

National Laws

Legislation of Interpol member states on sexual offences against children

Canada - Canada - Canadá

Ottawa

The information on this page is up to date as of spring 2006

I. Ages for legal purposes

Age of simple majority

There is no set age of majority throughout Canada. The age of majority is generally fixed by each province. According to section 1 of the 'Age of Majority and Accountability Act' in Ontario and to section 153 of the Quebec Civil Code, the age of majority is of eighteen (18) years. In Alberta, Saskatchewan, Prince Edward Island and Manitoba, the age of majority is also eighteen (18) years. In Newfoundland, Nunavut, British Columbia, New Brunswick, Nova Scotia, Northwest territories and Yukon, the age of majority is nineteen (19).

Age of consent for sexual activity

According to section 151 of the Criminal Code, the legal age for consenting to a sexual activity is fourteen (14) years

'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 fourteen (14) years is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.'

Age of consent for marriage

The age of consent for marriage can differ from one province to another. The age of consent for marriage in Alberta, Manitoba, New Brunswick, Saskatchewan, Quebec, Ontario, and Prince Edward Island is 18, however if the individual is under the age of 18 but over 16, they would need to obtain parental or court consent.

In Ontario, according to subsection 5(1) of the 'Marriage Act', any person who is eighteen (18) years or older can obtain a license or be married under the authority of the publication of banns. Furthermore, subsection 5(2) maintains that a minor cannot be married except if the minor is of the age of sixteen (16) years or more and has the consent in writing of both parents. The federal 'Marriage Act' was repealed.

The age of consent for marriage in British Columbia, Nova Scotia, Newfoundland, Northwest Territories, Yukon and Nunavut is 19, however if under the age of 19 but over 16, the same rule applies, the need for parental consent or court consent.

II. Rape

(Canada no longer contains separate offences for rape and indecent assault). Since 1983 rape has been referred to as Sexual Assault with different degrees of the assault.

With regard to the sexual interference with a minor, Section 151 states

'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 fourteen (14) years, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.'

III. Other forms of child sex abuse

With regard to 'anal intercourse', subsections 159(1) and (2) state that

'(1) Every person who engages in an act of anal intercourse is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

(2) Subsection (1) does not apply to any act engaged in, in private, between:

- a) husband and wife, or
- b) any two persons, each of whom is eighteen (18) years of age or more, both of whom consent to the act.'

The 'sexual exploitation of a minor' is strictly prohibited by Section 153 which stipulates

'(1) Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency 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 indicates and the body of the young person,

-is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

(2) In this section, 'young person' means a person fourteen (14) years of age or more but under the age of eighteen (18) years.'

When a parent or guardian procures sexual activity of a minor, it is considered an offence under Section 170. This Section states

'Every parent or guardian of a person under the age of eighteen (18) years who procures that person for the purpose of engaging in any sexual activity prohibited by this Act with a person other than the parent or guardian is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, if the person procured for that purpose is under the age of fourteen (14) years, or to imprisonment for a term not exceeding two years if the person so procured is fourteen (14) years of age or more but under the age of eighteen (18) years.'

Section 152 of the Criminal Code makes it an offence for any person who invites a minor to sexual touching and reads as follows

'Every person who, for a sexual purpose, invites, counsels or incites a person under the age of fourteen (14) years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of a person who so invites, counsels or incites and the body of the person under the age of fourteen (14) years, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.'

Bestiality in the presence of a minor or the inciting of performing bestiality by a minor is strictly prohibited by subsection 160(3), which reads as follows

'(3) Notwithstanding subsection (1), every person who, in the presence of a person under the age of fourteen (14) years, commits bestiality or who incites a person under the age of fourteen (14) years to commit bestiality, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.'

Section 171 makes it an offence for a householder to permit sexual activity for a person under the age of eighteen (18). This Section reads as follows

'Every owner, occupier or manager of premises or other person who has control of premises or assists in the management or control of premises who knowingly permits a person under the age of eighteen (18) years to resort to or to be in or on the premises for the purpose of engaging in any sexual activity prohibited by this Act is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, if the person in question is under the age of fourteen (14) years, or to imprisonment for a term not exceeding two years if the person in question is fourteen (14) years of age or more, but under the age of eighteen (18) years.'

With regard to indecent acts against a person under the age of fourteen (14), subsection 173(2) states that

'Every person who, in any place, for a sexual purpose, exposes his or her genital organs to a person who is under the age of fourteen (14) years is guilty of an offence punishable on summary conviction.'

It is an offence to sexually assault an individual according to subsection 271(1) and to commit aggravated sexual assault according to subsections 273(1) and (2). These subsections read as follows

Section 271

'(1) Every one who commits a sexual assault is guilty of-

- a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
- b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.'

