Considerations on
the Age of Consent to Sexual Activity

Discussion Paper written by Jannit Rabinovitch for the Honourable Landon Pearson, Senator

Current Canadian Legislation

According to the Canadian Criminal Code, consensual sexual activity with or between persons 14 or over is legal, unless it takes place in a relationship of trust or dependency, in which case sexual activity with any person under 18 can constitute an offence, notwithstanding their consent. Even consensual activity with those under 14 years of age but over 12 may not be an offence if the accused is under 16 years old and less than two years older than the complainant.

In 1988, Bill C-15 amended the Criminal Code in order to create offences called “sexual interference” and “invitation to sexual touching” that prohibit adults from engaging in virtually any kind of sexual conduct with either girls or boys under the age of 14, irrespective of consent. Introduced at the same time, the offence “sexual exploitation” also makes it an offence for an adult to have such contact with boys and girls over 14 years of age but under 18, where a relationship of trust or authority exists between the adult and child. Currently under consideration is Bill C-15A, which, once enacted, will create an offence of “luring” via the Internet to prevent the use of the Internet in crimes against children.

In 1997, Bill C-27 amended the Criminal Code to state that every person who obtains or attempts to obtain sexual services of a person who is under the age of 18 or who that person believes is under the age of 18 and every person who lives wholly or in part on the avails of prostitution of another person under 18 is guilty of an indictable offence and liable to imprisonment.

Why Raise the Age of Consent?

1. Prevent Sexual Exploitation

In Canada, the most common reason for recommending that the age of consent be raised is to prevent or limit sexual exploitation of youth, particularly within the age range of 14 to 17 years. There is no question that sexual exploitation is a real and serious risk for some children and youth in Canada. There are reports of an increase in the numbers of youth being sexually exploited. And Canada is listed on the Internet as an international source for sex with children and youth.

Young people who are sexually exploited often have their first consensual sexual experience when they are between 14 and 16 years of age. More often than not, this initial activity is not experienced by the young person as exploitation and it is not engaged in for consideration. On the contrary, it is experienced as a boyfriend-girlfriend relationship. Many would argue that an age of consent of 14 makes it easy for predators to recruit young people into the sex trade without facing any repercussions or without, initially, committing an offence. Once the youth are entrenched in the relationship, they are then convinced or coerced into engaging in illegal
activity. According to some, recruiters consciously choose to form consensual relationships with youth over the age of consent but as young as possible in order to make it easy to gain a hold on them.

It is argued that raising the age of consent would force young people to wait until they are older and better able to make decisions for themselves before they engage in sexual activity. Raising the age of consent would also assist in the prosecution of adults who buy sex from young people because the adult could be charged with sexual assault and it would not be necessary to prove that there was a negotiation for money or other consideration.

It is also argued that raising the age of consent to be more consistent with other Western industrialized countries would discourage sex tourism. Having an older age would send a message internationally that children in Canada are not available for sex. This must be considered in light of the fact that some children under 14 years of age are currently being procured by men from both inside and outside of Canada.

2. Decrease Teen Pregnancy

Teen pregnancy is a significant issue in both Canada and the USA. According to Health Canada data, in 1994, 10,964 babies were born to girls aged 15-19 fathered by men aged 20-29 compared to 4,482 babies fathered by youths 19 and under. According to the American Journal of Public Health, two-thirds of infants born to unwed teens in the USA are fathered by adults.

In the USA, decreasing teen pregnancy was the primary reason stated for raising the age of consent. In the USA, as of July 2000, the age of consent (without parental consent) ranges from ages 16 (27 states plus the military), 17 (8 states) to 18 (14 states).

However, research in the USA suggests that age of consent laws bear little connection to teen pregnancy and raising the age has had minimal impact. A new study by the American Urban Institute reveals that only 8 percent of all births to 15-19 year-olds would fall within the scope of statutory rape laws. Researcher Judith Levine suggests that poverty, poor education, and a perception of an optionless future are the biggest predictors of teen pregnancy and motherhood. Therefore, a more appropriate response would be increased access to education and more employment opportunities for poor young women.

3. Control Teen Sexuality

In 1978, the Law Reform Commission of Canada expressed the view that “the state and the public have an interest in controlling sexual behaviour in this age group (14-16 years of age)”. Yet, evidence abounds that teens are sexually active. Some adults disapprove of this activity while others recognize its inevitability in a world where sexual images permeate popular culture.

