



LIBRARY of PARLIAMENT  
BIBLIOTHÈQUE du PARLEMENT

## BACKGROUND PAPER



# The Legal Age in Canada of Consent to Sexual Activity

Publication No. 2017-24-E  
20 November 2017

**Robin MacKay**

Legal and Social Affairs Division  
Parliamentary Information and Research Service

Library of Parliament **Background Papers** provide in-depth studies of policy issues. They feature historical background, current information and references, and many anticipate the emergence of the issues they examine. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

© Library of Parliament, Ottawa, Canada, 2017

*The Legal Age in Canada of Consent to Sexual Activity*  
(Background Paper)

Publication No. 2017-24-E

Ce document est également publié en français.

# CONTENTS

1	INTRODUCTION.....	1
2	AGE OF CONSENT TO SEXUAL ACTIVITY UNDER THE <i>CRIMINAL CODE</i> .....	1
2.1	History of the Legal Age of Consent to Sexual Activity.....	1
2.2	Current Provisions.....	2
2.2.1	Age of Consent Is 16.....	2
2.2.1.1	Sexual Interference (Section 151) .....	2
2.2.1.2	Invitation to Sexual Touching (Section 152) .....	3
2.2.2	Age of Consent Is 18.....	3
2.2.2.1	Sexual Exploitation (Section 153) .....	3
3	AGE AS PART OF THE DEFINITION OF THE OFFENCE .....	4
3.1	Bestiality in Presence of or By Child (Section 160(3)) .....	4
3.2	Child Pornography (Section 163.1).....	4
3.3	Parent or Guardian Procuring Sexual Activity (Section 170).....	5
3.4	Householder Permitting Prohibited Sexual Activity (Section 171).....	5
3.5	Making Sexually Explicit Material Available to Child (Section 171.1).....	5
3.6	Corrupting Children (Section 172).....	5
3.7	Luring a Child (Section 172.1).....	6
3.8	Agreement or Arrangement: Sexual Offence Against Child (Section 172.2).....	6
3.9	Exposure (Section 173(2)) .....	6
3.10	Removal of Child from Canada (Section 273.3).....	7
3.11	Trafficking of a Person Under the Age of 18 Years (Section 279.011).....	7
3.12	Offences Referred to in Sexual Offences Involving Young People (Sections 280 and 281) .....	8

3.13	Obtaining Sexual Services for Consideration from Person Under 18 Years (Section 286.1(2)) .....	8
3.14	Procuring – Person Under 18 Years (Section 286.3(2)) .....	8
3.15	Marriage Under Age of 16 Years (Section 293.2) .....	8
4	AGE AS AN ADDITIONAL FACTOR IN SENTENCING .....	9
4.1	Incest (Section 155) .....	9
4.2	Sexual Assault (Section 271) .....	9
4.3	Sexual Assault with a Weapon, Threats to a Third Party or Causing Bodily Harm (Section 272) .....	9
4.4	Aggravated Sexual Assault (Section 273) .....	10
4.4.1	Consent (Sections 273.1 and 273.2) .....	10
5	SEXUAL OFFENCES COMMITTED OUTSIDE CANADA .....	11
6	“CLOSE-IN-AGE” AND “MISTAKE-OF-AGE” DEFENCES .....	11
7	SPECIAL EVIDENTIARY AND TESTIMONIAL RULES FOR YOUNG PERSONS .....	13
7.1	Exclusion of the Public .....	13
7.2	Presence of a Support Person .....	13
7.3	Testimony Outside the Court Room .....	13
7.4	Accused Not to Personally Cross-Examine .....	13
7.5	Order Restricting Publication .....	14
7.6	Evidence of Victim or Witness Under 18 .....	14
7.7	Proof of Age .....	14
7.8	<i>Canada Evidence Act</i> Provisions .....	14
8	LEGAL CONSEQUENCES OF A CONVICTION .....	15
8.1	Sentencing .....	15
8.2	Forensic DNA Analysis .....	16
8.3	<i>Sex Offender Information Registration Act</i> .....	16
8.4	Dangerous or Long-Term Offender Designation .....	16
8.5	Recognizance or Peace Bond .....	17
8.6	Criminal Records .....	18

# THE LEGAL AGE IN CANADA OF CONSENT TO SEXUAL ACTIVITY

---

## 1 INTRODUCTION

The legal age of consent to sexual activity refers to the age at which the criminal law recognizes the legal capacity of a young person to provide such consent.<sup>1</sup> Below this age, most sexual activity with a young person, ranging from sexual touching to sexual intercourse, is prohibited.

For more than 100 years, beginning with the 1892 consolidation of Canada's first *Criminal Code*, the age of consent to sexual activity was 14, with a small exception introduced in 1987 which allowed consensual sexual activity between a person aged 12 to 14 and someone who was close in age. The age of consent was raised to 16 in 2008.

This paper presents many of the offences in Canada related to the age of consent to sexual activity, as well as some of the legal issues connected with them.

## 2 AGE OF CONSENT TO SEXUAL ACTIVITY UNDER THE *CRIMINAL CODE*

### 2.1 HISTORY OF THE LEGAL AGE OF CONSENT TO SEXUAL ACTIVITY

The 1892 consolidation of Canada's first *Criminal Code* contained this provision: "It is no defence to a charge for any indecent assault on a young person under the age of fourteen years to prove that he or she consented to the act of indecency."<sup>2</sup> For offences such as the prohibition of sexual intercourse with girls under 14 who were not married to the accused, the accused's belief as to the age of the young woman was irrelevant.<sup>3</sup>

That age limit was retained for over a century, save for a narrow exception for consensual sexual activity between young persons who are close in age, which was added to the *Criminal Code*<sup>4</sup> by an amending statute given Royal Assent in 1987.<sup>5</sup> This allowed for sexual activity with someone between the ages of 12 and 14.

The 1987 amendments also created new, more gender-neutral, offences called "sexual interference" and "invitation to sexual touching," which prohibited adults from engaging in virtually any kind of sexual contact with either boys or girls under the age of 14, irrespective of consent. In addition, the offence of "sexual exploitation" made it an offence for an adult to have any such contact with boys and girls over 14 but under 18, where a relationship of trust or authority exists between the adult and child.

## 2.2 CURRENT PROVISIONS

With its coming into force on 1 May 2008, the *Tackling Violent Crime Act*<sup>6</sup> raised the age of consent in Canada to 16. In general under this Act, a person below the age of 16 cannot consent to sexual activity. There are, nonetheless, “close-in-age” exceptions for young people aged 12 to 14 and 14 to 16, where consent to sexual activity can be valid. Consent is not a defence, however, when, for example, it is obtained by use of threats or force or when a person is incapable of giving consent. Any non-consensual sexual activity is sexual assault regardless of the age of the people involved.