Section 273 states

'(1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

(2) Every person who commits an aggravated sexual assault is guilty of an indictable offence and liable-

- a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and
- b) in any other case, to imprisonment for life.'

We should also mention that section 268 of the Criminal Code is amended by adding the following after subsection (2)

'(3) For greater certainty, in this section, 'wounds' or 'maims' includes to excise, infibulate or mutilate, in whole or in part, the labia majora, labia minora or clitoris of a person, except where

- a) a surgical procedure is performed, by a person duly qualified by provincial law to practice medicine, for the benefit or the physical health of the person or for the purpose of that person having normal reproductive functions or normal sexual appearance or function; or
- b) the person is at least eighteen (18) years of age and there is no resulting bodily harm.'

IV. Child prostitution

Bill C-27 included an amendment to the Criminal Code to allow the criminal prosecution in Canada of Canadian citizens and permanent residents who travel abroad to victimize children sexually, either for money or any other form of consideration.

If child pornography also appears to be evidence of a crime committed in another country, the information will be turned over to local police.

Bill C-27, An Act to amend the criminal code (child prostitution, child sex tourism, criminal harassment and female genital mutilation) came into force May 26, 1997. With these criminal law reforms, Canada has joined more than 20 other states in enacting extraterritorial legislation that will allow for the Canadian prosecution of Canadians who sexually exploit children while abroad.

s. 7(4.1) Sexual offences against children

The 1997 Criminal Code amendments make it possible for Canadian prosecution of Canadian citizens or permanent residents who sexually abuse children, including engaging in prostitution, while outside Canada. It is important to note that the amendments allow not only for the prosecution of offences related to child sex tourism, such as child prostitution, but also of child sexual exploitation offences, such as sexual exploitation, indecent acts, child pornography and incest.

The assumption of Canadian jurisdiction to prosecute the commission of a child sexual exploitation offences by a Canadian while outside of Canada (also known as "extraterritorial jurisdiction") is unusual for Canada. While Canada asserts extraterritorial jurisdiction for certain offences such as war crimes, crimes against humanity and various terrorist-related crimes, Canada had not previously assumed jurisdiction for child sexual exploitation offences. Since 1997, if a Canadian citizen or permanent resident engages in any of the sexual exploitation offences enumerated in s.7(4.1), whether or not, that offence is deemed to have been committed in Canada, thereby enabling a Canadian prosecution.

s. 7(4.2) Request of the Ministry of Justice

Criminal proceeding in relation to sex tourism will be instituted in Canada only upon request by a foreign country. The request must be made to the Federal Minister of Justice. The request can occur in one of two ways. In Canada, a foreign consular officer or diplomatic agent accredited to Canada may make the request. Abroad, a foreign minister may make the request to the Minister of Justice through a diplomatic representative of Canada.

This procedural requirement recognizes the competence of the foreign state to exercise control over events occurring within its own boundaries. It thereby allows that country to choose whether to prosecute the Canadian or to request that the prosecution be undertaken in Canada.

s. 7(4.3) Consent of the Attorney General

Criminal proceeding may only be instituted with the consent of the provincial Attorney General. Such a decision will be taken following considerations of matter such as the extra-territorial element of the offence and the possible impact on relations between states.

*The offences listed in subsection 7(4.1) are:

- s. 151 sexual interference;
- s. 152 invitation to sexual touching;
- s. 153 sexual exploitation;
- s. 155 incest;
- s. 159 anal intercourse;
- s. 160(2) compelling the commission of bestiality;
- s. 160(3) bestiality in the presence of a child under 14 / inciting child under 14 to commit;
- s. 163.1 making, distributing, selling or possessing child pornography;
- s. 170 parent or guardian procuring sexual activity;
- s. 171 householder permitting sexual activity;
- s. 173 indecent acts / exposure;
- s. 212(4) (NEW) (as amended by Bill C-51) prostitution of a person under 18.

Under subsections 212(2) and (4) child prostitution is an offence

'(...) (2) Notwithstanding paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen (18) years is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

(...) (4) Every person who, in any place, obtains or attempts to obtain, for consideration, the sexual services of a person who is under the age of eighteen (18) years or who that person believes is under the age of eighteen (18) years, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.'

We can also mention Section 170. This Section states

'Every parent or guardian of a person under the age of eighteen (18) years who procures that person for the purpose of engaging in any sexual activity prohibited by this Act with a person other than the parent or guardian is guilty of an indictable

offence and liable to imprisonment for a term not exceeding five years, if the person procured for that purpose is under the age of fourteen (14) years, or to imprisonment for a term not exceeding two years if the person so procured is fourteen (14) years of age or more but under the age of eighteen (18) years.'

