

## SEXUAL OFFENCES AGAINST MINORS

Physicians who are treating adolescents should be aware that it is a criminal offence for a person to involve a minor **under the age of 16 years** in any kind of sexual activity. It is no defence that the minor consented to the activity. Prohibited activities include: sexual intercourse, sexual interference - that is touching either directly or indirectly for a sexual purpose, invitations to sexual touching, exposure of genitalia, and sexual exploitation.

The only exceptions to this are set out in the Criminal Code of Canada, which provides that consent to the sexual activity by the minor (complainant) is a defence:

- If the complainant is **at least 12 and under 14 years of age** and the accused person:
  - is **less than two years older** than the complainant; and
  - 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,
    - nor in a relationship with the complainant that is exploitive of the complainant.
- If the complainant is **at least 14 and under 16 years of age**; and the accused person
  - is **less than five years older** than the complainant; and
  - 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,
    - nor in a relationship with the complainant that is exploitive of the complainant;
  - or
  - the accused is married to the complainant; or
  - the accused is the common-law partner of the complainant or has been cohabitating 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 that relationship; and
  - 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,
    - nor in a relationship with the complainant that is exploitive of the complainant.

When treating minors under the age of 16 years who have been involved in sexual activity, physicians should be aware of these defences, but their concern should be the possibility of a criminal offence having been committed and their responsibility to report a child under the provisions of [The Child & Family Services Authorities Act, C.C.S.M. c. C80](#).

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**A statement is a formal position of the College with  
which members shall comply.**