Of 30,000 BC high school students who participated in the 1998 McCreary Centre survey, 23% of 15 year olds have had sex and 9% of 13 year olds. Nearly half of all youth who are sexually active said they first had sex at age 14 or younger. The National Population Health Survey, based on 1996 data, found that 24% of girls and 18% of boys had intercourse by age 15. Doubtless, most of these youth are not even aware of what the age of consent is.
For some Canadians, raising the age of consent is a moral issue. Those who hold this position believe that young people need to be protected from sex and all kinds of sexual activity. They suggest that the problem, in part, is the “liberal assumption that sex is natural and therefore good.” As one writer stated: “Children lack the moral experience to distinguish good from bad, wise from unwise, and love from lust” and “society, perhaps with the best of intentions, has given licence to children to make mistakes they might not otherwise have made but which cannot be unmade” thereby destroying the innocence of childhood.

Compelling Reasons For or Against Raising the Age of Consent

The most compelling reason given by those who advocate to raise the age of consent is the need to address the recognized recruitment process for the sex trade in Canada which preys on young girls and boys and specifically targets those who are at the current age of consent. According to the Children of the Street Society, the majority of parents who call asking for help have children who are 14 years old and are being recruited into the trade. They argue that if the police had the ability to pick up the girl or boy, regardless of their consent, and return them to their family or to take them to a safe house, then many youth would be saved from entering the sex trade.

The most compelling reason against raising the age of consent is that raising the age would send a message that Canada is becoming part of a movement to repress sexuality. Many sexually exploited youth have argued that it is the lack of a healthy sexual climate and adequate sexual education that creates and sustains the enormous scale and scope of the sex trade. At Out from the Shadows: International Summit of Sexually Exploited Youth (Victoria, 1998), the youth stated: “As children and youth we are all vulnerable to sexual exploitation” and that one avenue for reducing this vulnerability is for “community and government action to be taken to support safer sex education.” Proponents of the prevention position would argue that raising the age of consent would be a step backward away from sexual health and youth autonomy and toward sexual repression, control and a larger sex trade.

Alternatives to Raising the Age of Consent

For those whose primary concern is sexual exploitation, there are a number of suggested alternatives to address this issue without limiting the control and choices of the majority of youth.

Rare are the situations where Canadian laws do not/cannot protect a child because the age of consent limits authority to intervene. What is required is increased enforcement of existing legislation both federal, such as the Criminal Code, and provincial, such as the Youth Protection Act in Quebec or child welfare legislation elsewhere in order to enhance protection for children without becoming excessively punitive and criminalizing sexuality among peers. For example, Section 212.4 of the Criminal Code prohibits men from buying sexual acts from children and youth but is rarely enforced. In the words of Justice for Girls: “Although raising the age of consent to 16 years with provisions may make it easier for criminal justice officials to prosecute
men who sexually exploit young women, the more responsive option would be to use current Criminal Code laws to prosecute these men.”

If, as suggested by some, it is too difficult to enforce the existing legislation then changes need to be made to that legislation or to the evidentiary processes required by the legislation rather than to the age of consent. Nevertheless, in situations of sexual abuse Canadian laws are very clear; all children under the age of 18 are protected. Perhaps the law should add the presumption that punishing the abuser through the criminal justice system is the best way to protect children from future victimization.

Below are a number of activities that would have a measurable impact on both the numbers of sexually exploited youth and the degree of exploitation. These activities would, however, require a commitment to youth on an ongoing and substantive basis and would require an allocation of resources rather than a mere change in legislation.

Prevention activities:
- significant and ongoing dialogue about sex and healthy sexuality with both boys and girls
- access to birth control education and to contraception
- education on STDs and their prevention
- education against homophobia
- change in public attitudes and behaviour toward buying sex
- awareness of tactics used by sexual predators
- realistic information on the sex trade provided to youth by former sex trade workers
- access to confidential and affordable counselling and personal support for youth
- decrease in poverty as money is the most commonly stated reason youth provide for staying in the sex trade
- an end to racism, especially as it impacts Canada’s Aboriginal community

Supports for youth in the sex trade:
- adequate safe housing for homeless and at-risk youth
- detox and treatment facilities for addicted youth
- programs for sexually exploited youth provided by experiential youth
- specialized education and training programs

Voices of Concern

Badgeley Report: Society has a vital interest in ensuring that its naturally weaker members are protected by legal safeguards against the naturally stronger, and particularly, that the welfare of its children and youths will be protected and fostered.
Beyond Borders: It is no use looking at the age of consent from the perspective of advantaged, excellent critically thinking, well protected 14 year olds. Asking them if they want Big Brother to interfere in whom they are sexually active with at 14 is folly indeed. Ask them if they think 50 year old men should be able to target 14 year old runaways for sex, give them AIDS or other diseases, get them pregnant and you might get a different response.

