

ONTARIO POLICE COLLEGE

ONTARIO

MAJOR CASE MANAGEMENT

COURSE

SEXUAL OFFENCES - DRAFTNG GUIDE

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SEXUAL OFFENCE LISTINGS

APRIL 1, 1955 TO JULY 14, 1971

Rape	Sec 136
Attempted Rape	Sec 137
Intercourse Female Under 14	Sec 138 (1)
Intercourse Female Under 16	Sec 138 (2)
Intercourse with Feeble -Minded	Sec 140
Indecent Assault Female	Sec 141
Incest	Sec 142 (2)
Intercourse with Step-daughter	Sec 145 (1)(a)
Seduction Female Passengers	Sec 146
Buggery or Bestiality	Sec 147
Indecent Assault Male	Sec 148
Gross Indecency	Sec 149
Abduction Female	Sec 234(a) or (b)
Conspiracy to Defile	Sec 408 (1) (c)

JANUARY 4,1983 TO DECEMBER 31,1987

Intercourse Female Under 14	Sec 146 (1)
Intercourse Female Under 16	Sec 146 (2)
Incest	Sec 150 (2)
Intercourse with step-daughter	Sec 153 (1) (a)
Seduction Female Passengers	Sec 154
Buggery or Bestiality	Sec 155
Gross Indecency	Sec 157
Sexual Assault	Sec 246 (1) (1)
Sexual Assault Weapon, Threats	246.2 (a)
Threats, Harm	(b), (c), (c)
Aggravated Sexual Assault	Sec 246.3 (2)

JANUARY 1,1988 TO MAY 1, 1989

Sexual Interference	Sec 140
Invitation to Sexual Touching	Sec 141
Sexual Exploitation	Sec 146 (1)
Incest	Sec 150 (2)
Anal Intercourse	Sec 154 (1)
Bestiality	Sec 155 (1) or (2)
Parent Procuring	Sec 166
Householder Permitting Sex	Sec 167
Corrupting Children	Sec 169 (1)
Exposing Genitals to children	Sec 169 (2)
Loitering of Sex Offenders	Sec 179 (b)
Procuring	Sec 195 (1)
Live Avails Young Person	Sec 195 (2)
Obtain Sex Young Person	Sec 195 (4)
Sexual Assault	Sec 146.1(1)
Sexual Assault Weapon	Sec 246.2 (a)
Threats or Harm	(b), (c), (d)
Aggravated Sexual Assault	Sec 246.3 (2)

JULY 15,1971 TO JANUARY 3, 1983

Rape	Sec 144
Attempted Rape	Sec 145
Intercourse Female Under 14	Sec 146 (1)
Intercourse Female Under 16	Sec 146 (2)
Intercourse with Feeble - Minded	Sec 148
Indecent Assault Female	Sec 149
Incest	Sec 150 (2)
Intercourse with Step-daughter	Sec 153 (1)(a)
Seduction Female Passengers	Sec 154
Buggery or Bestiality	Sec 155
Indecent Assault Male	Sec 156
Gross Indecency	Sec 157
Abduction Female	Sec 248 (a) or (b)
Conspiracy to Defile	Sec 423 (1) (c)

MAY 1,1989 TO PRESENT

Sexual Interference	Sec 151
Invitation to Sexual Touching	Sec 152
Sexual Exploitation	Sec 153 (1)
Incest	Sec 155 (2)
Anal Intercourse	Sec 159 (1)
Bestiality	Sec 160 (1)(2)
Parent Procuring	Sec 170
Householder Permitting Sex	Sec 171
Corrupting Children	Sec 172 (1)
Exposing Genitals to Children	Sec 173 (2)
Loitering of Sex Offender	Sec 179 (1)(b)
Procuring	Sec 212 (1)
Live Avails Young Person	Sec 212 (2)
Obtain Sex Young Person	Sec 212 (4)
Sexual Assault	Sec 271(1)
Sexual Assault Weapon, Threats	Sec 272(a)
or Harm	(b), (c), (d)
Aggravated Sexual Assault	Sec 273 (2)

INTRODUCTION

Perhaps of all criminal offences investigated, sexual offences against the person present the greatest drafting challenge to prosecutors and investigators. Because allegations of this type frequently date back several years and in some instances a decade or more, research is often required to determine which Criminal Code offences were in force at the time or times of the incident(s) in question. One is expected to be familiar with both changing section numbers over the years together with effective dates of repeal and enactment of various offences. The numerous Criminal Code amendments in recent years have made this task increasingly difficult. This guide is an attempt to consolidate in a concise fashion the statutory history of most sexual offences against the person since 1955 and to provide a convenient reference tool for prosecutors and investigators.

The material is organized into three parts. A two page summary provides quick reference to offences and section numbers since 1955. The second part provides relevant Criminal Code offences and sections for four specific periods: (1) April 1, 1955 to July 14, 1971; (2) July 15, 1971 to January 3, 1963; (3) January 4, 1983 to December 31, 1987; (4) January 1, 1988 to the present. In each instance a brief summary of statutory amendments and transitional problems in charge drafting is followed by specific offences and sections. The specific offences and sections are in turn followed by special provisions covering such topics as statutory definitions, corroboration requirements, unavailable defenses, and evidence of past sexual activity. The last part deals with suggested charge wordings, which can be used for all of the sexual offences, past and present, covered in this guide.

The statutory provisions reproduced in this guide will have to be addressed in the context of case law, most particularly in the area of Charter challenges to both former and present sections. It is beyond the scope of this guide to annotate that case law. Of particular significance, however, is the Supreme Court of Canada decision of Regina V. Seaboyer 66 C.C.C. (3d) 321 which struck down section 276 of the Criminal Code. Amendments effective August 15, 1992 in response to that decision set out new provisions dealing with the admissibility of evidence of past sexual activity. These new provisions, together with companion amendments setting out a statutory definition for consent and a statutory limitation on the availability of a mistaken belief defence, will no doubt be subjected to future judicial scrutiny.

When dealing with offences committed at a time when corroboration was once required, special note should be made of the case of Regina v. Bickford, a 1989 decision of the Ontario Court of Appeal, 51 C.C.C. (3d) 181. This decision makes it clear that the abolition of the necessity for corroboration applies retrospectively. For this reason, any offence occurring at a time when corroboration was once needed is no longer subject to that requirement. All such offences, regardless of time frame, may be prosecuted on the evidence of the complainant alone.

In years past there were a number of indictable sexual offences against the person which were subject to limitation periods. Those offences have accordingly not been included. (In this regard, however, reference may be made to the case of Regina V. Sheppard, a 1990 decision of the Trial Division of the Newfoundland Supreme Court, 57 C.C.C. (3d) 213. In that case a charge of procuring was allowed to proceed on the basis that the repeal of the limitation period which would otherwise have applied was in fact retrospective in nature.)

Previous relevant summary conviction offences subject to a six-month limitation period have equally been excluded. There have been included, however, two summary conviction of fences contained in the most recent amendments. Charges under those sections will be appropriate for current of fences falling within the six-month limitation period.