The *Criminal Code* does not criminalize non-exploitative, consensual sexual activity with or between persons who are 16 years of age or older, unless it takes place in a relationship of trust or dependency, in which case sexual activity with persons over 16 but under 18 can constitute an offence, notwithstanding consent. Even consensual activity with those under 14 but over 12 may not be an offence if the accused is less than two years older than the complainant.

One exception to the age of consent is found in section 159 of the *Criminal Code*, which makes 18 the age of consent to anal intercourse, unless it is an act engaged in, in private, between husband and wife.<sup>7</sup>

Section 150.1 of the *Criminal Code* stipulates that the consent of complainants under specified ages is not a defence in particular cases enumerated in the section.

### 2.2.1 AGE OF CONSENT IS 16

#### 2.2.1.1 SEXUAL INTERFERENCE (SECTION 151)

It is an offence to touch any part of the body of a person under the age of 16 for a sexual purpose (which is not defined). When, however, an accused is charged with an offence under section 151 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:

- is less than two years older than the complainant; and
- 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.

If an accused is charged with an offence under section 151 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:

- is less than five years older than the complainant; and
- 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.

This is a hybrid offence<sup>8</sup> with a mandatory minimum sentence of imprisonment for one year (upon indictment) or 90 days (upon summary conviction). The maximum penalty for this offence is imprisonment for up to 14 years (upon indictment) or two years less a day (upon summary conviction).

#### 2.2.1.2 INVITATION TO SEXUAL TOUCHING (SECTION 152)

It is an offence to invite, counsel or incite a person under the age of 16 to touch any person's body for a sexual purpose (which is not defined). The same close-in-age exemptions as outlined for the section 151 offence apply to the section 152 offence.

This is a hybrid offence, with a mandatory minimum sentence of imprisonment for one year (upon indictment) or 90 days (upon summary conviction). The maximum penalty for this offence is imprisonment for up to 14 years (upon indictment) or two years less a day (upon summary conviction).

### 2.2.2 AGE OF CONSENT IS 18

#### 2.2.2.1 SEXUAL EXPLOITATION (SECTION 153)

It is an offence for anyone who is in a position of trust or authority toward a young person, or is a person with whom the young person is in a relationship of dependency, or is in a relationship with the young person that is exploitative of the young person to commit acts amounting to either sexual interference (section 151) or invitation to sexual touching (section 152) against the young person. In section 153, "young person" means someone who is 16 or 17 years old.

The section states that a judge may infer that the accused is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including the age of the young person, the age difference between the accused and the young person, the evolution of the relationship, and the degree of control or influence by the accused over the young person.

This is a hybrid offence with a mandatory minimum sentence of imprisonment for one year (upon indictment) or 90 days (upon summary conviction). The maximum penalty for this offence is imprisonment for up to 14 years (upon indictment) or two years less a day (upon summary conviction).

### 3 AGE AS PART OF THE DEFINITION OF THE OFFENCE

In certain instances, the age of a person involved determines whether the activity in question constitutes a criminal offence. One example is that of pornography. It is not a criminal offence to depict adults engaging in sexual activity unless the depiction is considered “obscene.” The term “obscene” is defined in section 163(8) of the *Criminal Code* as having “a dominant characteristic of ... undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence.”

By contrast, any showing of sexual activity involving someone depicted as being under 18 years of age is a criminal offence. In the case of child pornography, it is not necessary to prove that the depiction of the sexual activity was obscene.

A number of other offences where the age of the victim determines whether that particular offence has been committed are set out below.

#### 3.1 BESTIALITY IN PRESENCE OF OR BY CHILD (SECTION 160(3))

It is an offence with a separate punishment regime to commit bestiality in the presence of a person under the age of 16 years or to incite a person under the age of 16 years to commit bestiality.

This is a hybrid offence, with a mandatory minimum sentence of imprisonment for one year (upon indictment) or six months (upon summary conviction). The maximum penalty for this offence is imprisonment for 14 years (upon indictment) or two years less a day (upon summary conviction).

#### 3.2 CHILD PORNOGRAPHY (SECTION 163.1)

It is an offence to make, print, publish, possess, access, transmit, make available, distribute, sell, advertise, export, import or possess for the purpose of publication or transmission child pornography. Child pornography is broadly defined and includes:

- materials that show someone engaged in explicit sexual activity who is, or seems to be, under the age of 18 years;
- material that advocates sexual activity with a person under the age of 18 that would be an offence under the *Criminal Code*; or
- material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of 18 that would be an offence under the *Criminal Code*.

A defence to a charge under this section is that the act alleged to constitute the offence has a legitimate purpose related to the administration of justice or to science, medicine, education or art, provided that the act does not pose an undue risk of harm to persons under the age of 18 years.



There are a range of punishments for the various types of child pornography offences, with a maximum punishment of 14 years' imprisonment and a minimum punishment of imprisonment for one year. It is an aggravating factor in sentencing if the offence was committed with the intent to make a profit.

### **3.3 PARENT OR GUARDIAN PROCURING SEXUAL ACTIVITY (SECTION 170)**

It is an indictable offence for every parent or guardian of a person under the age of 18 to procure<sup>9</sup> that person for the purpose of engaging in any sexual activity prohibited by the *Criminal Code* with a person other than the parent or guardian.<sup>10</sup>

The maximum sentence for this offence is 14 years' imprisonment, and the minimum sentence is one year's imprisonment.

### **3.4 HOUSEHOLDER PERMITTING PROHIBITED SEXUAL ACTIVITY (SECTION 171)**

It is an indictable offence for every owner, occupier or manager of premises to knowingly permit a person under the age of 18 years to be on the premises for the purpose of engaging in any sexual activity prohibited by the *Criminal Code*.

The maximum sentence for this offence is 14 years' imprisonment, and the minimum sentence is one year's imprisonment.

### **3.5 MAKING SEXUALLY EXPLICIT MATERIAL AVAILABLE TO CHILD (SECTION 171.1)**

It is an offence to transmit, make available, distribute or sell sexually explicit material<sup>11</sup> to a person under the age of 18 years, for the purpose of facilitating the commission of a number of offences with respect to that person. It is also an offence to carry out these activities with respect to a person under the age of 16 or 14 years, for the purpose of facilitating the commission of various age-specific offences concerning that person.<sup>12</sup> In all cases, the accused can be found guilty where the young person is, or the accused believes the young person is, under the relevant age.

