

EDUCATOR RESOURCE—LEGAL DEFINITIONS IN CANADA

Age of Consent

Any kind of sexual activity without consent, regardless of age, is a criminal offense. Age of consent laws in Canada provide guidelines about how old a person must be to give consent for sexual activity. The age of consent in Canada is 16 (raised from 14 in 2008). It is the age at which a young person can legally consent to sexual activity; however, the age of consent for anal sexual intercourse is currently 18 years. Legislation at the time of publication, if passed, would change this to 16 years. A second exception to the 16 year age of consent is if there is the potential for exploitation (e.g., sexual activity that happens within a relationship of trust, authority, or dependency). In this case, age of consent laws apply to anyone under 18 years. A third exception to the law refers to closeness in age. For example, a 14 or 15 year-old can consent to sexual activity with a partner as long as the partner is less than five years older and there is no relationship of trust, authority, dependency, or exploitation of the younger person. There is also a close in age/peer group exception for 12 and 13 year-olds: a 12 or 13 year-old can consent to sexual activity with another person who is less than two years older and with whom there is no relationship of trust, authority or dependency, or other exploitation.

There is a bit of a grey area for 16 and 17 year-olds. *The Criminal Code* protects 16 and 17 year-olds against sexual exploitation, where the sexual activity occurs within a relationship of trust, authority, or dependency. Young people who are 16 and 17 years old cannot consent to sexual activity that involves sex work or pornography. In some cases, when an intimate, sexual picture of a person under 18 years is posted online, child pornography laws apply (for more information, see module 6.6). The grey area is in determining whether a relationship is considered to be exploitative for the 16 or 17 year-old. The definition of exploitative depends on the nature and circumstances of the relationship (e.g., the age of the young person, the age difference between the young person and their partner, how the relationship developed, and how the partner may have controlled or influenced the young person). This sometimes leaves survivors of sexual abuse in legal limbo, where the police and child protection agency will not take on the case. (For more information, see 8.1 resources).

Sexual Assault

Sexual assault is a term that is on the continuum of sexual violence. In 1983, the laws and the definition of rape changed to allow for a range of offenses beyond forced vaginal penetration. The current law on sexual assault includes all unwanted sexual activities and the meaning of consent.



YOU SHOULD KNOW

If a person does not want or no longer wants the sexual activity to continue, it is non-consensual and therefore a crime.

According to Canadian law, there are three levels of sexual assault:

- Level 1: Any form of sexual activity (e.g., kissing, touching, digital penetration, oral sex, vaginal or anal intercourse) forced on someone else that results in minor physical injuries or no physical injuries.
- Level 2: Sexual assault with a weapon, threats, or causing bodily harm.
- Level 3: Sexual assault that results in wounding, maiming, disfiguring, or endangering of life.

Sexual abuse of children under 14 is in part covered under sexual interference laws and invitation to sexual touching laws (there is an additional law for the latter regarding children 14 to 17). (For more information, see 8.1 resources).

Consent

The *Criminal Code* defines consent as voluntary agreement to a sexual activity. This agreement can be expressed by words or actions. There is no consent if someone is not capable of consenting (e.g., if they are drunk, drugged, asleep, or unconscious). No one can give sexual consent on behalf of another person. It is also considered to be a sexual assault if someone abuses their position of trust or authority (e.g., a police officer, a teacher, a coach, or a member of the clergy). Consent is ongoing. If someone initially agrees to a sexual activity, then does not want to continue, there is no consent and continuation of the sexual activity is sexual assault. (For more information, see 8.1 resources).