Because this guide is only a reference tool primarily directed towards charge drafting, it has not included relevant portions of the Canada Evidence Act or those procedural provisions of the Criminal Code dealing with such matters as publication of a complainant's identity or the use of screens, all of which would also have to be addressed in the course of any prosecution. In certain cases it may also be necessary to refer to the Interpretation Act which specifically provides that any subsequent statutory reduction of penalty for an offence is to the benefit of an accused notwithstanding that a greater penalty was in force at the time of the commission of the offence.

David Arntfield
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August 1992

SUMMARY OF AVAILABLE OFFENCES AND SECTION NUMBERS

1. April 1. 1955 To July 14 1971

Rape	Section	136
Attempted Rape	Section	137
Intercourse Female Under Fourteen	Section	138(1)
Intercourse Female Under Sixteen	Section	138(2)
Intercourse With Feeble -Minded	Section	140
Indecent Assault Female	Section	141
Incest	Section	142(2)
Intercourse With Step-Daughter	Section	145(1)a
Seduction Female Passengers	Section	146
Buggery or Bestiality	Section	147
Indecent Assault Male	Section	148
Gross Indecency	Section	149
Abduction Female	Section	234a or b
Conspiracy To Defile	Section	408(1)c

2. July 15. 1971 To January 3. 1983

Rape	Section	144
Attempted Rape	Section	145
Intercourse Female Under Fourteen	Section	146(1)
Intercourse Female Under Sixteen	Section	146(2)
Intercourse Feeble -Minded	Section	148
Indecent Assault Female	Section	149
Incest	Section	150(2)
Intercourse With Step-Daughter	Section	153(1)a
Seduction Female Passengers	Section	154
Buggery or Bestiality	Section	155
Indecent Assault Male.	Section	156
Gross Indecency	Section	157
Abduction Female	Section	248a or b
Conspiracy To Defile	Section	423(1)c

3. January 4. 1983 to December 31. 1987

Intercourse Female Under Fourteen	Section	146(1)
Intercourse Female Under Sixteen	Section	146(2)
Incest	Section	150(2)
Intercourse With Step-Daughter	Section	153(1)a
Seduction Female Passengers	Section	154
Buggery Or Bestiality	Section	155
Gross Indecency	Section	157
Sexual Assault	Section	246.1(1)
Sexual Assault Weapon, Threats or Harm	Section	246.2(a), (b), (c), (d)
Aggravated Sexual Assault	Section	246.3(2)

**4. January 1, 1988 To Present (Temporary Section Numbers Valid
Until May 1, 1989 Are In Brackets)**

Sexual Interference	Section	151 [140]
Invitation to Sexual Touching	Section	152 (141)
Sexual Exploitation	Section	153(1) [146(1)]
Incest	Section	155(2) [150(2)]
Anal Intercourse	Section	159(1) [154(1)]
Bestiality	Section	160(1)(2) [155(1)(2)]
Parent Procuring	Section	170 (166)
Householder Permitting Sex	Section	171 (167)
Corrupting Children	Section	172(1) [169(1)]
Exposing Genitals To Children	Section	173(2) [169(2)]
Loitering Of Sex Offenders	Section	179(1)b
Procuring	Section	212(1) [195(1)]
Live Avails Young Person	Section	212(2) [195(2)]
Obtain Sex Young Person	Section	212(4) [195(4)]
Sexual Assault	Section	271(1) [246.1(1)]
Sexual Assault Weapon, Threats or Harm	Section	272(a)(b)(c)(d) [246.2(a), (b), (c), (d)]
Aggravated Sexual Assault	Section	273(2) [246.3(2)]

APRIL 15, 1955 TO JULY 14, 1971

What is commonly called the 1953-54 Criminal Code was a major revision and consolidation of the 1927 Criminal Code and all amendments in the intervening years. This condensed and reorganized Code came into effect on April 1, 1955. Relevant sections dealing with sexual offences were as follows:

RAPE

135. A male person commits rape when he has sexual intercourse with a female person who is not his wife,
- (a) without her consent, or
 - (b) with her consent if the consent
 - (i) is extorted by threats or fear of bodily harm₁
 - (ii) is obtained by personating her husband, or
 - (iii) is obtained by false and fraudulent representations as to the nature and quality of the act
136. Every one who commits rape is guilty of an indictable offence and is liable to imprisonment for life and to be whipped.
137. Every one who attempts to commit rape is guilty of an indictable offence and is liable to imprisonment for ten years and to be whipped.

SEXUAL INTERCOURSE WITH FEMALE UNDER FOURTEEN OR UNDER SIXTEEN

138. (1) Every male person who has sexual intercourse with a female person who
- (a) is not his wife, and
 - (b) is under the age of fourteen years,
- whether or not he believes that she is fourteen years of age or more is guilty of an indictable offence and is liable to imprisonment for life and to be whipped.
- (2) Every male person who has sexual intercourse with a female person who
- (a) is not his wife
 - (b) is of previously chaste character, and
 - (c) is fourteen years of age or more and is under the age of sixteen years,
- whether or not he believes that she is sixteen years of age or more, is guilty of an indictable offence and is liable to imprisonment for five years.
- (3) Where an accused is charged with an offence under subsection (2), the court may find the accused not guilty if it is of opinion that the evidence does not show that, as between the accused and the female person, the accused is wholly or chiefly to blame.

Effective July 18, 1959 the wording of subsection (3) was amended to read as follows:

- (3) Where an accused is charged with an offence under subsection (2), the court may find the accused not guilty if it is of opinion that the evidence does not show that, as between the accused and the female person, the accused is more to blame than the female person.

SEXUAL INTERCOURSE WITH FEEBLE-MINDED

- 140.** Every male person who, under circumstances that do not amount to rape, has sexual intercourse with a female person
- (a) who is not his wife, and
 - (b) who is and who he knows or has good reason to believe is feeble-minded, insane, or is an idiot or imbecile
- is guilty of an indictable offence and is liable to imprisonment for five years.

INDECENT ASSAULT ON FEMALE

- 141.** (1) Every one who indecently assaults a female person is guilty of an indictable offence and is liable to imprisonment for five years and to be whipped.
- (2) An accused who is charged with an offence under subsection (1) may be convicted if the evidence establishes that the accused did anything to the female person with her consent that, but for her consent, would have been an indecent assault, if her consent was obtained by false and fraudulent representations as to the nature and quality of the act.
- 142.** (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 is liable to imprisonment for fourteen years, and in the case of a male person is liable, in addition to be whipped.
- (3) Where a female person is convicted of an offence under this section and the court is satisfied that she committed the offence by reason only that she was under restraint, duress or fear of the person with whom she had the sexual intercourse, the court is not required to impose any punishment upon her.
- (4) In this section, "brother" and "sister", respectively, include half-brother and half-sister.

SEXUAL INTERCOURSE WITH STEP-DAUGHTER. ETC.