This is a hybrid offence, with a mandatory minimum sentence of imprisonment for six months (upon indictment) or 90 days (upon summary conviction). The maximum penalty for this offence is imprisonment for 14 years (upon indictment) or two years less a day (upon summary conviction).

### **3.6 CORRUPTING CHILDREN (SECTION 172)**

It is an indictable offence for any person in the home of a child to participate in adultery or sexual immorality or to indulge in habitual drunkenness or any other form of vice, and thereby endanger the morals of the child or render the home an unfit place for the child to be in. In this section, "child" means a person who is or appears to be under the age of 18 years.

The maximum sentence for this offence is two years' imprisonment. This offence may only be prosecuted with the Attorney General's consent, unless the prosecution is by a recognized society for the protection of children (such as a Children's Aid Society) or by an officer of a youth court.

### **3.7 LURING A CHILD (SECTION 172.1)**

It is an offence to use telecommunication to communicate with a person under the age of 18, 16, or 14 years, as the case may be, for the purpose of facilitating the commission of a number of *Criminal Code* offences with respect to that person.<sup>13</sup> In all cases, the accused can be found guilty where the young person is, or the accused believes the young person is, under the relevant age.

This is a hybrid offence, with a mandatory minimum sentence of imprisonment for one year (upon indictment) or six months (upon summary conviction). The maximum penalty for this offence is imprisonment for 14 years (upon indictment) or two years less a day (upon summary conviction).

### **3.8 AGREEMENT OR ARRANGEMENT: SEXUAL OFFENCE AGAINST CHILD (SECTION 172.2)**

It is an offence to agree with a person or make an arrangement with a person by means of telecommunication to commit an offence with respect to another person under the age of 18, 16, or 14 years.<sup>14</sup> In all cases, the accused can be found guilty where the young person is, or the accused believes the young person is, under the relevant age. Section 172.2 explicitly states that it is no defence that the person with whom the accused agreed or made an arrangement was a peace officer or someone acting under the direction of a peace officer.

This is a hybrid offence, with a mandatory minimum sentence of imprisonment for one year (upon indictment) or six months (upon summary conviction). The maximum penalty for this offence is imprisonment for 14 years (upon indictment) or two years less a day (upon summary conviction).

### **3.9 EXPOSURE (SECTION 173(2))**

It is an offence to expose one's genitals to a person under the age of 16 if the accused does so for a sexual purpose. The close-in-age exemptions outlined for the section 151 offence of sexual interference apply to the section 173(2) offence.

This is a hybrid offence, with a mandatory minimum sentence of imprisonment for 90 days (upon indictment) or 30 days (upon summary conviction). The maximum penalty for this offence is imprisonment for two years (upon indictment) or six months (upon summary conviction).

### **3.10 REMOVAL OF CHILD FROM CANADA (SECTION 273.3)**

It is an offence to do anything for the purpose of removing from Canada a person who is ordinarily resident in Canada and who is:

- under the age of 16 years, with the intention that the person be submitted to an act outside Canada that if it were committed in Canada would be an offence against section 151 (sexual interference), 152 (invitation to sexual touching), 160(3) (bestiality in presence of or by child), or 173(2) (exposure);
- 16 years of age or more but under the age of 18 years, with the intention that the person be submitted to an act outside Canada that if it were committed in Canada would be an offence against section 153 (sexual exploitation);
- under the age of 18 years, with the intention that the person be submitted to an act outside Canada that if it were committed in Canada would be an offence against section 155 (incest), 170 (parent or guardian procuring sexual activity), 171 (householder permitting prohibited sexual activity), 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault); or
- under the age of 16 years, with the intention that the person be submitted to an act outside Canada that, if it were committed in Canada, would be an offence against section 293.2 (marriage under age of 16 years).

Anyone who contravenes this section is guilty either of an indictable offence and is liable to imprisonment for a maximum term of five years or of an offence punishable on summary conviction.

### **3.11 TRAFFICKING OF A PERSON UNDER THE AGE OF 18 YEARS (SECTION 279.011)**

It is an indictable offence to recruit, transport, transfer, receive, hold, conceal or harbour a person under the age of 18 years, or exercise control, direction or influence over the movements of a person under the age of 18 years, for the purpose of exploiting them or facilitating their exploitation.

The punishment for this offence is a minimum of six years' imprisonment and a maximum of life imprisonment if the offender kidnaps, commits an aggravated assault or aggravated sexual assault against, or causes death to, the victim during the commission of the offence. In any other case, the minimum punishment is five years' imprisonment and the maximum punishment is 14 years' imprisonment. Related offences include receiving a material benefit from trafficking of a person under 18 years of age (section 279.02(2)) and withholding or destroying documents related to trafficking of a person under 18 years of age (section 279.03(2)).

### **3.12 OFFENCES REFERRED TO IN SEXUAL OFFENCES INVOLVING YOUNG PEOPLE (SECTIONS 280 AND 281)**

Abduction of person under sixteen (section 280) and abduction of person under fourteen (section 281) are two other offences that are defined by the age of the victim. While they do not reference sexual activity, they are frequently referred to in sexual offences involving young people, such as making sexually explicit material available to child (section 171.1), luring a child (section 172.1), and agreement or arrangement: sexual offence against child (section 172.2).

### **3.13 OBTAINING SEXUAL SERVICES FOR CONSIDERATION FROM PERSON UNDER 18 YEARS (SECTION 286.1(2))**

It is an indictable offence to obtain the sexual services of a person under the age of 18 years for money or something else of value.

The punishment for this offence is a maximum of 10 years' imprisonment and a minimum of six months' imprisonment for a first offence and one year's imprisonment for each subsequent offence.

Section 286.2(2) makes it an offence to receive a material benefit from the commission of an offence under section 286.1(2). By the terms of section 286.5, no person shall be prosecuted for this offence if the benefit is derived from the provision of their own sexual services.

### **3.14 PROCURING – PERSON UNDER 18 YEARS (SECTION 286.3(2))**

It is an indictable offence to procure a person under the age of 18 years to offer or provide sexual services for money or something else of value.

The punishment for this offence is a maximum of 14 years' imprisonment and a minimum of five years' imprisonment.

### **3.15 MARRIAGE UNDER AGE OF 16 YEARS (SECTION 293.2)**

It is an indictable offence to celebrate, aid or participate in a marriage rite or ceremony knowing that one of the persons being married is under the age of 16, regardless of whether that person is doing so voluntarily.

The maximum punishment for this offence is imprisonment for five years.

