

**Research and Development Section**

*National Child Exploitation  
Coordination Centre (NCECC)*

# Quick Reference Guide to Child Sexual Exploitation Offences

Legislation on Child Sexual Exploitation

*Criminal Code, [R.S.C. 1985, c. C-46]*

And

*Bill C-2 (An Act to amend the Criminal Code)*

As Assented to by Parliament July 20, 2005

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## ***Introduction and Disclaimer***

The National Child Exploitation Coordination Centre (NCECC) of the Royal Canadian Mounted Police (RCMP) coordinates investigations involving Canadian victims and suspects and collaborates on educational, intelligence, and research based strategies to combat the global, online sexual exploitation of children. The legislative information in this Quick Reference Guide was collected from the Justice Laws Web Site, which is the Department of Justice Canada's online source of consolidated Acts and regulations of Canada, including the *Criminal Code*. The information consists of provisions concerning the sexual exploitation of children copied from the online *Criminal Code*. The information in this guide has been prepared for convenience of reference only. It may not be exhaustive, may not constitute all provisions relevant to child sexual exploitation in the *Code*, and does not have official sanction. For all purposes of interpreting and applying the official laws of Canada, readers should consult the Department of Justice Canada, Justice Laws Web Site, for further information. The RCMP assumes no liability for the accuracy or reliability of any information contained in this Quick Reference Guide.

## Offence in Relation to Sexual Offences Against Children

### S.7 Offence in relation to sexual offences against children.

(4.1) Notwithstanding anything in this Act or any other Act, every one who, outside Canada, commits an act or omission that if committed in Canada would be an offence against section 151 (Sexual Interference), 152 (Invitation to Sexual Touching), 153 (Sexual Exploitation), 155 (Incest) or 159 (Anal Intercourse), subsection 160(2) (Compelling the commission of bestiality) or (3) (Bestiality in presence of or by child), section 163.1 (Making), 170 (Parent or Guardian Procuring Sexual Activity), 171 (Householder Permitting Sexual Activity) or 173 (Indecent Acts/Exposure) or subsection 212(4) (Procuring) shall be deemed to commit that act or omission in Canada if the person who commits the act or omission is a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* who is ordinarily resident in Canada.

## Consent No Defence

### 150.1

(1) Where an accused is charged with an offence under section 151 or 152 or subsection 153(1), 160(3) or 173(2) or is charged with an offence under section 271, 272 or 273 in respect of a complainant under the age of sixteen years it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

(2) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 271 in respect of a complainant who is twelve years of age or more but under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge unless the accused

(a) is less than two years older than the complainant; and

(b) 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.

(2.1) When an accused is charged with an offence under section 151 or 152, subsection 173(2) or section 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

(a) the accused

(i) is less than five years older than the complainant; and

(ii) 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; or

(b) the accused is married to the complainant

(2.2) When the accused referred to in subsection (2.1) is five or more years older than the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if, on the day on which this subsection comes into force,

(a) the accused is the common-law partner of the complainant, or has been cohabiting with the complainant in a conjugal relationship for a period of less than one year and they have had or are expecting to have a child as a result of the relationship; and

(b) the accused 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.

(3) No person aged twelve or thirteen years shall be tried for an offence under section 151 or 152 or subsection 173(2) unless the person is in a position of trust or authority towards the complainant, is a person with whom the complainant is in a relationship of dependency or is in a relationship with the complainant that is exploitative of the complainant.

(4) It is not a defence to a charge under section 151 or 152 subsection 160(3) or 173(2), or section 271, 272 or 273 that the accused believed that the complainant was sixteen 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.

(5) It is not a defence to a charge under section 153, 159, 170, 171 or 172 or subsection 212(2) or (4) that the accused believed that the complainant was eighteen 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.

(6) An accused cannot raise a mistaken belief in the age of the complainant in order to invoke a defence under subsection (2) or (2.1) unless the accused took all reasonable steps to ascertain the age of the complainant.