145. (l) Every male person who
(a) has illicit sexual intercourse with his step-daughter, foster daughter or female ward;
is guilty of an indictable offence and is liable to imprisonment for two years.

SEDUCTION OF FEMALE PASSENGERS

146. Every male person who, being the owner or master of, or employed on board a vessel, engaged in the carriage of passengers for hire, seduces, or by threats or by the exercise of his authority, has illicit sexual intercourse on board the vessel with a female passenger is guilty of an indictable offence and is liable to imprisonment for two years.

BUGGERY OR BESTIALITY

147. Every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for fourteen years.

INDECENT ASSAULT ON MALE

148. Every male person who assaults another person with intent to commit buggery or who indecently assaults another male person is guilty of an indictable offence and is liable to imprisonment for ten years and to be whipped.

ACTS OF GROSS INDECENCY

149. Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

ABDUCTION OF FEMALE

234. Every one who takes away or detains a female person, against her will, with intent
(a) to marry her or to have illicit sexual intercourse with her, or
(b) to cause her to marry or to have illicit sexual intercourse with a male person
is guilty of an indictable offence and is liable to imprisonment for ten years.

CONSPIRACY TO DEFILE

408.(1) Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy, namely,

- (c) every one who conspires with any one to induce by false pretences, false representations or other fraudulent means, a woman to commit adultery or fornication, is guilty of an indictable offence and is liable to imprisonment for two years;

SPECIAL PROVISIONS

- 3.(6)** For the purposes of this Act, sexual intercourse is complete upon penetration to even the slightest degree, notwithstanding that seed is not emitted.
- 130.** In this Part
- (b) "public place" includes any place to which the public have access as of right or by invitation, express or implied;
- 131(1)** No accused shall be convicted of an offence under section 140, 142, 143, 144, 145, 146 or 155 upon the evidence of only one witness unless the evidence of the witness is corroborated in a material particular by evidence that implicates the accused.
- (2) No accused shall be convicted of an offence under section 144, paragraph (b) of section 145 or section 146 where he proves that, subsequent to the time of the alleged offence, he married the person in respect of whom he is alleged to have committed the offence.
- (3) In proceedings for an offence under subsection (2) of section 138 or section 143, 144 or paragraph (b) of section 145 the burden of proving that the female person in respect of whom the offence is alleged to have been committed was not of previously chaste character is upon the accused.
- (4). In proceedings for an offence under subsection (2) of section 138 or under section 143 or paragraph (b) of section 145, evidence that the accused had, prior to the time of the alleged offence, sexual intercourse with the female person in respect of whom the offence is alleged to have been committed shall be deemed not to be evidence that she was not of previously chaste character.
- 132.** Where an accused is charged with an offence under section 138, 141 or 148 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.
- 134.** Notwithstanding anything in the Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137, subsection (1) or (2) of section 138 or subsection (1) of section 141, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular by evidence that implicates the accused, instruct the jury that it is not safe to find the accused guilty in the absence of such corroboration, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true.
- 139.** No male person shall be deemed to commit an offence under section 136, 137, 138 or 142 while he is under the age of fourteen years.

Effective August 26, 1969 the following provision was added:

- 149A**(1) Sections 147 and 149 do not apply to any act committed in private between
- (a) a husband and wife, or
 - (b) any two persons, each of whom is twenty-one years or more of age, both of whom consent to the commission of the act.
- (2) For the purposes of subsection (1),
- (a) an act shall be deemed not to have been committed in private if it is committed 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 the commission of an act
 - (i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act, or
 - (ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that person is feeble-minded, insane, or an idiot or imbecile.

JULY 15, 1971 TO JANUARY 3, 1983

Amendments and revisions to the Criminal Code subsequent to April 1, 1955 were consolidated in the 1970 Criminal Code, which came into effect on July 15, 1971. Although this resulted in new section numbers being assigned to the various types of sexual offences, it did not in any way involve substantive changes. The new section numbers should be used both for continuing offences predating and postdating the July 15, 1971 proclamation date and for new offences occurring after that date.

RAPE

143. A male person commits rape when he has sexual intercourse with a female person who is not his wife,

- (a) without her consent, or
- (b) with her consent if the consent
 - (i) is extorted by threats or fear of bodily harm,
 - (ii) is obtained by personating her husband, or
 - (iii) is obtained by false and fraudulent representations as to the nature and quality of the act.

144. Every one who commits rape is guilty of an indictable offence and is liable to imprisonment for life and to be whipped.

145. Every one who attempts to commit rape is guilty of an indictable offence and is liable to imprisonment for ten years and to be whipped.

Effective July 15, 1971 the provision for whipping as a form of punishment under Sections 144 and 145 was removed.

SEXUAL INTERCOURSE WITH FEMALE UNDER FOURTEEN OR UNDER SIXTEEN

146. (1) Every male person who has sexual intercourse with a female person who

- (a) is not his wife, and
- (b) is under the age of fourteen years,

whether or not he believes that she is fourteen years of age or more is guilty of an indictable offence and is liable to imprisonment for life and to be whipped.

(2) Every male person who has sexual intercourse with a female person who

- (a) is not his wife,
- (b) is of previously chaste character, and
- (c) is fourteen years of age or more and is under the age of sixteen years,

whether or not he believes that she is sixteen years of age or more, is guilty of an indictable offence and is liable to imprisonment for five years.

(3) Where an accused is charged with an offence under subsection (2), the court may find the accused not guilty if it is of opinion that the evidence does not show that, as between the accused and the female person, the accused is more to blame than the female person.

Effective July 15, 1971 the provision for whipping as a form of punishment under Section 146 was removed.

SEXUAL INTERCOURSE WITH FEEBLE-MINDED

148. Every male person who, under circumstances that do not amount to rape, has sexual intercourse with a female person

(a) who is not his wife, and

(b) who is and who he knows or has good reason to believe is feeble-minded, insane, or is an idiot or imbecile,

is guilty of an indictable offence and is liable to imprisonment for five years.

INDECENT ASSAULT ON FEMALE

149. (1) Every one who indecently assaults a female person is guilty of an indictable offence and is liable to imprisonment for five years and to be whipped.

(2) An accused who is charged with an offence under subsection (1) may be convicted if the evidence establishes that the accused did anything to the female person with her consent that, but for her consent, would have been an indecent assault, if her consent was obtained by false and fraudulent representations as to the nature and quality of the act.

Effective July 15, 1971 the provision for whipping as a form of punishment under Section 149 was removed.

INCEST

150. (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 is liable to imprisonment for fourteen years and in the case of a male person is liable, in addition, to be whipped.

(3) Where a female person is convicted of an offence under this section and the court is satisfied that she committed the offence by reason only that she was under restraint, duress or fear of the person with whom she had the sexual intercourse, the court is not required to impose any punishment upon her.

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

Effective July 15, 1971 the provision for whipping as a form of punishment under Section 150 was removed.

SEXUAL INTERCOURSE WITH STEP-DAUGHTER, ETC.