## 4 AGE AS AN ADDITIONAL FACTOR IN SENTENCING

For certain offences, age is a factor to be considered when imposing a sentence. In some instances, a mandatory minimum sentence applies if the victim is below a certain age, while in others the maximum penalty is increased if the victim is below a certain age. The offences in which age is an additional factor in sentencing are presented below.

### 4.1 INCEST (SECTION 155)

It is an indictable offence to have sexual intercourse with another person, knowing that the person is a parent, child, brother, sister, grandparent or grandchild by blood relationship.

There is a mandatory minimum sentence of imprisonment for five years if the other person is under the age of 16 years. The maximum penalty for this offence is imprisonment for 14 years.

### 4.2 SEXUAL ASSAULT (SECTION 271)

It is an offence to commit a sexual assault. “Sexual assault” is not defined in the *Criminal Code*. “Assault” is defined in section 265 as applying force intentionally to another person without that person’s consent.<sup>15</sup> This definition encompasses a wide variety of conduct. The close-in-age exemptions outlined for the section 151 offence of sexual interference apply to the section 271 offence.

If the complainant is under the age of 16 years, the punishment for this hybrid offence is a mandatory minimum sentence of imprisonment for one year (upon indictment) or six months (upon summary conviction). If the complainant is under 16 years of age, the maximum penalty for this offence is imprisonment for 14 years (upon indictment) or two years less a day (upon summary conviction).

### 4.3 SEXUAL ASSAULT WITH A WEAPON, THREATS TO A THIRD PARTY OR CAUSING BODILY HARM (SECTION 272)

It is an indictable offence to commit a sexual assault while carrying, using or threatening to use a weapon or an imitation of a weapon; threatening to cause bodily harm to a person other than the complainant; or causing bodily harm to the complainant.

If the complainant is under the age of 16 years, the punishment for this offence is a mandatory minimum sentence of imprisonment for five years, while the maximum penalty is imprisonment for life. Different punishments apply when the complainant is older than 16 and when there are other considerations, such as the use of a firearm in the commission of the offence.

#### **4.4 AGGRAVATED SEXUAL ASSAULT (SECTION 273)**

It is an indictable offence, while committing a sexual assault, to wound, maim, disfigure or endanger the life of the complainant.

If the complainant is under the age of 16 years, the punishment for this offence is a mandatory minimum sentence of imprisonment for five years, while the maximum penalty is imprisonment for life. Different punishments apply when the complainant is older than 16 and when there are other considerations, such as the use of a firearm in the commission of the offence.

##### **4.4.1 CONSENT (SECTIONS 273.1 AND 273.2)**

As mentioned in section 4.2 above, there is no specific definition of “sexual assault” in the *Criminal Code*. Instead, the *Criminal Code* relies upon the definition of “assault” found in section 265. This section defines an assault, in part, as applying force intentionally to another person without that person’s consent. It then goes on to state that no consent is obtained where the complainant submits or does not resist by reason of:

- the application of force to the complainant or to a person other than the complainant;
- threats or fear of the application of force to the complainant or to a person other than the complainant;
- fraud; or
- the exercise of authority.

Section 273.1 of the *Criminal Code* provides another gloss on the meaning of the term “consent” for the sexual assault offences. For the purposes of sections 271, 272 and 273, “consent” means the voluntary agreement of the complainant to engage in the sexual activity in question. No consent is obtained where:

- 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;
- 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.

Section 273.2 of the *Criminal Code* then states that 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:

- the accused's belief arose from the accused's
  - self-induced intoxication;
  - recklessness or wilful blindness; or
  - not taking reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

Thus, an accused person can argue in defence that a complainant consented to the sexual activity in question. This consent, however, cannot be assumed or taken as implied or given in advance.<sup>16</sup> An accused person must show what steps he or she took to ascertain that there was clear, ongoing consent and that those steps were reasonable in the circumstances of the case.

## 5 SEXUAL OFFENCES COMMITTED OUTSIDE CANADA

A number of the offences outlined above can be prosecuted in Canada even if the offence is committed beyond Canada's borders. It is an offence for a Canadian to travel outside of Canada and engage in any sexual activity with a young person that is against the law in Canada. Section 7(4.1) of the *Criminal Code* states that every person who, outside Canada, commits an act or omission that if committed in Canada would be an offence against any of numerous sections of the *Criminal Code*<sup>17</sup> shall be deemed to commit that act or omission in Canada if the person is a Canadian citizen or a permanent resident.

In addition, by the terms of section 7(4.11) of the *Criminal Code*, everyone who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 279.011 (trafficking of a person under the age of 18 years), 279.02 (material benefit – trafficking) or 279.03 (withholding or destroying documents – trafficking) shall be deemed to commit that act or omission in Canada if the person is a Canadian citizen or a permanent resident.

## 6 “CLOSE-IN-AGE” AND “MISTAKE-OF-AGE” DEFENCES

Section 150.1 of the *Criminal Code* starts with the general rule that when an individual is charged with an offence under section 151 (sexual interference), 152 (invitation to sexual touching), 153(1) (sexual exploitation), 160(3) (bestiality in presence of or by child) or 173(2) (exposure) or is charged with an offence under section 271, 272 or 273 (the types of sexual assault) 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.

However, this section then sets out certain “close-in-age” exceptions to the general rule. First, when an accused is charged with an offence under section 151, 152, 173(2), or 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:

- is less than two years older than the complainant; and
- 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.

Second, if an accused is charged with an offence under section 151, 152, 173(2), or 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:

- is less than five years older than the complainant; and
- 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.

In addition to the close-in-age defence, section 150.1 addresses the defence known as “mistaken belief.” The section makes it clear that it is not a defence to a charge under section 151, 152, 160(3), or 173(2) or section 271, 272 or 273 that the accused believed that the complainant was 16 years of age or more at the time the offence is alleged to have been committed, unless the accused took all reasonable steps to ascertain the age of the complainant.

The same provision applies where the complainant is believed to be 18 years of age or more when the charge is one under section 153 (sexual exploitation), 170 (parent or guardian procuring sexual activity), 171 (householder permitting prohibited sexual activity), 172 (corrupting children), 286.1(2) (obtaining sexual services for consideration from person under 18 years), 286.2(2) (material benefit from sexual services provided by person under 18 years) or 286.3(2) (procuring – person under 18 years).

Furthermore, an accused cannot raise a mistaken belief in the age of the complainant in order to invoke a close-in-age defence unless the accused took all reasonable steps to ascertain the age of the complainant. The accused must show what steps he or she took and that those steps were all that could be reasonably required of him or her in the circumstances.<sup>18</sup>

It may be more difficult to determine the age of a young person when the only contact with him or her is by means of telecommunication, as with the luring offence set out in section 172.1 of the *Criminal Code*. This section repeats that it is not a defence to a charge under the luring section that the accused believed that the person he or she was in contact with was at least 18, 16 or 14 years of age, as the case may be, unless the accused took reasonable steps to ascertain the age of the person. It goes further, though, in stating that evidence that the young person contacted was represented to the accused as being under the age of 18, 16 or



14 years is, in the absence of evidence to the contrary, proof that the accused believed that the person was under that age.