Dr. Edward Renner, Carleton University: A recent Canadian study found that judges are far more lenient with child sex offenders than they are with those who assault adults. Only 13% of those who preyed upon children received a sentence of two years or more, compared with 30% for those who preyed upon adults. Because there is less violence, there is an assumption that there is less harm and usually there is an existing relationship with the assailant.

Children of the Street: As a culture we don’t give children a choice of living with sexual abuse if we know about it when it’s a family member. It should be the same thing with a stranger they decide they want to live with; if it’s unsafe or exploitative we should make sure that we, as a society, have a way to protect the child.

Equality for Gays and Lesbians Everywhere (EGALE): The setting of an absolute age of consent is an inevitably imperfect line-drawing exercise. No matter where the line is drawn, some otherwise healthy sexual activity will be criminalized and some harmful activity will be permitted. Both effects are of concern, and both should be considered.

Justice for Girls: We need to ensure that people who exploit are held accountable and that young women are not criminalized for their sexuality or incarcerated because of sexual exploitation and lack of resources.

Judith Levine, author of forthcoming book “Harmful to Minors: The Perils of Protecting Children from Sex”: Adults’ child-protective responsibility lies not only in good parenting, but in supporting public institutions such as widespread comprehensive sex education and access for young people to contraception, condoms and safe abortions. As well, we need to promote values of egalitarianism, tolerance, negotiation and, yes, pleasure. Then kids can say yes to sex, and be safe too. The USA has to get rid of abstinence-only sex education and address the issues of children and youths’ real lives including their sexuality and their relationships.

National Foundation for Family Research and Education: The results of dozens of studies show the effects of adult sexual contact with children. There is a 21% higher risk of clinical depression, 21% greater chance of suicide, 20% increase in post-traumatic stress disorder, and a 14% jump in extreme promiscuity and involvement in prostitution. The age of consent should be raised to 16. The earlier physical maturity of teens these days results in a wider gap between physical and psychological maturation.

Canadian Parliamentary Research Branch, 1999: A consequence of raising the age of consent would be to criminalize sexuality among peers. Raising the age would mean that they cannot consent to have sex if underage, regardless of the age of their partner. Because the modern sexual assault provisions of the Criminal Code no longer depend upon proof of intercourse, such
an amendment could allow a 16-year-old to be prosecuted for virtually any sexual contact with a 15-year-old boyfriend or girlfriend.

**Bloc Québécois Political Party:** As suggested by Michel Bellehumeur, M.P. for Berthier-Montcalm: “The age of consent debate highlights the attitudinal chasm between Québec’s sexual liberality and the more conservative English Canadian perspective.”

**Voices of Young People**

**Cherry Kinglsey, Internationally Recognized Advocate for Sexually Exploited Youth:** Changing the age of consent doesn’t address the real problem - adults wanting to have sex with children. If the issue is predatory adults then we have to address that directly. Maybe we need to look at how we collect and present evidence, address the role of the courts in trying to protect children. The real question is, How do we protect children from abuse and exploitation? Does the age of consent law protect children under 14 now? How, when we know increasing numbers of youth under 14 are being sexually exploited in Canada?

Abusers ignore the law. Even if consent were raised to 25 it would not stamp out abuse. The key to protecting teenagers is education and empowerment. The laws have to focus on the activity not the age of those involved. If exploitation and abuse are illegal and engaging in them is criminal then the age of those involved shouldn’t matter.

The issue is not the laws but the enforcement. If the existing federal statutes against exploitation are not enforceable, then the statute must be changed. In my opinion, the problem lies in the evidentiary requirements of the existing legislation. It defines the crime by the relative ages of the individuals rather than by the behaviour being prohibited.