153 (l) Every male person who

(a) has illicit sexual intercourse with his step-daughter, foster daughter or female ward, is guilty of an indictable offence and is liable to imprisonment for two years.

SEDUCTION OF FEMALE PASSENGERS

154. Every male person who, being engaged in the carriage of passengers for hire, seduces, or by threats or by the exercise of his authority, has illicit sexual intercourse on board the vessel with a female passenger is guilty of an indictable offence and is liable to imprisonment for two years.

BUGGERY OR BESTIALITY

155. Every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for fourteen years.

INDECENT ASSAULT ON MALE

156. Every male person who assaults another person with intent to commit buggery or who indecently assaults another male person is guilty of an indictable offence and is liable to imprisonment for ten years and to be whipped.

Effective July 15, 1971 the provision for whipping as a form of punishment under Section 156 was removed.

ACTS OF GROSS INDECENCY

157. Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

ABDUCTION OF FEMALE

248. Every one who takes away or detains a female person against her will, with intent

(a) to marry her or to have illicit sexual intercourse with her, or

(b) to cause her to marry or to have illicit sexual intercourse with a male person

is guilty of an indictable offence and is liable to imprisonment for ten years.

CONSPIRACY TO DEFILE

423. (1)

424. (c) every one who conspires with any one to induce, by false pretenses, false representations or other fraudulent means, a woman to commit adultery or fornication, is guilty of an indictable offence and is liable to imprisonment for two years;

SPECIAL PROVISIONS

3(6) For the purpose of this Act, sexual intercourse is complete upon penetration to even the slightest degree, notwithstanding that seed is not emitted.

130. In this Part

- (b) "public place" includes any place to which the public have access is of right or by invitation, express or implied;

139 (1) No accused shall be convicted of an offence under section 148, 150, 151, 152, 153, 154, or 166 upon the evidence of only one witness unless the evidence of the witness is corroborated in a material particular by evidence that implicates the accused.

(2) No accused shall be convicted of an offence under section 152 paragraph 153(b) or section 154 where he proves that, subsequent to the time of the alleged offence, he married the person in respect of whom he is alleged to have committed the offence.

(3) In proceedings for an offence under subsection 146(2) or section 151, 152 or paragraph 153(b) the burden of proving that the female person in respect of whom the offence is alleged to have been committed was not of previously chaste character is upon the accused.

(4) In proceedings for an offence under subsection 146(2) or under section 151 or paragraph 153(b), evidence that the accused had, prior to the time of the alleged offence, sexual intercourse with the female person in respect of whom the offence is alleged to have been committed shall be deemed not to be evidence that she was not of previously chaste character.

140. Where an accused is charged with an offence under section 146, 149 or 156 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.

142. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 144, 145, subsection 146(1) or (2) or subsection 149(1), the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular by evidence that implicates the accused, instruct the jury that it is not safe to find the accused guilty in the absence of such corroboration, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true.

147. No male person shall be deemed to commit an offence under section 144, 145, 146 or 150 while he is under the age of fourteen years.

158(1) Sections 155 and 157 do not apply to any act committed in private between

- (a) a husband and wife, or
 - (b) any two persons, each of whom is twenty-one years or more of age, both of whom consent to the commission of the act.
- (2) For the purposes of subsection (1),
- (a) an act shall be deemed not to have been committed in private if it is committed 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 the commission of an act
 - (i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act, or
 - (ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that that person is feeble-minded, insane, or an idiot or imbecile.

JANUARY 4, 1983 TO DECEMBER 31, 1987

"An Act to amend the Criminal Code in relation to sexual offences and other offences against the person ...", 1980-81-82, c. 125 came into force on January 4, 1983. This major revision of sexual offence provisions had the effect of repealing those sections dealing with indecent assault (149 and 156), rape (143, 144, and 145), sexual assault with the feeble-minded (148), abduction of a female for sexual purposes (248), and conspiracy to defile (423(1)(c)). Criminal conduct previously charged under these sections was now covered under new sections, which addressed sexual assault, sexual assault with a weapon, sexual assault with threats, sexual assault causing bodily harm, and aggravated sexual assault.

For continuing criminal conduct both predating and postdating January 4, 1983 it will be necessary to lay two charges, one to January 3, 1983 under the old provision(s) and the other from January 4, 1983 onward under the new provision(s) in all those cases where sections have been repealed and a new type of criminal offence substituted.

This will not be necessary where the criminal conduct falls under the unrepealed sections dealing with incest (150), sexual intercourse with a female under fourteen or sixteen (146), sexual intercourse with a step-daughter (153), seduction of female passengers (154), buggery or bestiality (155), and gross indecency (157). Single charges under existing section numbers will still be appropriate in those instances both for continuing offences predating and postdating the January 4, 1983 proclamation date and for new offences occurring after that date.

SEXUAL INTERCOURSE WITH FEMALE UNDER FOURTEEN OR SIXTEEN

- 146.** (1) Every male person who has sexual intercourse with a female person who
- (a) is not his wife, and
 - (b) is under the age of fourteen years,
whether or not he believes that she is fourteen years of age or more, is guilty of an indictable offence and is liable to imprisonment for life.
- (2) Every male person who has sexual intercourse with a female person who
- (a) is not his wife,
 - (b) is of previously chaste character, and
 - (c) is fourteen years of age or more and is under the age of sixteen years,
whether or not he believes that she is sixteen years of age or more, is guilty of an indictable offence and is liable to imprisonment for five years.
- (3) Where an accused is charged with an offence under subsection (2), the court may find the accused not guilty if it is of opinion that the evidence does not show that, as between the accused and the female person, the accused is more to blame than the female person.

INCEST

150. (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 is liable to imprisonment for fourteen years.

(3) Where a female person is convicted of an offence under this section and the court is satisfied that she committed the offence by reason only that she was under restraint, duress or fear of the person with whom she had the sexual intercourse, the court is not required to impose any punishment upon her.

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

Effective December 4, 1985 the following provision was substituted for subsection (3):

(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.

SEXUAL INTERCOURSE WITH STEP-DAUGHTER, ETC.

153 (1) Every male person who

(a) has illicit sexual intercourse with his step-daughter, foster daughter or female ward, is guilty of an indictable offence and is liable to imprisonment for two years.

SEDUCTION OF FEMALE PASSENGERS

154. Every male person who, being the owner or master of, or employed on board a vessel, engaged in the carriage of passengers for hire, seduces, or by threats or by the exercise of his authority, has illicit sexual intercourse on board the vessel with a female passenger is guilty of an indictable offence and is liable to imprisonment for two years.

BUGGERY OR BESTIALITY

155. Every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for fourteen years.

ACTS OF GROSS INDECENCY

157. Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

SEXUAL ASSAULT

- 246.1** (1) Every one who commits a sexual assault is guilty of
- (a) an indictable offence and is liable to imprisonment for ten years; or
 - (b) an offence punishable on summary conviction
- (2) Where an accused is charged with an offence under subsection (1) or section 246.2 or 246.3 in respect of a person 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 is less than three years older than the complainant.