## **7 SPECIAL EVIDENTIARY AND TESTIMONIAL RULES FOR YOUNG PERSONS**

### **7.1 EXCLUSION OF THE PUBLIC**

When children are the alleged victims of one of the offences discussed above, special rules may be invoked to assist them in giving evidence or to protect their interests. Thus, while section 486 of the *Criminal Code* states that there is a presumption that proceedings against an accused shall be held in open court, a judge may order the exclusion of the public or the shielding of a witness from public view under a number of circumstances, one of which is the need to safeguard the interests of witnesses under the age of 18 years. Section 486 goes further and requires a judge to state the reason for not excluding the public if an application is made for such an order by the prosecutor or the accused where the accused is charged with a number of offences involving young people.<sup>19</sup>

### **7.2 PRESENCE OF A SUPPORT PERSON**

Section 486.1 of the *Criminal Code* sets out the circumstances in which a judge will permit a support person to be near to a witness (including the complainant) while the witness testifies. One of these circumstances is that of a witness who is under the age of 18 years. Such an order shall be made upon application of the prosecutor or the witness unless the judge is of the opinion that it would interfere with the proper administration of justice.

### **7.3 TESTIMONY OUTSIDE THE COURT ROOM**

While section 650 of the *Criminal Code* states that an accused, other than an organization, shall be present in court during the whole of his or her trial, section 486.2 provides that this need not be the case in certain circumstances. Section 486.2 stipulates that a judge shall, on application of the prosecutor regarding a witness (including the complainant) who is under the age of 18 years or on application of such a witness, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused. There is provision for a judge who is of the opinion that the order would interfere with the proper administration of justice not to give this order.

### **7.4 ACCUSED NOT TO PERSONALLY CROSS-EXAMINE**

By the terms of section 486.3 of the *Criminal Code*, a judge shall, on application of the prosecutor regarding a witness (including the complainant) who is under the age of 18 years, or on application of such a witness, order that the accused not personally cross-examine the witness, unless the judge is of the opinion that the proper administration of justice requires the accused to personally conduct the

cross-examination. If such an order is made, the judge shall appoint counsel to conduct the cross-examination.

## **7.5 ORDER RESTRICTING PUBLICATION**

Section 486.4 of the *Criminal Code* concerns the power of a judge, in proceedings for offences under numerous sections of the *Criminal Code*,<sup>20</sup> to make an order directing that any information that could identify the victim or a witness not be published or broadcast in any way. Section 486.4 instructs the presiding judge to, at the first reasonable opportunity, inform any witness under the age of 18 years and the victim of the right to make an application for a non-publication order. Upon application by the victim, the prosecutor or a witness under the age of 18 years in a trial concerning a listed offence, the judge shall make the order.

Where the trial does not concern one of the listed offences, the presiding judge may also make a non-publication order if the victim is under the age of 18 years. In proceedings for an offence under section 163.1 (child pornography), a judge shall make an order directing that any information that could identify a witness who is under the age of 18 years, or any person who is the subject of a representation, written material or a recording that constitutes child pornography, not be published or broadcast in any way.

## **7.6 EVIDENCE OF VICTIM OR WITNESS UNDER 18**

Section 715.1 of the *Criminal Code* states that, in any proceeding against an accused in which a victim or other witness was under the age of 18 years at the time the offence is alleged to have been committed, a video recording made within a reasonable time after the alleged offence, in which the victim or witness describes the acts complained of, is admissible in evidence if the victim or witness, while testifying, adopts the contents of the video recording, unless the presiding judge is of the opinion that admitting the video would interfere with the proper administration of justice.

## **7.7 PROOF OF AGE**

Section 658 of the *Criminal Code* deals with some of the methods by which the age of a person may be proven. It specifies that the testimony of a person as to the date of his or her birth is admissible as evidence of that date. The testimony of a parent as to the age of his or her child is also admissible, as is a birth or baptismal certificate. If there is no other evidence, a jury or judge may infer the age of a child or young person from his or her appearance.

## **7.8 CANADA EVIDENCE ACT PROVISIONS**

Section 16.1 of the *Canada Evidence Act*<sup>21</sup> states that any person under 14 years of age is presumed to have the capacity to testify. It says that such a proposed witness shall not take an oath or make a solemn affirmation; the evidence shall be received if the witness is able to understand and respond to questions. A party who challenges the capacity to testify of a proposed witness under 14 years of age has the burden of satisfying the court that there is an issue as to that capacity. If the court is satisfied that there is a capacity issue, it shall conduct an inquiry to determine whether the proposed

young witness is able to understand and respond to questions. The court shall, before permitting a proposed witness under 14 years of age to give evidence, require the witness to promise to tell the truth. If the evidence of a witness under 14 years of age is received by the court, it shall have the same effect as if it were taken under oath.

## 8 LEGAL CONSEQUENCES OF A CONVICTION

### 8.1 SENTENCING

Certain legal consequences may follow conviction for a number of the offences described above. Section 718.01 of the *Criminal Code* provides that, in imposing a sentence for an offence involving the abuse of a person under the age of 18 years, the court shall give primary consideration to the objectives of denunciation and deterrence. Under section 718.2 of the *Criminal Code*, evidence that the offender, in committing the offence, abused a person under the age of 18 years is an aggravating circumstance in sentencing. Under both of these provisions, therefore, the sentence for abusing a young person would tend to be a heavier one than when the victim of the abuse is an adult.

A conviction for committing a sexual offence against a young person may carry consequences in addition to a sentence of imprisonment and a criminal record.

When an offender is convicted of a specified sexual offence in respect of a person who is under the age of 16 years, the court that sentences the offender may impose an order of prohibition under section 161 of the *Criminal Code*. This order can prohibit the offender from:

- being near certain public places and other facilities where persons under 16 years of age may be present;
- obtaining employment or a voluntary position which may involve the offender's being in a position of trust or authority over persons under 16 years of age;
- having any unsupervised contact with anyone under 16 years of age; or
- using the Internet or other digital network unless this is done in accordance with conditions set by the court.