## **Sexual Interference**

### **151.**

Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of sixteen years

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

## **Invitation to Sexual Touching**

### **152.**

Every person who, for a sexual purpose, invites, counsels or incites a person under the age of sixteen years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of sixteen years,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

## **Sexual Exploitation**

### **153.**

(1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

(1.1) Every person who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of forty-five days; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

(1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including

(a) the age of the young person;

(b) the age difference between the person and the young person;

(c) the evolution of the relationship; and

(d) the degree of control or influence by the person over the young person.

(2) In this section, "young person" means a person sixteen years of age or more but under the age of eighteen years.

## ***Sexual Exploitation of Person with Disability***

### **153.1**

(1) Every person who is in a position of trust or authority towards a person with a mental or physical disability or who is a person with whom a person with a mental or physical disability is in a relationship of dependency and who, for a sexual purpose, counsels or incites that person to touch, without that person's consent, his or her own body, the body of the person who so counsels or incites, or the body of any other person, directly or indirectly, with a part of the body or with an object, is guilty of

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

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

(2) Subject to subsection (3), "consent" means, for the purposes of this section, the voluntary agreement of the complainant to engage in the sexual activity in question.

(3) No consent is obtained, for the purposes of this section, if

(a) the agreement is expressed by the words or conduct of a person other than the complainant;

(b) the complainant is incapable of consenting to the activity;

(c) the accused counsels or incites the complainant to engage in the activity by abusing a position of trust, power or authority;

(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or

(e) 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.

(4) Nothing in subsection (3) shall be construed as limiting the circumstances in which no consent is obtained.

(5) It is not a defence to a charge under this section that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge if

(a) the accused's belief arose from the accused's

(i) self-induced intoxication, or

(ii) recklessness or willful blindness; or

(b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

(6) If an accused alleges that he or she believed that the complainant consented to the conduct that is the subject-

matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence of absence of reasonable grounds for that belief.

## ***Incest***

### **155.**

(1) Every one commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.

(2) Every one who commits incest is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

(3) No accused shall be determined by a court to be guilty of an offence under this section if the accused was under restraint, duress or fear of the person with whom the accused had the sexual intercourse at the time the sexual intercourse occurred.

(4) In this section, "brother" and "sister", respectively, include half-brother and half-sister.

## ***Anal Intercourse***

### **159.**

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

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

(a) husband and wife, or

(b) any two persons, each of whom is eighteen years of age or more, both of whom consent to the act.

(3) For the purposes of subsection (2),

(a) an act shall be deemed not to have been engaged in in private if it is engaged in in a public place or if more than two persons take part or are present; and

- (b) a person shall be deemed not to consent to an act
- (i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations respecting the nature and quality of the act, or
  - (ii) if the court is satisfied beyond a reasonable doubt that the person could not have consented to the act by reason of mental disability.

### **Bestiality/Compelling the Commission of Bestiality/Bestiality in Presence of or by Child**

#### **160.**

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

### **Order of Prohibition Conditions**

#### **161.**

- (1) When an offender is convicted, or is discharged on the conditions prescribed in a probation order under section 730, of an offence referred to in subsection (1.1) in respect of a person who is under the age of sixteen years, the court that sentences the offender or directs that the accused be discharged, as the case may be, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, shall consider making and may make,

subject to the conditions or exemptions that the court directs, an order prohibiting the offender from

- (a) attending a public park or public swimming area where persons under the age of sixteen years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground or community centre;
- (b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of sixteen years; or
- (c) using a computer system within the meaning of subsection 342.1(2) for the purpose of communicating with a person under the age of sixteen years.

(1.1) The offences for the purpose of subsection (1) are

- (a) an offence under section 151, 152, 155 or 159, subsection 160(2) or (3), section 163.1, 170, 171 or 172.1, subsection 173(2) or section 271, 272, 273 or 281;
- (b) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983; or
- (c) an offence under subsection 146(1) (sexual intercourse with a female under 14) or section 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988.