SEXUAL ASSAULT WITH WEAPON, THREATS OR BODILY HARM

- 246.2** Every one who, in committing a sexual assault
- (a) carries, uses or threatens to use a weapon or an imitation thereof,
 - (b) threatens to cause bodily harm to a person other than the complainant
 - (c) causes bodily harm to the complainant
 - (d) is a party to the offence with any other person is guilty of an indictable offence and is liable to imprisonment for fourteen years.

AGGRAVATED SEXUAL ASSAULT

- 246.3(1)** Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.
- (2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

SPECIAL PROVISIONS

2. "complainant" means the victim of the alleged offence;

3.(6) For the purposes of this Act, sexual intercourse is complete upon penetration to even the slightest degree, notwithstanding that seed is not emitted.

138. In this Part

"public place" includes any place to which the public have access as of right or by invitation, express or implied;

140. Where an accused is charged with an offence under section 146 in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.

147. No male person shall be deemed to commit an offence under section 146 or 150 while he is under the age of fourteen years.

158 (1) Sections 155 and 157 do not apply to any act committed in private between

- (a) a husband and his wife, or
- (b) any two persons, each of whom is twenty-one years or more of age,

both of whom consent to the commission of the act.

(2) For the purposes of subsection (1),

- (a) an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two person take part or are present; and
- (b) a person shall be deemed not to consent to the commission of an act
 - (i) if the consent is extorted by force, threats or fear bodily harm or is obtained by false and fraudulent misrepresentations as to the nature and quality of the act, or
 - (ii) if that person is, and the other party to the commission of the act knows or has good reason to believe that that person is feeble-minded, insane, or and idiot or imbecile.

244 (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or
- (c) while openly wearing or carrying a weapon or imitation thereof, he accosts or impedes another person or begs.

(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
- (c) fraud; or
- (d) the exercise of authority

(4) Where an accused alleges that he 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 or absence of reasonable grounds for that belief.

246.4 Where an accused is charged with an offence under section 150 (incest), 157 (gross indecency), 246.1 (sexual assault), 246.2 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 246.3 (aggravated sexual assault) no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

246.5 The rules relating to evidence of recent complaint in sexual assault cases are hereby abrogated.

236.6(1) In proceedings in respect of an offence under section 246.1, 246.2 or 246.3 no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless

- (a) it is evidence that rebuts evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;
 - (b) it is evidence of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or
 - (c) it is evidence of sexual activity that took place on the same occasion as the sexual activity that forms the subject-matter of the charge, where that evidence relates to the consent that the accused alleges he believed was given by the complainant.
- (2) No evidence is admissible under paragraph (1) (c) unless
- (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and

(b) a copy of the notice has been filed with the clerk of the court.

(3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.

(4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.

(5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.

(6) In this section, "newspaper" has the same meaning as in section 261.

246.7 In proceedings in respect of an offence under section 246.1, 246.2 or 246.3, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

246.8 A husband or wife may be charged with an offence under section 246.1, 246.2 or 246.3 in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.

JANUARY 1, 1988 TO PRESENT (INCLUDING THE MAY 1, 1989 RE-NUMBERING AND THE DEFINITIONAL AND PROCEDURAL AMENDMENTS OF AUGUST 15, 1992)

Bill C-15 was proclaimed January 1, 1988 and introduced major reforms in the area of child sexual abuse. This revision had the effect of repealing those sections dealing with sexual intercourse with a female under fourteen or sixteen (146), sexual intercourse with stepdaughter (153), seduction of female passengers (154), buggery (155) and gross indecency (157). Criminal conduct previously charged under these sections must from this date be charged under:

- (1) the continuing sections addressing incest, bestiality, and various levels of sexual assault,
- (2) those sections (now no longer subject to a one year limitation period) dealing with parents or guardians procuring sexual activity, householders permitting sexual activity, corrupting children (the latter requiring the consent of the Attorney General), and procuring,
- (3) new sections dealing with sexual interference, invitation to sexual touching, sexual exploitation, additional bestiality provisions, anal intercourse, and new or expanded summary conviction provisions addressing exposure of genitals to children and the loitering of sex offenders in public areas.

For continuing offences both predating and postdating January 1, 1988 it will be necessary to lay two charges, one to December 31, 1987 under the old provision(s) and the other from January 1, 1988 onward under the new provision(s) in those instances where sections have been repealed and a new type of criminal offence substituted. This will not be necessary where the criminal conduct falls within the unrepealed sections dealing with incest, bestiality, and the various levels of sexual assault. Single charges under those sections will still be appropriate both for continuing of fences predating and postdating the January 1, 1988 proclamation date and for new of fences occurring after that date.

Unfortunately the section numbers of January 1, 1988 relating to both new and existing types of sexual of fences are only valid until May 1, 1989 as a result of renumbering necessitated by further consolidation and revision of the Criminal Code. Since this renumbering in no way involved substantive changes, it need only be of concern in those instances where an offence was wholly confined to a January 1, 1988 to April 30, 1989 time frame or if a continuing offence predating January 1, 1988 did not continue beyond April 30, 1989. Although wrong section numbers may not be fatal to a charge if the offence has been properly particularized, uniformity of practice will avoid confusion. Thus for offences caught by the January 1, 1988 to April 30, 1989 time frame (either confined to that period or continuing into but not beyond that period) the section numbers appearing in square brackets should be used. For offences continuing beyond April 30, 1989 or not occurring until after that date, offences should be charged using the new section numbers that appear unbracketed.

Amendments effective August 15, 1992 provided for the first time a statutory definition for consent. These amendments additionally imposed limitations on the availability of a mistaken belief defence. They also set out new provisions dealing with the admissibility of evidence of past sexual activity. These latter provisions were a direct response to the Supreme Court of Canada decision in Regina v. Seaboyer 66 C.C.C. (3d) 321 which struck down existing Section 276 of the Criminal Code. Although clarifying as of August 15, 1992 what constitutes or does not constitute consent and providing as of that date a new procedure to determine admissibility of past sexual activity, they have no effect on charge drafting since basic offence provisions remain unchanged. The amendments will, however, have to be addressed in the context of future case law which will no doubt address the constitutionality of these provisions.

Relevant sections dealing with sexual offences from January 1, 1988 onward are as follows:

SEXUAL INTERFERENCE

151. [140] Every person who, for a sexual purpose, touches, directly or indirectly with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence on summary conviction.

INVITATION TO SEXUAL TOUCHING

152.[141] Every person who, for a sexual purpose, invites, counsels or incites a person under the age of fourteen 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 fourteen years, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

SEXUAL EXPLOITATION

153.(1) (146(1)) Every person who is in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency and who

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

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

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

INCEST

155.(1) (150.(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) (154.(1)) Every person who engages in an act of anal intercourse is guilty of an indictable offence and is 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 as to the nature and quality of the act, or

(ii) if the court is satisfied beyond a reasonable doubt that that person could not have consented to the act by reason of mental disability.