The prohibition order may be for life or some shorter period, and its terms may be varied upon application of the offender or the prosecutor. Under section 42(2)(j) of the *Youth Criminal Justice Act*,<sup>22</sup> a section 161 prohibition order may not be imposed upon a young person. Failure to comply with the order is a hybrid offence, with a maximum punishment of four years' imprisonment upon indictment or 18 months' imprisonment upon summary conviction.

Under section 164.2 of the *Criminal Code*, a court that convicts a person of an offence under section 163.1 (child pornography), 172.1 (luring a child) or 172.2 (agreement or arrangement – sexual offence against child) may order that anything – other than real property – be forfeited to Her Majesty and disposed of as the Attorney General directs if the court is satisfied, on a balance of probabilities, that the thing was used in the commission of the offence and is the property of:

- the convicted person or another person who was a party to the offence; or
- a person who acquired the thing from a person referred to above under circumstances that give rise to a reasonable inference that it was transferred for the purpose of avoiding forfeiture.

Given the nature of the three offences referred to in this section, the property used to commit them will often be computers and telecommunication devices. Section 164.3 provides the procedure for a person claiming an interest in things forfeited under section 164.2, and who had not been a party to the offence or who had not been given the thing to avoid forfeiture, to obtain an order declaring that the person's interest is not affected by the forfeiture order. This may result in the thing being returned to the person or their receiving compensation for it.

## 8.2 FORENSIC DNA ANALYSIS

Under section 487.051 of the *Criminal Code*, a court must authorize the taking of samples of bodily substances for the purpose of forensic DNA analysis from a person who is convicted, who is discharged under section 730, or who is found guilty under the *Youth Criminal Justice Act* or the *Young Offenders Act*, of a primary designated offence listed in section 487.04. These bodily substances are stored in the national DNA data bank established under the *DNA Identification Act*.<sup>23</sup> A number of the offences mentioned in this publication are included in the list of primary designated offences.<sup>24</sup>

## 8.3 SEX OFFENDER INFORMATION REGISTRATION ACT

Under section 490.012 of the *Criminal Code*, when a court imposes a sentence on a person for certain designated offences or renders a verdict of not criminally responsible on account of mental disorder for one of those offences, it must order the person to comply with the *Sex Offender Information Registration Act*<sup>25</sup> for the applicable period specified in section 490.013 of the *Criminal Code*. Depending upon the offence and its maximum punishment, the registration as a sex offender can last for 10 years, 20 years or life. The designated offences are set out in section 490.011 of the *Criminal Code*; they are the same as those listed for mandatory DNA orders (see section 8.2 of this paper).

Under the *Sex Offender Information Registration Act*, a sex offender must report to a registration centre and provide specified information, such as the address of every place at which he or she is employed or retained or is engaged on a volunteer basis. He or she must also give notice of any changes in this information, as well as any absences from his or her residence. Under section 7 of the Act, a sex offender who is under 18 years of age has the right to have an "appropriate adult" chosen by him or her in attendance when he or she reports to a registration centre and when information is collected.

## 8.4 DANGEROUS OR LONG-TERM OFFENDER DESIGNATION

Conviction for a number of the offences discussed could also lead to a determination that the offender is a dangerous or a long-term offender. Under section 753(1.1) of the *Criminal Code*, there is a presumption that the person convicted of a primary

designated offence is a dangerous offender if the appropriate sentence is imprisonment for two years or more and the offender was convicted previously at least twice of a primary designated offence and was sentenced to at least two years of imprisonment for each of those convictions. A “primary designated offence” for these purposes is defined in section 752 of the *Criminal Code* as including the following offences:

- sexual interference (section 151);
- invitation to sexual touching (section 152);
- sexual exploitation (section 153);
- incest (section 155);
- sexual assault (section 271);
- sexual assault with weapon, threats to third party or causing bodily harm (section 272); and
- aggravated sexual assault (section 273).

If a court finds an offender to be a dangerous offender, the default sentence is one of imprisonment for an indeterminate period.

If the court does not find an offender to be a dangerous offender, it may find him or her to be a long-term offender. To make such a finding, the court must be satisfied that there is a substantial risk that the offender will reoffend and that there is a reasonable possibility of eventual control of the risk in the community.

Section 753.1(2) of the *Criminal Code* states that a court shall be satisfied that there is a substantial risk that the offender will reoffend if the offender has been convicted of one or more of the offences discussed in this publication<sup>26</sup> and the offender has, by sexual conduct including that involved in the offence for which the offender has been convicted, shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences. A court may also be satisfied that there is a substantial risk that the offender will reoffend if he or she has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons. If the court finds an offender to be a long-term offender, it shall impose a minimum punishment of imprisonment for a term of two years, and order that the offender be subject to long-term supervision for a maximum of 10 years.

## 8.5 RECOGNIZANCE OR PEACE BOND

Under section 810.1 of the *Criminal Code*, a person may apply to a provincial court judge for an order requiring the defendant to enter into a recognizance or peace bond (an obligation entered into before a judge by which the defendant must keep the peace and be of good behaviour) including conditions resembling the conditions which can be imposed as part of a prohibition order under section 161. The applicant must fear, on reasonable grounds, that the defendant will commit one of a number of

specified sexual offences in respect of a person under 16 years of age. The order can last for up to one year, unless the defendant was previously convicted of a sexual offence in respect of a person under 16 years of age, in which case the recognizance can last for up to two years.

## 8.6 CRIMINAL RECORDS

Anyone convicted of one of the offences discussed in this publication will have a criminal record. By the provisions of the *Criminal Records Act*,<sup>27</sup> an offender can apply for a record suspension (pardon) after a certain period has elapsed since the expiration of a sentence. The effect of a record suspension is that the judicial record of the conviction is kept separate and apart from other criminal records. A criminal record search for a person should not, therefore, reveal any record for those offences for which a record suspension has been granted. In general, a person is ineligible to apply for a record suspension if he or she has been convicted of a number of the offences discussed in this publication.<sup>28</sup>

A person who has been convicted of one of the listed offences may, however, still apply for a record suspension if the Parole Board of Canada is satisfied that:

- the offender was not in a position of trust or authority towards the victim of the offence and the victim was not in a relationship of dependency with him or her;
- the offender did not use, threaten to use or attempt to use violence, intimidation or coercion in relation to the victim; and
- the offender was less than five years older than the victim.

An exception to the non-disclosure of a criminal record for which a record suspension has been granted is made if a person applies for a paid or volunteer position and the position is one of authority or trust relative to children or vulnerable persons. Should the applicant consent to the verification, the information that the applicant has been convicted of certain specified offences may be disclosed, so long as this information is used only in relation to the assessment of the application. The specified offences in this instance are set out in Schedule 2 of the *Criminal Records Act* and include many of the offences discussed above.

