



## Consent & Criminal Law

It is a criminal offence to engage in sexual activity with another person who does not consent.

Consent must be freely given - it cannot be forced. The courts can decide that consent was not given if the offender uses force, threats, fear of bodily harm, lies about their intentions, or, if the victim does not have the mental capacity to consent. It is not a defense that the accused believed that the complainant consented to the activity where,

273.1. (2) the accused's belief arose from the accused's

(i) self-induced intoxication, or

(ii) recklessness or willful blindness; or the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting. Willful blindness arises when the accused, who has become aware of the need for some inquiry, declines to make the inquiry because he or she does not wish to know the truth, preferring to remain ignorant.

### **The law of consent is complex.**

As with any case of sexual assault, it is not uncommon for the perpetrator to claim that the sexual activity between him/herself and the victim was consensual.

For years, the Criminal Code did not define "consent", and thus the verdicts varied considerably in cases where consent was an issue. On June 23, 1992, Bill C-49 became law and for the first time, the term "consent" (as it relates to sexual assault) was defined as the "voluntary agreement of the complainant to engage in the sexual activity in question". Furthermore, the Criminal Code now outlines situations in which consent is not obtained. It should be noted, however, that the absence of consent is not strictly limited to the following situations.

### **Section 273.1(2) states that consent is not obtained if:**

- the agreement is expressed by the words or conduct of a person other than the complainant;
- the complainant is incapable of consenting to the activity (e.g. a person is incapacitated by drugs or alcohol);
- the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
- the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- 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.

*Adapted from The Canadian Resource Centre for Victims of Crime [http://www.crcvc.ca/docs/sexual\\_assault.pdf](http://www.crcvc.ca/docs/sexual_assault.pdf)*

### **Age of consent**

The legal age of consent in Canada is 14 years. In some cases, even if you do say yes to sexual activity, you are not legally allowed to consent to have sex.

If you are under 14 years old, you cannot consent to have sex with anyone more than two years older than you. If you do, the other person can be charged with sexual assault.

If you are under 18 years old, you cannot legally consent to have sex with someone who is in a position of trust, power or authority over you. For example, a minister, coach, employer, teacher, police officer, etc. can be charged.

With the passage of Bill C-2 in July of 2005, a new sexual exploitation offence is created to better protect young persons between 14 and 18 years of age against those who would prey on their vulnerability. Under this new prohibition, courts may infer that a relationship is exploitative of the young person based on its nature and circumstances, including the age of the young person, any difference of age, the evolution of the relationship, and the degree of control or influence exercised over the young person.

These factors reflect the reality that there are different indicators of exploitation of a young person. While the chronological age of the young person is one such indicator there are others including a difference in age between the young person and the other person, as well as how the relationship developed (e.g., secretly over the Internet). This new offence focuses on the wrongful conduct of the exploiter rather than on the consent of the young person to that conduct.





