

# SEXTING AND CANADIAN LAW

The legal definition of sexting is the sending of digital messages containing suggestive, provocative, or explicit sexual photographs.

For adults, consensually exchanging nude photos electronically is, under most circumstances, a legal activity. However, the creation and sending of sexual photos of people under the age of 18 breaks Canada's child pornography laws.

The child pornography sections of the Criminal Code of Canada are intended to prevent the sexual exploitation of young people. Specifically, the Criminal Code Section 163.1 on child pornography makes clear that the creation and distribution of images depicting sexual activity or the depiction of a sexual organ of a person under the age of 18 is a criminal offense.

The primary objective of this law is to protect children and teens under age 18 from being exploited and harmed by adults through the creation and distribution of child pornography. However, it is still a criminal offense for teens to take or share sexual photos with one another without consent.

In 2001, the Supreme Court of Canada established a personal or private use exception to child pornography laws that allows two youths to consensually record their own sexual activity as long as it stays between them.

## Personal or Private Use Exception Requires:

1. materials depict lawful sexual activity.
2. materials were made with the consent of the persons depicted.
3. materials were held for private use.

## Conviction of a Minor

In January 2014, a 17-year-old girl from Saanich, B.C., was found guilty of possessing and distributing child pornography a year after she was caught sexting nude photos of her boyfriend's underage ex-girlfriend to her friends. The girl, who cannot be named because she was under 18 at the time of the offence, is believed to be the first minor convicted under Canada's child porn laws.

## Bill C-13

A new law gives authorities an additional option to laying child porn charges in teen sexting cases. The federal cyberbullying act (Bill C-13) is a response, in part, to the Rehtaeh Parsons and Amanda Todd tragedies. On March 9, 2015 it became a criminal offence—punishable by up to five years in prison—for adults, as well as children aged 12 and older, to share "intimate images" of anyone without his or her consent.