There are other potential consequences of not being able to obtain a record suspension because the offence at issue was a sexual offence involving a young person. One of these is an inability to legally travel to countries whose entry rules bar persons with criminal records.

Another consideration applies specifically to foreign nationals and permanent residents in Canada. Section 36 of the *Immigration and Refugee Protection Act*<sup>29</sup> states that a permanent resident or a foreign national is inadmissible to Canada on grounds of serious criminality for having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed. The section goes on to state, however, that this inadmissibility may not be based on a conviction for which

a record suspension has been ordered. Thus, the inability to obtain a record suspension means a foreign national or permanent resident may be deported from Canada or denied entry into it.

---

## NOTES

1. Department of Justice, [Age of Consent to Sexual Activity](#).
2. [Criminal Code, 1892](#), S.C. 1892, 55–56 Victoria, c. 29, s. 261.
3. Ibid., s. 269. See also Marilyn Pilon, [Canada's Legal Age of Consent to Sexual Activity](#), Publication no. 99-3E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 12 April 2001.
4. [Criminal Code](#), R.S.C. 1985, c. C-46.
5. *An Act to amend the Criminal Code and the Canada Evidence Act (Sexual Offences)*, R.S.C. 1985, c. 19, (3<sup>rd</sup> Supp.)
6. [Bill C-2, An Act to amend the Criminal Code and to make consequential amendments to other Acts](#), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament (S.C. 2008, c. 6) [short title: *Tackling Violent Crime Act*].
7. Section 159 of the *Criminal Code* has been held to be a violation of the *Canadian Charter of Rights and Freedoms* by at least two Courts of Appeal. In [R. v. C.M.](#) (1995), 23 OR (3<sup>d</sup>) 629, two judges of the Ontario Court of Appeal found that the section infringed section 15 of the Charter by discriminating on the basis of age, while a third judge found that there was discrimination on the basis of sexual orientation. All three agreed that this *Criminal Code* provision could not be saved by section 1 of the Charter, which permits, within “reasonable limits,” the restricting of rights guaranteed by the Charter. In [R. c. Roy](#) (1998), 161 DLR (4<sup>th</sup>) 148, the Quebec Court of Appeal held that this section infringes section 15 of the Charter, as it discriminates on the basis of age, sexual orientation and marital status and is therefore of no force and effect.  
  
On 8 March 2017, [Bill C-39, An Act to amend the Criminal Code \(unconstitutional provisions\) and to make consequential amendments to other Acts](#), was given first reading in Parliament. Clause 4 of this bill repeals section 159 of the *Criminal Code*. Clause 3 of the bill adds section 156 to the *Criminal Code* to provide that no person shall be convicted of any historical offence of a sexual nature unless the act that constitutes the offence would constitute an offence under the *Criminal Code* if it were committed on the day on which the charge was laid.
8. A hybrid offence is one that may be prosecuted by indictment or by summary conviction.
9. Section 22 of the *Criminal Code* states that when a person counsels another to commit an offence and the second person subsequently commits that offence, the person who counselled the commission becomes a party to the offence. The section also specifies that “counsel” includes “procure.” Section 170 employs the term “procures” in making it an offence to encourage others to engage in sexual activity with someone under the age of consent.
10. Compare this offence with that of incest (see section 4.1 of this paper).
11. The term “sexually explicit material” is defined to exclude material that is child pornography, since that has its own *Criminal Code* section (section 163.1).

12. The specific offences under the *Criminal Code* with respect to a person under 18 years of age are:

- sexual exploitation (section 153(1));
- incest (section 155);
- child pornography (section 163.1);
- parent or guardian procuring sexual activity (section 170);
- householder permitting prohibited sexual activity (section 171);
- trafficking of a person under the age of 18 years (section 279.011);
- material benefit – trafficking of person under 18 years (section 279.02(2));
- withholding or destroying documents – trafficking of person under 18 years (section 279.03(2));
- obtaining sexual services for consideration from person under 18 years (section 286.1(2));
- material benefit from sexual services provided by person under 18 years (section 286.2(2)); and
- procuring – person under 18 years (section 286.3(2)).

The specific offences under the *Criminal Code* with respect to a person under 16 years of age are:

- sexual interference (section 151);
- invitation to sexual touching (section 152);
- bestiality in presence of or by child (section 160(3));
- exposure (section 173(2));
- sexual assault (section 271);
- sexual assault with a weapon, threats to a third party or causing bodily harm (section 272);
- aggravated sexual assault (section 273); and
- abduction of person under sixteen (section 280).

The specific offence under the *Criminal Code* with respect to a person under 14 years of age is:

- abduction of person under fourteen (section 281).

13. Ibid.

14. Ibid.

15. In [R. v. Chase](#), [1987] 2 SCR 293, the Supreme Court stated that a sexual assault is an assault which is committed in circumstances of a sexual nature such that the sexual integrity of the victim is violated.

16. In the case of [R. v. J.A.](#), [2011] 2 SCR 440, the Supreme Court held that Parliament's definition of consent does not extend to advance consent to sexual acts committed while the complainant is unconscious. The legislation requires ongoing, conscious consent to ensure that women and men are not the victims of sexual exploitation, and to ensure that individuals engaging in sexual activity are capable of asking their partners to stop at any point.



17. These sections are:
  - section 151 (sexual interference);
  - section 152 (invitation to sexual touching);
  - section 153 (sexual exploitation);
  - section 155 (incest);
  - section 160(3) (bestiality in presence of or by child);
  - section 163.1 (child pornography);
  - section 170 (parent or guardian procuring sexual activity);
  - section 171 (householder permitting prohibited sexual activity);
  - section 171.1 (making sexually explicit material available to child);
  - section 172.1 (luring a child);
  - section 172.2 (agreement or arrangement – sexual offence against child);
  - section 173 (indecent acts); or
  - section 286.1(2) (obtaining sexual services for consideration from person under 18 years).
18. Nor can an accused rely on a defence that consent to the sexual activity in question was implied. In the case of [\*R. v. Ewanchuk\*](#), [1999] 1 SCR 330, the Supreme Court held that the trier of fact (the judge or jury that determines questions of fact in a trial) may come to only one of two conclusions: the complainant either consented or did not. If the trier of fact accepts the complainant's testimony that no consent was given, even if the complainant's conduct may appear to contradict that claim, the absence of consent is established.
19. The offences include the following:
  - sexual interference (section 151);
  - invitation to sexual touching (section 152);
  - sexual exploitation (section 153);
  - incest (section 155);
  - bestiality in presence of or by child (section 160(3));
  - child pornography (section 163.1);
  - parent or guardian procuring sexual activity (section 170);
  - householder permitting prohibited sexual activity (section 171);
  - making sexually explicit material available to child (section 171.1);
  - corrupting children (section 172);
  - luring a child (section 172.1);
  - agreement or arrangement – sexual offence against child (section 172.2);
  - indecent acts (section 173);
  - sexual assault (section 271);
  - sexual assault with a weapon, threats to a third party or causing bodily harm (section 272);
  - aggravated sexual assault (section 273);
  - trafficking of a person under the age of 18 years (section 279.011);
  - material benefit – trafficking of person under 18 years (section 279.02(2));
  - withholding or destroying documents – trafficking of person under 18 years (section 279.03(2));
  - obtaining sexual services for consideration (section 286.1);
  - material benefit from sexual services (section 286.2); and
  - procuring (section 286.3).