(2) The prohibition may be for life or for any shorter duration that the court considers desirable and, in the case of a prohibition that is not for life, the prohibition begins on the later of

- (a) the date on which the order is made; and
- (b) where the offender is sentenced to a term of imprisonment, the date on which the offender is released from imprisonment for the offence, including release on parole, mandatory supervision or statutory release.

(3) A court that makes an order of prohibition or, where the court is for any reason unable to act, another court of equivalent jurisdiction in the same province, may, on application of the offender or the prosecutor, require the offender to appear before it at any time and, after hearing the parties, that court may vary the conditions prescribed in the order if, in the opinion of the court, the variation is desirable because of changed circumstances after the conditions were prescribed.

(4) Every person who is bound by an order of prohibition and who does not comply with the order is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or

(b) an offence punishable on summary conviction.

## **Voyeurism**

### **162.**

(1) Every one commits an offence who, surreptitiously, observes – including by mechanical or electronic means – or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy, if

(a) the person is in a place in which a person can reasonably be expected to be nude, to expose his or her genital organs or anal region or her breasts, or to be engaged in explicitly sexual activity;

(b) the person is nude, is exposing his or her genital organs, or anal region or her breasts, or is engaged in explicitly sexual activity, and the observation or recording is done for the purpose of observing or recording a person in such a state or engaged in such an activity; or

(c) the observation or recording is done for a sexual purpose.

(2) In this section, “visual recording” includes a photographic, film or video recording made by any means.

(3) Paragraphs (1)(a) and (b) do not apply to a peace officer who, under the authority of a warrant issued under section 487.01, is carrying out any activity referred to in those paragraphs.

(4) Every one commits an offence who, knowing that a recording was obtained by the commission of an offence under subsection (1), prints, copies, publishes, distributes, circulates, sells, advertises or makes available the recording, or has the recording in his or her possession for the purpose of printing, copying, publishing, distributing, circulating, selling or advertising it or making it available.

(5) Every one who commits an offence under subsection (1) or (4)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

(6) No person shall be convicted of an offence under this section if the acts that are alleged to constitute the offence serve the public good and do not extend beyond what serves the public good.

(7) For the purposes of subsection (6),

(a) it is a question of law whether an act serves the public good and whether there is evidence that the act alleged goes beyond what serves the public good, but it is a question of fact whether the act does or does not extend beyond what serves the public good; and

(b) the motives of an accused are irrelevant.

## **Corrupting Morals - Making/ Distribution/Possession**

### **163.**

(1) Every one commits an offence who

(a) makes, prints, publishes, distributes, circulates or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatever; or

(b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation a crime comic.

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

(a) sells, exposes to public view or has in his possession for such a purpose any obscene written matter, picture, model, phonograph record or other thing whatever;

(b) publicly exhibits a disgusting object or an indecent show;

(c) offers to sell, advertises or publishes an advertisement of, or has for sale or disposal, any means, instructions, medicine, drug or article intended or represented as a method of causing abortion or miscarriage; or

(d) advertises or publishes an advertisement of any means, instructions, medicine, drug or article intended or represented as a method for restoring sexual virility or curing venereal diseases or diseases of the generative organs.

(3) No person shall be convicted of an offence under this section if the public good was served by the acts that are alleged to constitute the offence and if the acts alleged did not extend beyond what served the public good.

(4) For the purposes of this section, it is a question of law whether an act served the public good and whether there is evidence that the act alleged went beyond what served

the public good, but it is a question of fact whether the acts did or did not extend beyond what served the public good.

(5) For the purposes of this section, the motives of an accused are irrelevant.

(6) [Repealed, 1993, c. 46, s. 1]

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

- (a) the commission of crimes, real or fictitious; or
- (b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

(8) For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

## Definition of "Child Pornography"

### 163.1

(1) In this section, "child pornography" means

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years;

(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity

with a person under the age of eighteen years that would be an offence under this Act.

(2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of ninety days.

(3) Every person who transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding ten years and to a minimum punishment of imprisonment for a term of one year; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of ninety days.