BEASTIALITY

160. (1) [155(1)] Every person who commits bestiality is guilty of an indictable offence and is 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 is 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 commits bestiality in the presence of a person who is under the age of fourteen years or who incites a person under the age of fourteen years to commit bestiality is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

PARENT OR GUARDIAN PROCURING SEXUAL ACTIVITY

170. [166] Every parent or guardian of a person under the age of eighteen years who procures that person for the purpose of engaging in any sexual activity prohibited by this Act with a person other than the parent or guardian is guilty of an indictable offence and is liable to imprisonment for a term not exceeding five years if the person in question is under the age of fourteen years or to imprisonment for a term not exceeding two years if the person in question is fourteen years of age or more but under the age of eighteen years.

HOUSEHOLDER PERMITTING SEXUAL ACTIVITY

171. [167] Every owner, occupier or manager of premises or other person who has control of premises or assists in the management or control of premises who knowingly permits a person under the age of eighteen 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 is liable to imprisonment for a term not exceeding five years if the person in question is under the age of fourteen years or to imprisonment for a term not exceeding two years if the person in question is fourteen years of age or more but under the age of eighteen years.

CORRUPTING CHILDREN

172.(1) [169.(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

(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.

EXPOSURE OF GENITALS FOR SEXUAL PURPOSE

173.(2) [169.(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 fourteen years is guilty of an offence punishable on summary conviction.

VAGRANCY

179.(1) Every one commits vagrancy who...

- (b) having at any time been convicted of an offence under section 151, 152 or 153, subsection 160(3) or 173(2) or section 271, 272 or 273, or of an offence under a provision referred to in paragraph (b) of the definition "serious personal injury offence" in section 687 of the Criminal Code, chapter C-34 of the Revised Statutes of Canada, 1970, as it read before January 4, 1983, is found loitering in or near a school ground, playground, public park or bathing area.

(2) Every one who commits vagrancy is guilty of an offence punishable on summary conviction.

Note that the above two offences are summary conviction and subject to a six month limitation period.

PROCURING AND JUVENILE PROSTITUTION

212.(1) [195.(1)] Every one who

- (a) procures, attempts to procure or solicits a person to have illicit sexual intercourse with another person, whether in or out of Canada
- (b) inveigles or entices a person who is not a prostitute or a person of known immoral character to a common bawdy-house or a house of assignation for the purpose of illicit sexual intercourse or prostitution,
- (c) knowingly conceals a person in a common bawdy-house or house of assignation,
- (d) procures or attempts to procure a person to become, whether in or out of Canada, a prostitute,
- (e) procures or attempts to procure a person to leave the usual place of abode of that person in Canada, if that place is not a common bawdy-house, with intent that the person may become an inmate or frequenter of a common bawdy-house, whether in or out of Canada,
- (f) on the arrival of a person in Canada, directs or causes that person to be directed or takes or causes that person to be taken, to a common bawdy-house or house of assignation,
- (g) procures a person to enter or leave Canada, for the purpose of prostitution,
- (h) for the purposes of gain, exercises control, direction or influence over the movements of a person in such a manner as to show that he is aiding, abetting or compelling that person to engage in or carry on prostitution with any person generally,

- (i) applies or administers to a person or causes that person to take any drug, intoxicating liquor, matter or thing with intent to stupefy or overpower that person in order thereby to enable any person to have illicit sexual intercourse with that person, or
 - (j) lives wholly or in part on the avails of prostitution of another person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.
- (2) Notwithstanding paragraph (1)(j), every person who lives wholly or in part on the avails of prostitution of another person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
- (3) Evidence that a person lives with or is habitually in the company of a prostitute or lives in a common bawdy-house or in a house of assignation 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 subsection (2).
- (4) Every person who, in any place, obtains or attempts to obtain, for consideration, the sexual services of a person who is under the age of eighteen years is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

SEXUAL ASSAULT

271.(1) [246.(1)] Every one who commits a sexual assault 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

SEXUAL ASSAULT WITH WEAPON, THREATS OR BODILY HARM

272. [246.2] Every one who, in committing a sexual assault,

- (a) carries, uses or threatens to use a weapon or an imitation thereof,
- (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, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

AGGRAVATED SEXUAL ASSAULT

273.(1) [246.3(1)] Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and liable to imprisonment for life.

SPECIAL PROVISIONS

2 "complainant" means the victim of an alleged offence;

4 (5) For the purposes of this Act, sexual intercourse is complete on penetration to even the slightest degree, notwithstanding that seed is not emitted.

150. In this Part

"guardian" includes any person who has in law or in fact the custody or control of another person;

"public place" includes any place to which the public have access as of right or by invitation, express or implied;

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 fourteen years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

(2) Notwithstanding subsection (1), where 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 twelve years of age or more but under the age of sixteen years;
 - (b) is less than two years older than the complainant; and
 - (c) is neither in a position of trust or authority towards the complainant nor is a person with whom the complainant is in a relationship of dependency.
- (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 or is a person with whom the complainant is in a relationship of dependency.
- (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 fourteen 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.

197.(1) "common bawdy-house means a place that is

- (a) kept or occupied, or
- (b) resorted to by one or more persons for the purpose of prostitution or the practice of acts of indecency

"prostitute" means a person of either sex who engages in prostitution

265. (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
 - (b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, present ability to effect his purpose; or
 - (c) while openly wearing or carrying a weapon or imitation thereof, he accosts or impedes another person or begs.
- (2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.
- (3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of
- (a) the application of force to the complainant or to a person other than the complainant
 - (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
 - (c) fraud; or
 - (d) the exercise of authority

(4) Where an accused alleges that he 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 or absence of reasonable grounds for that belief.

Effective August 15, 1992 the following provisions under sections 273.1 and 273.2 were added:

273.1 (1) Subject to subsection (2) and subsection 265(3), "consent" means, for the purposes of 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

(2) No consent is obtained, for the purposes of sections 271, 272 and 273, where

- (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 induces the complainant to engage in the activity by abusing a position of trust, power or authority;

the
the

- (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.
- (3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.

273.2 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

- (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.

274. Where an accused is charged with an offence under section 151, 152, 153, 155, 159, 160, 170, 171, 172, 173, 212, 271, 272 or 273, no corroboration is required for a conviction and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

275. The rules relating to evidence of recent complaint are hereby abrogated with respect to offences under sections ~51, 152, 153, 155 and 159, subsections 160(2) and (3), and sections 170, 171, 172, 173, 271, 272 and 273.

Section 276 which follows was struck down on August 22, 1991 as a result of the supreme Court of Canada decision in Regina V. Seaboyer 66 C.C.C. (3d) 321. It was formally repealed on August 15, 1992 and replaced by a new section 276 which follows.

276.(1) In proceedings in respect of an offence under section 151, 152, 153, 155 or 159, subsection 160(2) or (3), or section 170, 171, 172, 173, 271, 272 or 273, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless

- (a) it is evidence that rebuts evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;
- (b) it is evidence of specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or
- (c) it is evidence of sexual activity that took place on the same occasion as the sexual activity that forms the subject-matter of the charge, where that evidence relates to the consent that the accused alleges he believed was given by the complainant.