20. The offences include the following:
  - sexual interference (section 151);
  - invitation to sexual touching (section 152);
  - sexual exploitation (section 153);
  - incest (section 155);
  - bestiality (section 160);
  - child pornography (section 163.1);
  - parent or guardian procuring sexual activity (section 170);
  - householder permitting prohibited sexual activity (section 171);
  - making sexually explicit material available to child (section 171.1);
  - corrupting children (section 172);
  - luring a child (section 172.1);
  - agreement or arrangement – sexual offence against child (section 172.2);
  - indecent acts (section 173);
  - sexual assault (section 271);
  - sexual assault with a weapon, threats to a third party or causing bodily harm (section 272);
  - aggravated sexual assault (section 273);
  - trafficking of a person under the age of 18 years (section 279.011);
  - material benefit – trafficking of person under 18 years (section 279.02(2));
  - withholding or destroying documents – trafficking of person under 18 years (section 279.03(2));
  - abduction of person under sixteen (section 280);
  - abduction of person under fourteen (section 281);
  - obtaining sexual services for consideration (section 286.1);
  - material benefit from sexual services (section 286.2); and
  - procuring (section 286.3).
21. [\*Canada Evidence Act\*](#), R.S.C. 1985, c. C-5.
22. [\*Youth Criminal Justice Act\*](#), S.C. 2002, c. 1.
23. [\*DNA Identification Act\*](#), S.C. 1998, c. 37.
24. The offences mentioned in this publication that are found in the list of primary designated offences include the following:
  - offence in relation to sexual offences against children (section 7(4.1));
  - sexual interference (section 151);
  - invitation to sexual touching (section 152);
  - sexual exploitation (section 153);
  - incest (section 155);
  - bestiality in presence of or by child (section 160(3));
  - child pornography (section 163.1);
  - parent or guardian procuring sexual activity (section 170);
  - making sexually explicit material available to child (section 171.1);
  - luring a child (section 172.1);
  - agreement or arrangement – sexual offence against child (section 172.2);
  - exposure (section 173(2));

- sexual assault (section 271);
- sexual assault with a weapon, threats to a third party or causing bodily harm (section 272);
- aggravated sexual assault (section 273);
- removal of a child from Canada (section 273.3);
- trafficking of a person under the age of 18 years (section 279.011);
- material benefit – trafficking of person under 18 years (section 279.02(2));
- withholding or destroying documents – trafficking of person under 18 years (section 279.03(2));
- obtaining sexual services for consideration from person under 18 years (section 286.1(2));
- material benefit from sexual services provided by person under 18 years (section 286.2(2)); and
- procuring – person under 18 years (section 286.3(2)).

Note that in the section 487.04 definition and other definitions of “primary designated offences,” there are references to historical sexual offences. In the section 487.04 definition, for example, a “primary designated offence” includes offences that were in force prior to 1 January 1988, such as sexual intercourse with a female under age 14 (section 146(1)) and sexual intercourse with a female between the ages of 14 and 16 (section 146(2)).

25. [Sex Offender Information Registration Act](#), S.C. 2004, c. 10.

26. These offences are:

- sexual interference (section 151);
- invitation to sexual touching (section 152);
- sexual exploitation (section 153);
- making child pornography (section 163.1(2));
- distribution, etc., of child pornography (section 163.1(3));
- possession of child pornography (section 163.1(4));
- accessing child pornography (section 163.1(4.1));
- parent or guardian procuring sexual activity (section 170);
- householder permitting prohibited sexual activity (section 171);
- making sexually explicit material available to child (section 171.1);
- luring a child (section 172.1);
- agreement or arrangement – sexual offence against child (section 172.2);
- exposure (section 173(2));
- sexual assault (section 271);
- sexual assault with a weapon, threats to a third party or causing bodily harm (section 272);
- aggravated sexual assault (section 273);
- trafficking of a person under the age of 18 years (section 279.011);
- material benefit – trafficking of person under 18 years (section 279.02(2));
- withholding or destroying documents – trafficking of person under 18 years (section 279.03(2));
- obtaining sexual services for consideration from person under 18 years (section 286.1(2));
- material benefit from sexual services provided by person under 18 years (section 286.2(2)); and
- procuring – person under 18 years (section 286.3(2)).

27. [Criminal Records Act](#), R.S.C. 1985, c. C-47.
28. Section 4(2) of the *Criminal Records Act* states that a person is, in general, unable to apply for a record suspension for the following offences listed in Schedule 1 to that Act:
  - sexual interference (section 151);
  - invitation to sexual touching (section 152);
  - sexual exploitation (section 153);
  - incest (section 155);
  - bestiality in presence of or by child (section 160(3));
  - child pornography (section 163.1);
  - parent or guardian procuring sexual activity (section 170);
  - householder permitting prohibited sexual activity (section 171);
  - making sexually explicit material available to child (section 171.1);
  - corrupting a child (section 172);
  - luring a child (section 172.1);
  - agreement or arrangement – sexual offence against child (section 172.2);
  - exposure (section 173(2));
  - sexual assault (section 271);
  - sexual assault with a weapon, threats to a third party or causing bodily harm (section 272);
  - aggravated sexual assault (section 273);
  - removal of child from Canada (section 273.3);
  - trafficking of a person under the age of 18 years (section 279.011);
  - material benefit – trafficking of person under 18 years (section 279.02(2));
  - withholding or destroying documents – trafficking of person under 18 years (section 279.03(2));
  - obtaining sexual services for consideration from person under 18 years (section 286.1(2));
  - material benefit from sexual services provided by person under 18 years (section 286.2(2)); and
  - procuring – person under 18 years (section 286.3(2)).

Note that, as with the DNA provisions (discussed in note 24), Schedule 1 makes references to historical sexual offences.
29. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.