Legal Issue

Current Criminal Code offences dealing with child prostitution are difficult to enforce (i.e. Sec. 212(2), living off avails and Sec. 212(4), obtaining person under 18 for sexual services).

In 1998, Bill C-15 created law in Canada which prohibits living on the avails of prostitution or engaging in sexual services of a person under the age of 18 (sec. 212(2) and 212(4)). This legislation reflected a change in viewing child prostitutes as victims rather than as offenders. Prior to this, child prostitutes were often charged under the solicitation provision and were treated as offenders. Unfortunately, the new provisions for charging "Johns" and pimps are ineffectual. They require the "John" to be caught in the act and the pimp to be turned in by the prostitute.

The findings of an evaluation of the child sexual offences indicated that subsection 212(3) (Living on the avails of a person under 18 years of age) is only enforceable when a prostitute turns against a pimp. Likewise, charges under subsection 212(4) (Obtaining a person under 18 years of age for sexual purposes) could only be enforced if the 'Johns' were caught in the act. Thus, traditional policing methods do not seem to be appropriate for enforcement of subsections 212(2) and (4). Therefore, these sections have not been effective in dealing with the problem of child prostitution.

Recent amendments to subsection 212(4) may make it easier to charge John. The wording now reads 'Every person who, in any place, obtains or communicates with any person for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years...' This charge, which came into force May 1, 1999, will now enable police to charge anyone communicating for the purpose of buying sex.

Alberta has recently enacted the Protection of Children Involved in Prostitution Act (February 1, 1999). This law allows for the protection of children under 18 years old who are at risk by being involved in prostitution. The law provides protective services such as taking them to a safe house for 72 hours to be assessed and referred for services. Hopefully it will also result in the prosecution of "Johns" and pimps who are sexually abusing these children. This law is very unique and has yet to be evaluated. However, it does seem to provide a strategy for dealing with an otherwise impossible situation.

V. Child pornography

There is no distinction in the Criminal Code concerning the level of pornography involving child pornography. Therefore, an erotical material that falls under the

definition of child pornography is regulated under Section 163.1 of the Criminal Code.

According to Section 163.1 of the Criminal Code, there is child pornography when a child under or depicted as being under the age of eighteen (18) is the subject of pornography-material for a sexual purpose.

Subsections 163.1 (2), (3), (4) target four groups of people who are involved in child pornography, namely producers, distributors and sellers, and possessors of the illegal material.

Subsection 163.1 (2) that makes it an offence to create child pornography, reads as follows

'Every person who makes, prints, publishes or possesses for the purpose of publication, any child pornography is guilty of:

- a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- b) an offence punishable on summary conviction.'

With regard to distribution and sale of child pornography, subsection 163.1(3) states that

'Every person who imports, distributes, sells or possesses for the purpose of distribution or sale, any child pornography, is guilty of:

- a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or
- b) an offence punishable on summary conviction.'

The mere possession of child pornography is also an offence under subsection 163.1(4)

'Every person who possesses any child pornography is guilty of:

- a) an indictable offence and liable to imprisonment for a term not exceeding five years; or
- b) an offence punishable on summary conviction.'

We should be aware that there is no offence of child pornography if the representation or written material has an artistic, educational, scientific or medical purpose.

VI. Internet

Canada does have specific legislation for Internet related sexual offences:

***PART V: SEXUAL OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT
2002, chapter. 13, section. 8.***

Offences Tending to Corrupt Morals

Luring a child

172.1 (1) Every person commits an offence who, by means of a computer system within the meaning of subsection 342.1(2), communicates with

(a) a person who is, or who the accused believes is, under the age of eighteen years, for the purpose of facilitating the commission of an offence under subsection 153(1), section 155 or 163.1, subsection 212(1) or (4) or section 271, 272 or 273 with respect to that person;

(b) a person who is, or who the accused believes is, under the age of sixteen years, for the purpose of facilitating the commission of an offence under section 280 with respect to that person; or

(c) a person who is, or who the accused believes is, under the age of fourteen years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 281 with respect to that person.

Punishment

(2) Every person who commits an offence under subsection (1) is guilty of

(a) an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) an offence punishable on summary conviction.

Presumption regarding age

(3) Evidence that the person referred to in paragraph (1)(a), (b) or (c) was represented to the accused as being under the age of eighteen years, sixteen years or fourteen years, as the case may be, is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

No defence

(4) It is not a defence to a charge under paragraph (1)(a), (b) or (c) that the accused believed that the person referred to in that paragraph was at least eighteen years of age, sixteen years or fourteen years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person.