- (2) No evidence is admissible under paragraph (1) (c) unless
 - (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to adduce the evidence together with particulars of the evidence sought to be adduced; and
 - (b) a copy of the notice has been filed with the clerk of the court.
- (3) No evidence is admissible under subsection (1) unless the judge, magistrate or justice, after holding a hearing in which the jury and members of the public are excluded and in which the complainant is not a compellable witness, is satisfied that the requirements of this section are met.
- (4) The notice given under subsection (2) and the evidence taken, the information given or the representations made at a hearing referred to in subsection (3) shall not be published in any newspaper or broadcast.
- (5) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (4) is guilty of an offence punishable on summary conviction.
- (6) In this section, "newspaper" has the same meaning as in section 297.

Section 276 which follows was enacted effective August 15, 1992 to replace the former section 276

- 276.** (1) In proceedings in respect of an offence under section 151, 152, 153, 155 or 159, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 27.2 or 273, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant
- (a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or
 - (b) is less worth of belief.
- (2) In proceedings in respect of an offence referred to in subsection (1), no evidence shall be adduced by or on behalf of the accused that the complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person, unless the judge, provincial judge or justice determines, in accordance with the procedures set out in sections 276.1 and 276.2, that the evidence
- (a) is or specific instances of sexual activity;
 - (b) is relevant to an issue at trial; and
 - (c) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.
- (3) In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account

- (a) the interests of justice, including the right of the accused to make a full answer and defence;
- (b) society's interest in encouraging the reporting of sexual assault of fences;
- (c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;
- (d) the need to remove from the fact-finding process any discriminatory belief or bias;
- (e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;
- (f) the potential prejudice to the complainant's personal dignity and right or privacy;
- (g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- (h) any other factor that the judge, provincial court judge or justice considers relevant.

276.1(1) Application may be made to the judge, provincial court judge or justice by or on behalf of the accused for a hearing under section 276.2 to determine whether evidence is admissible under subsection 276(2).

- (2) An application referred to in subsection (1) must be made in writing and set out
 - (a) detailed particulars of the evidence that the accused seeks to adduce, and
 - (b) the relevance of that evidence to an issue at trial, and a copy of the application must be given to the prosecutor and to the clerk of the court.
- (3) The judge, provincial court judge or justice shall consider the application with the jury and the public excluded.
- (4) Where the judge, provincial court judge or justice is satisfied
 - (a) that the application was made in accordance with subsection (2),
 - (b) that a copy of the application was given to the prosecutor and to the clerk of the court at least seven days previously, or such shorter interval as the judge, provincial court judge or justice may allow where the interests of justice so require, and
 - (c) that the evidence sought to be adduced is capable of being admissible under subsection 276(2), the judge, provincial court judge or justice shall grant the application and hold a hearing under section 276.2 to determine whether the evidence is admissible under subsection 276(2).

276.2(1) At a hearing to determine whether evidence is admissible under subsection 276(2), the jury and the public shall be excluded.

- (2) The complainant is not a compellable witness at the hearing.

(3) At the conclusion of the hearing, the judge, provincial court judge or justice shall determine whether the evidence, or any part thereof, is admissible under subsection 276(2) and shall provide reasons for that determination, and

- (a) where not all of the evidence is to be admitted, the reasons must state the part of the evidence that is to be admitted;
- (b) the reasons must state the factors referred to in subsection 276(3) that affected the determination; and
- (c) where all or any part of the evidence is to be admitted, the reasons must state the manner in which that evidence is expected to be relevant to an issue at trial.

(4) The reasons provided under subsection (3) shall be entered in the record of the proceedings or, where the proceedings are not recorded, shall be provided in writing.

276.3(1) No person shall publish in a newspaper as defined in section 297, or in a broadcast, any of the following:

- (a) the contents of an application made under section 276.1;
 - (b) any evidence taken, the information given and the representations made at an application under section 276.1 or at a hearing under section 276.2;
 - (c) the decision of a judge, provincial court judge or justice under subsection 276.1(4), unless the judge, provincial court judge or justice, after taking into account the complainant's right of privacy and the interests of justice, orders that the decision may be published; and
 - (d) the determination made and the reasons provided under section 276.2 unless
 - (i) that determination is that evidence is admissible, or
 - (ii) the judge, provincial court judge or justice, after taking into account the complainant's right of privacy and the interests of justice, orders that the determination and reasons may be published.
- (2) Every person who contravenes subsection (1) is guilty of an offence punishable on summary conviction.

276.4 Where evidence is admitted at trial pursuant to a determination made under section 276.2, the judge shall instruct the jury as to the uses that the jury may and may not make of that evidence.

276.5 For the purposes of sections 675 and 676, a determination made under section 276.2 shall be deemed to be a question of law.

277. In proceedings in respect of an offence under section 151, 152, 153, 155 or 159, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

- 278.** A husband or wife may be charged with an offence under section 271, 272 or 273 in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.

SUGGESTED CHARGE WORDINGS

The following charge wordings address the minimum particularization considered necessary for the various sexual offences dealt with in this manual. To the wordings in each instance will have to be additionally added particulars regarding date(s), geographic location(s), and Code section in effect at the time of the commission of the offence. Given the many instances of repeal, consolidation, and reform over the years, it is of course essential in all cases to first determine if the provisions set out below were in fact in force at the time of the offence being investigated and whether any special statutory provision or case law might have to be considered before proceeding with the charge. For the reasons previously given in the introduction, of fences previously requiring corroboration are now no longer subject to that requirement. For offences involving attempts, accessories, counseling, or conspiracies, charges will have to be appropriately reworded.

ABDUCTION OF FEMALE

... did take away [or detain) ... , a female person, against her will with intent to marry her (or to have illicit sexual intercourse with her) contrary to

... did take away (or detain) ... a female person, against her will with intent to cause her to marry (or have illicit sexual intercourse with) ... contrary to ...

AGGRAVATED SEXUAL ASSAULT

... did commit an aggravated sexual assault on ... contrary to

... did in committing a sexual assault on ... wound {or maim or disfigure or endanger the life of}the said ... contrary to....

ANAL INTERCOURSE

... did engage in an act of anal intercourse with ... contrary to

BESTIALITY

... did commit bestiality with a (specify type of animal) contrary to....

... did compel ... to commit bestiality with a (specify type of animal) contrary to....

...did commit bestiality with a (specify type of animal) in the presence of ... , a person under the age of fourteen years contrary to ...

...did incite.... , a person under the age of fourteen years, to commit bestiality with a (specify type of animal) contrary to

BUGGERY

... did commit buggery with ... contrary to

CONSPIRACY TO DEFILE

...did conspire together to induce by false pretences, false representations or other fraudulent means... , a woman to commit adultery (or fornication) contrary to....