(4) Every person who possesses any child pornography is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of forty-five days; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

(4.1) Every person who accesses any child pornography is guilty of

- (a) an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of forty-five days; or
- (b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months and to a minimum punishment of imprisonment for a term of fourteen days.

(4.2) For the purposes of subsection (4.1), a person accesses child pornography who knowingly causes child pornography to be viewed by, or transmitted to, himself or herself.

(4.3) If a person is convicted of an offence under this section, the court that imposes the sentence shall consider as an aggravating factor the fact that the person

committed the offence with intent to make a profit.

(5) It is not a defence to a charge under subsection (2) in respect of a visual representation that the accused believed that a person shown in the representation that is alleged to constitute child pornography was or was depicted as being eighteen years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person was eighteen years of age or more, the representation did not depict that person as being under the age of eighteen years.

(6) No person shall be convicted of an offence under this section if the act that is alleged to constitute the offence

(a) has a legitimate purpose related to the administration of justice or to science, medicine, education or art; and

(b) does not pose an undue risk of harm to persons under the age of eighteen years.

(7) For greater certainty, for the purposes of this section, it is a question of law whether any written material, visual representation or audio recording advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act.

## Warrant of Seizure

### 164.

(1) A judge who is satisfied by information on oath that there are reasonable grounds for believing that

(a) any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is obscene or a crime comic, within the meaning of section 163,

(b) any representation, written material or recording, copies of which are kept in premises within the jurisdiction of the court, is child pornography within the meaning of section 163.1, or

(c) any recording, copies of which are kept for sale or distribution in premises within the jurisdiction of the court, is a voyeuristic recording, may issue a warrant authorizing seizure of the copies.

(2) Within seven days of the issue of a warrant under subsection (1), the judge shall issue a summons to the occupier of the premises requiring him to appear before the court and show cause why the matter seized should not be forfeited to Her Majesty.

(3) The owner and the maker of the matter seized under subsection (1), and alleged to be obscene, a crime comic, child pornography or a voyeuristic recording, may appear and be represented in the proceedings in order to oppose the making of an order for the forfeiture of the matter.

(4) If the court is satisfied, on a balance of probabilities, that the publication, representation, written material or recording referred to in subsection (1) is obscene, a crime comic, child pornography or a voyeuristic recording, it may make an order declaring the matter forfeited to Her Majesty in right of the province in which the proceedings take place, for disposal as the Attorney General may direct.

(5) If the court is not satisfied that the publication, representation, written material or recording referred to in subsection (1) is obscene, a crime comic, child pornography or a voyeuristic recording, it shall order that the matter be restored to the person from whom it was seized without delay after the time for final appeal has expired.

(6) An appeal lies from an order made under subsection (4) or (5) by any person who appeared in the proceedings

(a) on any ground of appeal that involves a question of law alone,

(b) on any ground of appeal that involves a question of fact alone, or

(c) on any ground of appeal that involves a question of mixed law and fact, as if it were an appeal against conviction or against a judgment or verdict of acquittal, as the case may be, on a question of law alone under Part XXI and sections 673 to 696 apply with such modifications as the circumstances require.

(7) If an order is made under this section by a judge in a province with respect to one or more copies of a publication, a representation, written material or a recording, no proceedings shall be instituted or continued in that province under section 162, 163 or 163.1 with respect to those or other copies of the same publication, representation, written material or recording without the consent of the Attorney General.

(8) In this section, "court" means

(a) in the Province of Quebec, the Court of Quebec, the municipal court of Montreal and the municipal court of Quebec,

(a.1) in the Province of Ontario, the Superior Court of Justice,

(b) in the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(c) in the Provinces of Prince Edward Island and Newfoundland, the Trial Division of the Supreme Court, (c.1) [Repealed, 1992, c. 51, s. 34]

(d) in the Provinces of Nova Scotia and British Columbia, in Yukon and in the Northwest Territories, the Supreme Court, and

(e) in Nunavut, the Nunavut Court of Justice; “crime comic” has the same meaning as in section 163; “judge” means a judge of a court.