**What We Can Learn from Other Jurisdictions**

Although it is important for Canada to develop its own policy and respond to the unique needs of Canadians, it is of interest to review the current age of consent in other jurisdictions with a similar lifestyle. In some of these countries, leaders point to Canada’s enlightened approach to the age of consent. This is particularly true in places where no exemption for peer sex exists and, as a result, widespread sexual activity among youth criminalizes a large portion of the youth population.

**Ages of consent are listed below:**

- 12 in Mexico
- 13 in Japan
- 14 in Austria, Iceland, Italy & Canada
- 15 in Denmark, France, Sweden
- 16 in Australia, Finland, Germany (14 with parental consent), Holland (12 with parental consent), Israel, New Zealand, Norway
Britain: Four out of five British teenagers responding to a survey by the British Youth Council a few years ago favoured a lower limit for age of consent in Britain. (It is now 16.) Many sexually active youth under 16 are sexually illiterate because of inadequate sex education. Few receive detailed safer sex advice, and most have no ready access to condoms. The age of consent is often used as a justification for denying them this information and protection. In Britain, even the former Bishop of Glasgow, Derek Rawcliffe, has backed 14 as the appropriate age of consent.

Hawaii: Governor Ben Cayetano vetoed a controversial measure on Monday, June 18, 2001 to raise the age of consent from 14 to 16 years of age. The Governor argued that Hawaii already has some of the strictest statutes in the nation concerning sexual assault. “Under these statutes, it is a crime for anyone to engage in acts of sexual penetration or contact without the consent of the other person regardless of the victim’s age.” The measure would have applied to consensual sex only. The Governor said the measure defines the crime by the relative ages of the individuals involved which could create unfortunately harsh results. “The crimes that are created by this bill are overly broad and in some situations may inappropriately bring teenagers and young adults as both victims and defendants into the State’s criminal justice system,” Governor Cayetano said. “In these cases, neither society’s interests to criminal law enforcement nor the well-being of these teenagers will be advanced by this approach.” However, in the end, the Governor’s veto was overturned and the age of consent in Hawaii was raised from 14 to 16 years of age.

South Africa: In South Africa, where the current age of consent is 16 years old, a recent Home Office report states that teenagers involved in a partnership are being placed on the sex offenders’ registry alongside of paedophiles. Youth under 16 years old are being arrested for having sex with peers. In South Africa, the average age for first sexual encounter is 14 years old according to a 1994 Survey of Sexual Attitudes and Lifestyles. The age of consent, therefore, criminalizes over half the teenage population. In South Africa a poll of 42,000 girls aged 12 to 16 conducted in November of 2000 found that 87% think the age of consent is too high at 16.

Other Kinds of Age of Consent

The age of majority, which was traditionally 21, has been lowered in most Canadian provinces to 18 or 19 years of age. Many believe that the age of majority is the age of consent. This is not the law in Canada. The age of consent varies from one circumstance to another.

Consent of Minors to Medical procedures

Many Canadian hospitals do not accept the consent of patients under the age of majority. However, there is nothing in the Common Law which prevents a “mature minor” from consenting to his or her own treatment. A mature minor is one who has the capacity to fully appreciate the nature and consequences of a proposed treatment; and thus, is capable of giving valid consent to such treatment. The mature minor rule means that there is no established age below which parental consent will be required. In the past, the Court has adopted the principle that a child with sufficient intelligence and understanding can make up his or her own mind even in situations of some controversy. For example, the age of consent for medical treatment in the Province of Quebec is 14 years of age.
Consent of Minors to Abortion
Many people believe that young women cannot give consent to abortion. This is a misunderstanding of the law of consent. It applies to all medical and surgical treatment, including therapeutic abortions performed on the basis of medical necessity. Some provinces have enacted legislation specifically setting ages of consent to care, and minors meeting the requirements of these laws may give permission to abortions. In provinces without “age of consent” legislation, the ability of a minor to give consent must be determined on a case-by-case basis. For example, the Court ruled that a 16-year old in Alberta in 1987 was able to have an abortion despite her parents objections.

Guardianship
In the broadest terms, guardianship involves the supervision, care, control and custody of the person of a child and the management of the child’s property. Guardianship may be acquired by nature or parental right, by appointment either by a parent or by the Court or by operation of a statute. In Canada, the consent of a child, if over the age of 12 or 14 depending on the province, is required before an appointment of a guardian can be made.