CORRUPTING CHILDREN

... , being in the home of a child did participate in adultery (or sexual immorality or did indulge in habitual drunkenness or did in indulge in (name particular form of vice) and did thereby endanger the morals of the child (or render the home an unfit place for the child to be in) contrary to ...

EXPOSURE OF GENITALS FOR SEXUAL PURPOSE

... did for a sexual purpose expose his (or her) genital organs to a person under the age of fourteen years, contrary to ...

GROSS INDECENCY

... did commit an act of gross indecency with contrary to

HOUSEHOLDER PERMITTING SEXUAL ACTIVITY

...being the owner (or occupier or manager) of premises, namely (specify type and location), did knowingly permit ... , a person under the age of eighteen years to resort to (or to be in or upon) such premises for the purpose of engaging in sexual activity, namely (specify the sexual activity prohibited by the Code) prohibited by section (specify section number) of the Criminal Code, thereby committing an offence contrary to

...having control (or assisting in the management (or control)) of premises, namely (specify type and location), did knowingly permit ... , a person under the age of eighteen years to resort to (or to be in or upon) such premises for the purpose of engaging in sexual activity, namely (specify the sexual activity prohibited by the Code] prohibited by section (specify section number) of the Criminal Code, thereby committing an offence contrary to

INCEST

...did have sexual intercourse with ... while knowing that..... was by blood relationship his [daughter, etc.] contrary to ...

... did have sexual intercourse with each other while knowing that they were related by blood relationship to with..... [specify relationship e.g. father and daughter] contrary to.....

INDECENT ASSAULT ON FEMALE

... did indecently assault ..., a female person contrary to....

INDECENT ASSAULT ON MALE

....., being a male person, did indecently assault.... , a male person, contrary to

....., being a male person, did assault ..., a male person, with intent to commit buggery contrary to...

INVITATION TO SEXUAL TOUCHING

... did for a sexual purpose invite (or counsel or incite) , a person under the age of fourteen years to touch directly (or indirectly) with a part of his body (or with an object), namely (specify part of body or object used the body of ... (name accused, victim, or third party as case may be) contrary to

PARENT OR GUARDIAN PROCURING SEXUAL ACTIVITY

...being the parent (or guardian) of ... , a person under the age of eighteen years, did procure the said ... for the purpose of engaging in sexual activity, namely (specify the sexual activity prohibited by the Code) prohibited by section (specify section number) of the Criminal Code, with ... (name third party) contrary to....

PROCURING AND JUVENILE PROSTITUTION

... did procure (or attempt to procure or solicit) ... to have illicit sexual intercourse with ... at (specify address) contrary to ...

... did inveigle (or entice) ... , not a prostitute (or not of known immoral character), to a common bawdy-house (or house of assignation) at (specify address) for the purpose of illicit sexual intercourse (or prostitution] contrary to ...

... did knowingly conceal ... in a common bawdy-house (or house of assignation) at (specify address) contrary to ...

...did procure (or attempt to procure) ... to become a prostitute contrary to...

... did procure... to enter (or leave) Canada for the purpose of prostitution contrary to ...

... did for the purpose of gain, exercise control (or direction or influence) over the movements of ... in such manner as to show that he was aiding (or abetting or compelling) ... to engage in (or carry on) prostitution with ... (or generally) contrary to....

...did apply (or administer) to ... (or cause to take) a drug (or intoxicating liquor or specify item) with intent to stupefy (or overpower) the said and to enable himself (or name third party) to have illicit sexual intercourse with ... contrary to ...

... did live wholly on the avails of prostitution of , (a person under the age of eighteen years) contrary to ...

... did obtain (or attempt to obtain) for consideration the sexual services of ... , a person under the age of eighteen years, contrary to ...

...did have sexual intercourse with . . . , a female person who was not his wife, without her consent contrary to....

... did have sexual intercourse with ... , a female person who was not his wife, with her consent, which consent was extorted by threats (or fear of bodily harm) contrary to...

... did have sexual intercourse with a female person who was not his wife, with her consent, which consent was obtained by personating her husband contrary to ...

...did have sexual intercourse with... , a female person who was not his wife, with her consent, which consent was obtained by false and fraudulent representations as to the nature and quality of the act contrary to...

SEXUAL ASSAULT

...did sexually assault ... contrary to...

SEXUAL ASSAULT WITH WEAPON, THREATS, OR BODILY HARM

...did in committing a sexual assault on ... carry (or threaten or threaten to use) a weapon (or an imitation of a weapon), namely a , contrary to.....

... did in committing a sexual assault upon ... threaten to cause bodily harm to the said ... contrary to ...

... did sexually assault ... and did cause bodily harm to the said contrary to

... did commit a sexual assault on ... to which ... was also a party contrary to ...

SEXUAL EXPLOITATION

... being in a position of trust or authority towards ... , a young person (or being a person with whom ... , a young person, was in a relationship of dependency), did for a sexual purpose, touch directly (or indirectly) the body of the said with a part of his body (or with an object), namely (specify part of body of accused or object used) contrary to

... being in a position of trust or authority towards ... , a young person (or being a person with whom , a young person, was in a relationship of dependency), did for a sexual purpose invite (or counsel or incite) the said to touch directly (or indirectly) with a part of his body (or with an object), namely (specify part of body or object used) the body of....(name accused, victim, or third party as case may be) contrary to

SEXUAL INTERCOURSE WITH FEEBLE-MINDED

...being a male person, did have sexual intercourse with a female person not his wife while knowing (or having good reason to believe) ... to be feeble-minded (or insane or an idiot or an imbecile) contrary to.....

SEXUAL INTERCOURSE WITH FEMALE UNDER FOURTEEN

... being a male person, did have sexual intercourse with a female person not his wife and under the age of fourteen years contrary to

SEXUAL INTERCOURSE WITH FEMALE BETWEEN FOURTEEN AND SIXTEEN

..., being a male person, did have sexual intercourse with a female person not his wife and of a previously chaste character who was under the age of sixteen years and over the age of fourteen years contrary to

SEXUAL INTERCOURSE WITH FEMALE PASSENGER

...being the owner of (or master of or employed. on board) a vessel, the ... , sailing on from the port of to the port of ... (or while berthed at the port of), while engaged in the carriage of passengers for hire, did seduce (or did by threats have illicit sexual intercourse with or did by exercise of his authority have illicit sexual intercourse with) , a female passenger on board the vessel contrary to

SEXUAL INTERCOURSE WITH STEP-DAUGHTER, ETC.

..., being a male person, did have illicit sexual intercourse with his step-daughter (or foster daughter or female ward) contrary to

SEXUAL INTERFERENCE

... ,did for a sexual purpose touch , a person under the age of fourteen years directly (or indirectly) with a part of his body, namely ... , contrary to

....did for a sexual purpose touch , a person under the age of fourteen years directly (or indirectly) with an object, namely acontrary to.....

VAGRANCY

....., having been previously convicted of the offence of (name type of qualifying offence as permitted by section) was found loitering in or near a school ground (or playground or public park or bathing area)contrary to