



CAMP NORTHLAND
Consent at Camp

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CONSENT AT CAMP:

HOW CONSENT LAWS IMPACT CAMP AND THE FUTURE OF YOUR EMPLOYEES AND VOLUNTEERS

Each camp across the country is unique and has their own philosophy and culture. There is something for everyone in this community. Despite the differences from camp to camp, one thing remains the same: the policies and procedures of your camp must adhere to the law.

We are asking you to convey the serious and lasting consequences of sexual activity without consent to your staff. Every year a young person commits a crime of a sexual nature. Sometimes knowingly, but many times not. No organization is immune.

Sexual activity without consent (which can refer to a broad spectrum of situations, which we will go into further) has and will have a devastating impact on everyone involved. First and foremost, the effect on victims cannot be overstated. This crime changes the trajectory of many lives. Some young people may not realise the permanent effect that engaging in such behaviour may have on their own lives. Their futures can and have been ruined by these actions. Where criminal activity has occurred, the individual Counsellor, CIT or Volunteer could face a criminal charge and if convicted, will have a criminal record. For those who were hoping for a professional career, their options will be limited by their own actions.

The goal is prevention. Even if an employee or volunteer does not have empathy for others, at the very least, they need to be aware of the damage they are doing to themselves. Although insurance coverage can help protect the assets of camp, you must also consider the consequential damage to the injured party (worst nightmare), your loss of reputation, and the future of your Counsellors, CITs or Volunteers.

The following is some information from the Department of Justice and other Canadian Law sources.

Consent to Sexual Activity

The age of consent is the age at which a young person can legally agree to sexual activity. Age of consent laws apply to all forms of sexual activity, ranging from kissing and fondling to sexual intercourse. *(Note: includes kissing)*

Canada's Age of Consent

The age of consent to sexual activity is **16 years**. In some cases, the age of consent is higher (for example, when there is a relationship of trust, authority or dependency).

In other words, a person must be at least 16 years old to be able to legally agree to sexual activity.

Close in Age Exceptions

A 14 or 15 year old can consent to sexual activity as long as the partner is **less than five years older** and there is no relationship of trust, authority or dependency or any other exploitation of the young person. This means that if the partner is 5 years or older than the 14 or 15 year old, any sexual activity is a criminal offence. *(Note: the word AND is important here. The age gap must be less than 5 years AND there cannot be a relationship of trust, authority or dependency or any other exploitation.)*

There is also a "close in age" exception for 12 and 13 year olds. A 12 or 13 year old can consent to sexual activity with a partner as long as the partner is **less than two years older** and there is no relationship of trust, authority or dependency or any other exploitation of the young person. This means that if the partner is 2 years or older than the 12 or 13 year old, any sexual activity is a criminal offence. *(Keep in mind this means that a relationship between a 12 year old and a 14+ year old, even if they are both campers, is contrary to this publication. Same relationship of trust, authority or dependency or any other exploitation considerations apply here as well.)*

Sexual Exploitation

A 16 or 17 year old cannot consent to sexual activity if:

- their sexual partner is in position of trust or authority towards them, for example their teacher or coach *(or counsellor)*
- the young person is dependent on their sexual partner, for example for care or support
- the relationship between the young person and their sexual partner is exploitative *(this is incredibly broad.)*

The following factors may be taken into account when determining whether a relationship is exploitative of the young person:

- the young person's age
- the age difference between the young person and their partner
- how the relationship developed (for example, quickly, secretly, or over the internet) *(this happens often)*

- whether the partner may have controlled or influenced the young person (this could be a hard thing for you to gauge)

Child Pornography

Child pornography is broadly defined and includes:

- any representation of a person who is, or is depicted as being, under the age of 18 years, engaged in explicit sexual activity;
- any representation whose dominant characteristic is the depiction of the sexual organs or anal region of a person under the age of 18 years for a sexual purpose;
- written, visual and audio material that advocates or counsels unlawful sexual activity with a person under the age of 18;
- written, visual and audio material whose dominant characteristic is the description of unlawful sexual activity with a person under the age of 18 for a sexual purpose.

It is against the law for child pornography to be:

- made
- distributed
- made available
- sold
- possessed or accessed
- advertised
- exported or imported

The maximum penalties for these offences range from 10 to 14 years.

(Please note that there is not an age that is described for child pornography. A person under 18 years old in possession of sexual images of another person under 18 years old is in possession of child pornography.)

What Consent Involves

Consent means the agreement given to a sexual partner at the moment the partners take part in sexual activities. This consent must be voluntary. This means that it must be given freely and not forced. Consent must also be informed. This means that the person consenting understands the consequences of the decision. If the choice is not voluntary and informed, then the person's consent is not valid.

Absence of Consent

A person doesn't have to go as far as physically resisting a sexual activity to show they don't consent to it.

For example, there's no consent to sexual activities in these situations:

- A person's words or actions show they don't consent to the sexual activity.
- A person started out by consenting to the activity, but their words or actions show they don't consent to continuing the sexual activity.
- Consent is given by someone else, such as a friend or parent.
- Silence doesn't mean consent. Consent must be expressed clearly.

Time of Consent

Whether consent is verbal or non-verbal, it must be given at the time of the sexual activity. A person must have a chance to express **consent at each stage of the sexual activity**. So, before beginning a different type of sexual activity, the partner must make sure the other person wants to continue. Consent becomes invalid as soon as someone loses the ability to consent. For example, there's no consent from the moment someone loses consciousness or is under the effects of a drug or alcohol.

Sometimes, people consent to a sexual activity, but then change their minds once the activity has begun. If they decide they don't want to continue, they can take back their consent at any time. If someone expresses refusal to participate in a sexual activity, either through words or actions, the partner must stop immediately. If the partner continues anyway, the partner is committing sexual assault.

Consent is Not Valid in Some Situations

If a person is in a position of authority or trust toward a minor, the law doesn't recognize the minor's consent to any type of sexual activity between them. Being in a position of authority doesn't necessarily mean that someone has a legal right over a young person. Instead, it refers to the power to tell the young person what to do. The young person's consent isn't valid even if it was obtained honestly and without the other person taking advantage of the position of authority or trust. In other words, the sexual activity is considered a crime whether or not the minor agreed to it.

To decide whether someone was in a position of authority or trust at the time of the sexual activity, the facts of each case must be considered. For instance, a court might take the following factors into account:

- age difference between the partners;
- evolution of their relationship;
- the position of the person in trust or authority in relation to the younger person.

A person can be guilty of a crime even if their actions took place outside of the context which gives one of them power over the other. For example, a teacher doesn't stop being in a position of authority toward a young person simply because it's summertime and there are no classes until the fall.

More onus is being put on care providers to intervene when potential exploitation is happening, and you want to be sure you're on the right side of it, should anything ever wind up in court.

We hope this was useful to you. This is for your reference and should not be substituted for legal advice. For more information, please see the following:

<https://www.educaloi.qc.ca/en>

<http://www.justice.qc.ca/eng/rp-pr/other-autre/clp/faq.html>