“voyeuristic recording” means a visual recording within the meaning of subsection 162(2) that is made as described in subsection 162(1).

## **Warrant of Seizure**

### **164.1**

(1) If a judge is satisfied by information on oath that there are reasonable grounds to believe that there is material — namely child pornography within the meaning of section 163.1, a voyeuristic recording within the meaning of subsection 164(8) or data within the meaning of subsection 342.1(2) that makes child pornography or a voyeuristic recording available — that is stored on and made available through a computer system within the meaning of subsection 342.1(2) that is within the jurisdiction of the court, the judge may order the custodian of the computer system to

- (a) give an electronic copy of the material to the court;
- (b) ensure that the material is no longer stored on and made available through the computer system; and
- (c) provide the information necessary to identify and locate the person who posted the material.

(2) Within a reasonable time after receiving the information referred to in paragraph (1)(c), the judge shall cause notice to be given to the person who posted the material, giving that person the opportunity to appear and be represented before the court, and show cause why the material should not be deleted. If the person cannot be identified or located or does not reside in Canada, the judge may order the custodian of the computer system to post the text of the notice at the location where the material was previously stored and made available, until the time set for the appearance.

(3) The person who posted the material may appear and be represented in the proceedings in order to oppose the making of an order under subsection (5).

(4) If the person who posted the material does not appear for the proceedings, the court may proceed ex parte to hear and determine the proceedings in the absence of the person as fully and effectually as if the person had appeared.

(5) If the court is satisfied, on a balance of probabilities, that the material is child pornography within the meaning of section 163.1, a voyeuristic recording within the meaning of subsection 164(8) or data within the meaning of subsection 342.1(2) that makes child pornography or the voyeuristic recording available, it may order the custodian of the computer system to delete the material.

(6) When the court makes the order for the deletion of the material, it may order the destruction of the electronic copy in the court’s possession.

(7) If the court is not satisfied that the material is child pornography within the meaning of section 163.1, a voyeuristic recording within the meaning of subsection 164(8) or data within the meaning of subsection 342.1(2) that makes child pornography or the voyeuristic recording available, the court shall order that the electronic copy be returned to the custodian and terminate the order under paragraph (1)(b).

(8) Subsections 164(6) to (8) apply, with any modifications that the circumstances require, to this section.

(9) No order made under subsections (5) to (7) takes effect until the time for final appeal has expired.

## **Parent or Guardian Procuring Sexual Activity**

### **170.**

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

(a) to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months if the person procured is under the age of sixteen years; or

(b) to imprisonment for a term not exceeding two years and to a minimum punishment of imprisonment for a term of forty-five days if the person procured is sixteen years of age or more but under the age of eighteen years.

## Householder Permitting Sexual Activity

### 171.

Every owner, occupier or manager of premises, or any other person who has control of premises or assists in the management or control of premises, who knowingly permits a person under the age of eighteen years to resort to or to be in or on the premises for the purpose of engaging in any sexual activity prohibited by this Act is guilty of an indictable offence and liable

(a) to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months if the person in question is under the age of sixteen years; or

(b) to imprisonment for a term not exceeding two years and to a minimum punishment of imprisonment for a term of forty-five days if the person is sixteen years of age or more but under the age of eighteen years.

## Corrupting Children

### 172.

(1) Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers the morals of the child or renders the home an unfit place for the child to be in, is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

(2) [Repealed, R.S., 1985, c. 19 (3rd Supp.), s. 6]

(3) For the purposes of this section, "child" means a person who is or appears to be under the age of eighteen years.

(4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General, unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court.

## Luring A Child

### 172.1

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

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

(b) a person who is, or who the accused believes is, under the age of sixteen years, for the purpose of facilitating the commission of an offence under section 151 or 152, subsection 160(3) or 173(2) or section 280 with respect to that person; or

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

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

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

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

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

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

## ***Indecent Acts/Exposure***

### **173.**

(1) Every one who willfully does an indecent act

(a) in a public place in the presence of one or more persons, or

(b) in any place, with intent thereby to insult or offend any person, is guilty of an offence punishable on summary conviction.

