Emily Chan, JFCY:

- Laws as they relate to children and youth

Pearl Rimer, BOOST:

- Victimization and Prevention



# CONSENT

IT'S SIMPLE AS TEA

# *Criminal Code of Canada*


## Meaning of “consent”

**273.1 (1)** Subject to subsection (2) and subsection 265(3), ***consent*** means, for the purposes of sections 271, 272 and 273, the **voluntary agreement of the complainant to engage in the sexual activity in question.**

## *Criminal Code of Canada*

### **No consent obtained**

(2) No consent is obtained, for the purposes of sections 271, 272 and 273, where

- (a) the agreement is expressed by the words or conduct of a person other than the complainant;
  - (b) the complainant is **incapable** of consenting to the activity;
  - (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
  - (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
  - (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a **lack of agreement to continue** to engage in the activity.
- 

## *Criminal Code of Canada*

### Where belief in consent not a defence

**273.2** It is **not a defence** to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

**(a) the accused's belief arose from the accused's**

**(i) self-induced intoxication, or**

**(ii) recklessness or wilful blindness; or**

**(b) the accused did not take reasonable steps**, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

1992, c. 38, s. 1.



Search ... 

# Legal services for young people under 18 and homeless youth under 25 in Ontario.

## Legal Rights Wiki

I am being [expelled](#).  
The [police](#) stopped me.  
[YCJA Records](#) destruction.  
Help with [leaving home](#).  
I'm in [child protection](#) court.  
I am a [victim](#).  
I received a [ticket](#).

LEGAL RIGHTS WIKI ►

## Ask a Lawyer

Free confidential legal advice for youth under 18 and homeless youth under 25 in Ontario.

**416-920-1633**

**1-866-999-5329**

ASK US ONLINE ►

## Research & Resources

Our [Cases](#) & Decisions  
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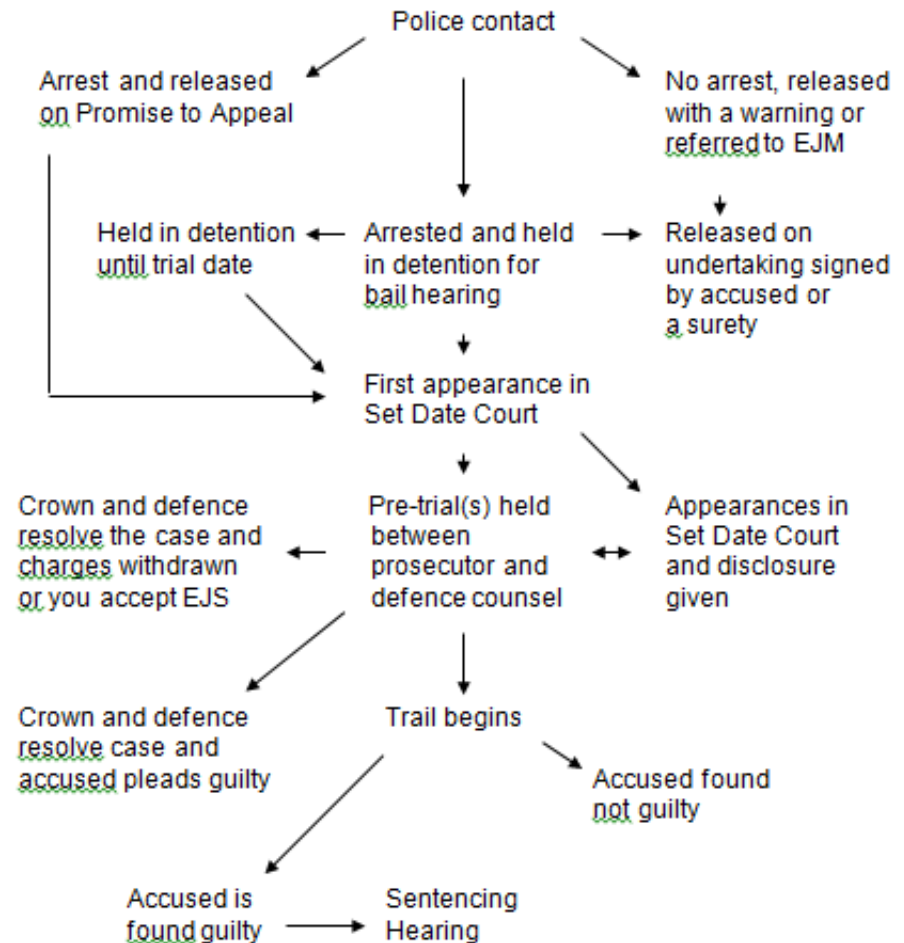
GO TO RESOURCES ►

# Youth Criminal Justice Act, 2003

12 - 17 years of age



This is a general overview of the steps that may occur in a case:





## *Criminal Code of Canada*

- Ages of consent
- Sexual exploitation
- Child Pornography
- Online Crime Act



# Legal Age of Consent for Sexual Activity

*Criminal Code of Canada, s.150.1*

About the younger person's ability to legally consent and the older person's legal responsibility to inquire.

12 - 13 years old = up to 2 years older

14 - 15 years old = up to 5 years older

16 - 17 years old = any years older\*



For **all** of the above: Older person must not in a position of power, trust or authority over the younger person.  
No relationship of dependency.

\*No exploitation (discussed later on).

# *Criminal Code of Canada*

## **Sexual Offences**

### ***Consent no defence***

150.1 (1) Subject to subsections (2) to (2.2), when an accused is charged with an offence under section 151 or 152 or subsection 153(1), 160(3) or 173(2) or is charged with an offence under section 271, 272 or 273 in respect of a complainant under the age of 16 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

## Sexual Offences, continued


### *Exception – complainant aged 12 or 13*

(2) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 12 years of age or more but under the age of 14 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused

(a) is less than two years older than the complainant; and

(b) is not in a position of trust or authority towards the complainant,

is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.



## Sexual Offences, continued

### *Exception – complainant aged 14 or 15*

(2.1) If an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused

(a) is less than five years older than the complainant; and

(b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

# Mistake of Age

Not a defence unless the accused shows honest belief and took all *reasonable steps* to ascertain the age of the complainant

*R v Chapman*, 2016 ONCA 310

(full discussion and references to other appellate decision)

*Requirement: “an earnest inquiry or some other compelling factor which negates the need for an inquiry. Whether an accused took all reasonable steps is fact-specific and depends on the circumstances.”*



# Sexual Exploitation

*Criminal Code, s. 153 (1.2)*

Charge possible when the younger person is 16 or 17

Individual circumstances:

- age of the young person
- age difference between the person and the young person
- evolution of the relationship; and
- degree of control or influence by the person over the young person.

# *Criminal Code of Canada*

## **Sexual exploitation**

**153 (1)** Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch,

directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

**153 (2)** In this section, *young person* means a person 16 years of age or more but under the age of eighteen years.



# CHILD PORNOGRAPHY

*Criminal Code of Canada, s 163.1(1)*

- written material and audio recordings advocating, counselling, or describing for a sexual purpose illegal sexual activity with a person who is or appears to be under the age of 18
- making, distributing, possessing or accessing the above

See also: *R v Sharpe*, [2001] 1 S.C.R. 45

# SEXTING



Image from: <http://wmuv.org/resources/human-exploitation/sexting/>

What?

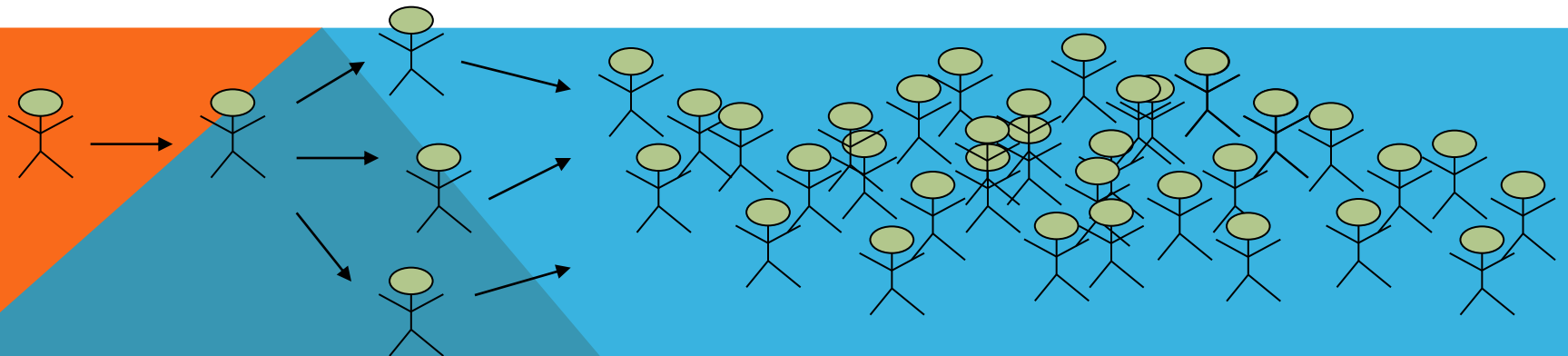
The sending of sexually suggestive or explicit photos, images, text messages, videos, or emails via cell phone or other mobile device

Why?

To flirt, to form relationships, to joke around, to bully and harass, or for revenge and intimidation

Your Photo Fate:

<https://www.youtube.com/watch?v=kiGfpt2hjAE>



# Bill C-13: Protecting Canadians from Online Crime Act

Came into force: March 10, 2015

**Publication of intimate images** without consent by any means of telecommunication



- Knowingly without consent or being reckless
- Publishes, distributes, transmits, sells, makes available or advertises

# *Criminal Code of Canada*

## Publication of an Intimate Image Without Consent

### Definition of intimate image

162.1

- (2) In this section, *intimate image* means a visual recording of a person made by any means including a photographic, film or video recording,
- (a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;
  - (b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and
  - (c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.



# Tort of “non-consensual distribution of intimate images” (civil lawsuits)

*Intimate Image Protection Act*, Manitoba, Jan 15, 2016

*Doe 464533 v N.D.*, 2016 ONSC 541, Jan 12, 2016

- Video posted without consent, online for 3 weeks, both parties 18 years of age, no criminal charges
- Liability: breach of confidence, intentional infliction of mental distress, invasion of privacy,
- Remedy for: general harm, punitive, deterrence
- \$100,000 (limited based on Simple Procedure rules) + costs



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# CHALLENGES

**Definitions:** Sexual Assault, Sexual Exploitation

**Police :** discretion, evidentiary issues, media, caselaw

**School:** discipline and treatment of offenders, treatment of victims

**Remedies:** criminal charges, CICB, civil lawsuits

**Disclosure:** duty to report

**QUESTIONS**