Child in Need of Protection
Child protection legislation is intended to protect and enhance the well-being and development of children. The welfare or best interests of the child is the most important consideration in any child protection matter. All of the child protection statutes define child by reference to age. That age ranges from below 16 years old in Saskatchewan, Ontario, Nova Scotia, and Newfoundland and Labrador, to below 18 in the Yukon, Alberta, Manitoba, and Prince Edward Island, to below 19 in British Columbia and New Brunswick.

Adoption
The age of consent in adoption varies from one province to another. For example, in Ontario, the age of consent in adoption is 7 years old under the Child and Family Services Act.

Children of Divorce
The law is silent under the federal Divorce Act; however, the judge will take into consideration the views of the child.
## Appendix A - Summary of Pros and Cons of Raising the Age of Consent from 14 to 16 or 18 Years of Age for Sexual Activity

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<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
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<tr>
<td>Makes it harder to recruit young people into the sex trade between</td>
<td>Has little or no impact on the recruitment of youth under 14 years currently being recruited. Canadian law now prohibits the commercial sexual exploitation of children under the age of 18 (Bill C-27).</td>
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<td>the ages of 14 and 16/18 by using a relationship since it would be</td>
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<td>illegal</td>
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<td>Provides police with a new tool for removing young people from</td>
<td>Criminalizes further young people due to the lack of appropriate programs and services for police to refer them to</td>
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<td>exploitative situations</td>
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<tr>
<td>Returns runaway youth to their families, thus preventing them</td>
<td>Has no impact on runaways without adequate services being available to them such as counselling, detox, treatment, education and training</td>
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<td>from becoming entrenched in the sex trade</td>
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<tr>
<td>Prevents some instances of teen sexual exploitation</td>
<td>Sexual exploitation of youth under 18 years of age is already illegal; consent is irrelevant</td>
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<td>Decreases sex tourism by making sexual activity with anyone</td>
<td>Has no impact on sex tourism as evidenced by the increasing number of children under 14 currently being purchased by men from other countries</td>
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<td>under 16/18 years old illegal</td>
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<td>Sends a message internationally that children in Canada are not</td>
<td>Sends a message internationally that Canada has joined the forces who support the repression of sexuality</td>
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<td>sexual and are not available for sex</td>
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<tr>
<td>Decreases teen pregnancy by decreasing sex among 14 to 15/17 year</td>
<td>Has little or no impact on teen pregnancy based on the USA experience</td>
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<td>olds</td>
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<td>Prohibits sexual activity until youth are mature enough to make</td>
<td>Criminalizes normal healthy sexual development and runs the risk of criminalizing some youth</td>
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<td>such decisions</td>
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<td>Discourages youth from having sex so young</td>
<td>Uses as an excuse to limit access to sex education and birth control</td>
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<td>Sex is too dangerous for youth between 14 and 17 years old to</td>
<td>Once a law is passed, there is no way to control how it is used; the intent becomes irrelevant</td>
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<td>decide for themselves</td>
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<td>Protects youth from themselves</td>
<td>Decreases the autonomy of youth</td>
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<td>Protects youth in the same way they are protected from</td>
<td>Is disempowering to youth</td>
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<td>cigarettes, alcohol, driving</td>
<td></td>
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<tr>
<td>Protects youth from their decisions</td>
<td>Does not support youth making their own decisions</td>
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Appendix B - Bibliography


*Times-Colonist,* Kids keep virginity longer, survey suggests; Sex and the Single Teen; Teen Sex: Respect and equality are themes of media campaign.


**Website**

Nerve.Com dispatches - Specific modifications you would make to the way sex is presented in the public and private sectors if you could change things as you wished to make a better child-rearing environment by Judith Levine, 1998.

[www.nerve.com/dispatches](http://www.nerve.com/dispatches)
Appendix C - Organizations in Focus Groups & Key Informant Interviews

Alliance Against the Commercial Sexual Exploitation of Children, Vancouver, BC
Beyond Borders, Winnipeg, MA
Chief of Police, Victoria, BC
Children of the Street Society, Coquitlam, BC
Justice for Girls Outreach Society, Vancouver, BC
National Police Association, Ottawa, ON
National Council of Women of Canada
Project Respect, Victoria Women’s Sexual Assault Centre, Victoria, BC
Prostitutes’ Empowerment, Education and Resource Society, Victoria, BC
Save the Children Canada, Vancouver, BC

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