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

## ***Procuring/ Living Off the Avails***

### **212.**

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

(2.1) Notwithstanding paragraph (1)(j) and subsection (2), every person who lives wholly or in part on the avails of prostitution of another person under the age of eighteen years, and who

(a) for the purposes of profit, aids, abets, counsels or compels the person under that age to engage in or carry on prostitution with any person or generally, and

(b) uses, threatens to use or attempts to use violence, intimidation or coercion in relation to the person under that age,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years but not less than five years.

(3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house is, in the absence of evidence to the contrary, proof that the person lives on the avails of prostitution, for the purposes of paragraph (1)(j) and subsections (2) and (2.1).

(4) Every person who, in any place, obtains for consideration, or communicates with anyone for the purpose of obtaining for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years and to a minimum punishment of imprisonment for a term of six months.

(5) [Repealed, 1999, c. 5, s. 8]

## ***Duty of Persons to Provide Necessaries***

### **215.**

(1) Every one is under a legal duty

(a) as a parent, foster parent, guardian or head of a family, to provide necessaries of life for a child under the age of sixteen years;

(b) to provide necessaries of life to their spouse or common-law partner; and

(c) to provide necessaries of life to a person under his charge if that person

(i) is unable, by reason of detention, age, illness, mental disorder or other cause, to withdraw himself from that charge, and

(ii) is unable to provide himself with necessaries of life.

(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies on him, to perform that duty, if

(a) with respect to a duty imposed by paragraph (1)(a) or (b),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(b) with respect to a duty imposed by paragraph (1)(c), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

(3) Every one who commits an offence under subsection (2)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

(4) For the purpose of proceedings under this section,

(a) [Repealed, 2000, c. 12, s. 93]

(b) evidence that a person has in any way recognized a child as being his child is, in the absence of any evidence to the contrary, proof that the child is his child;

(c) evidence that a person has failed for a period of one month to make provision for the maintenance of any child of theirs under the age of sixteen years is, in the absence of any evidence to the contrary, proof that the person has failed without lawful excuse to provide necessaries of life for the child; and

(d) the fact that a spouse or common-law partner or child is receiving or has received necessaries of life from another person who is not under a legal duty to provide them is not a defence.

## **Abandoning Child**

### **218.**

Every one who unlawfully abandons or exposes a child who is under the age of ten years, so that its life is or is likely to be endangered or its health is or is likely to be permanently injured,

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

## **Sexual Assault**

### **271.**

(1) Every one who commits a sexual assault is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

(2) [Repealed, R.S., 1985, c. 19 (3rd Supp.), s. 10]

## **Sexual Assault with a Weapon, Threats to a Third Party or Causing Bodily Harm**

### **272.**

(1) Every person commits an offence who, in committing a sexual assault,

(a) carries, uses or threatens to use a weapon or an imitation of a weapon;

(b) threatens to cause bodily harm to a person other than the complainant;

(c) causes bodily harm to the complainant; or

(d) is a party to the offence with any other person.

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

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding fourteen years and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for a term not exceeding fourteen years and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for a term not exceeding fourteen years.

## **Aggravated Sexual Assault**

### **273.**

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

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

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

(2) Every one who, without lawful authority, confines, imprisons or forcibly seizes another person is guilty of

(a) an indictable offence and liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

(3) In proceedings under this section, the fact that the person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that the failure to resist was not caused by threats, duress, force or exhibition of force. ■

## **Kidnapping/Forcible Confinement**

### **279.**

(1) Every person commits an offence who kidnaps a person with intent

(a) to cause the person to be confined or imprisoned against the person's will;

(b) to cause the person to be unlawfully sent or transported out of Canada against the person's will; or

(c) to hold the person for ransom or to service against the person's will.

(1.1) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence