

CITY OF BURNABY

COMMUNITY POLICING COMMITTEE

*HIS WORSHIP, THE MAYOR
AND COUNCILLORS*

**RE: AGE OF CONSENT CONSIDERATIONS WHEN SENTENCING SEXUAL
OFFENDERS**

RECOMMENDATIONS:

1. **THAT** Council write to the Federal Department of Justice requesting that the Criminal Code of Canada be amended to clarify that apparent consent or acquiescence cannot be considered a mitigating factor in sentencing when a victim is under the age of consent.
2. **THAT** a copy of this report be forwarded to:
 - a. the Federal Members of Parliament for Burnaby
 - b. the Attorney General of British Columbia
 - c. the Community Issues and Social Planning Committee

REPORT

The Community Policing Committee, at its meeting held on 2000 June 08, received and adopted the *attached* report providing information regarding a proposed amendment to the Criminal Code of Canada that would disallow apparent consent or acquiescence as a mitigating factor in sentencing when a victim is under the age of consent for sexual activity.

As part of the Federal consultation process on Child Victims and the Criminal Justice System, the Committee is requesting that Council support and forward to the Federal Department of Justice the above noted recommendation.

Respectfully submitted,

: COPY - CITY MANAGER - DIR. PLNG. & BLDG. - OFFICER-IN-CHARGE, R.C.M.P.
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Councillor D. Evans
Chair

Councillor J. Young
Vice Chair

TO: COMMUNITY POLICING COMMITTEE May 31, 2000
FROM: DIRECTOR PLANNING AND BUILDING OUR FILE: 17.317.1
SUBJECT: AGE OF CONSENT CONSIDERATIONS WHEN SENTENCING SEXUAL OFFENDERS

PURPOSE: To provide the Committee and Council with additional information regarding a proposed amendment to the Criminal Code of Canada that would disallow apparent consent or acquiescence as a mitigating factor in sentencing when a victim is under the age of consent for sexual activity.

RECOMMENDATIONS:

1. **THAT**, as part of the Federal consultation process on *Child Victims and the Criminal Justice System*, Council be requested to support and forward to the Federal Department of Justice the following recommendation:

“That the Criminal Code of Canada be amended to clarify that apparent consent or acquiescence cannot be considered a mitigating factor in sentencing when a victim is under the age of consent.”
2. **THAT** a copy of this report be forwarded to:
 - a. the Federal Members of Parliament for Burnaby
 - b. the Attorney General for British Columbia
 - c. the Community Issues & Social Planning Committee

R E P O R T

1.0 BACKGROUND

At its meeting of 2000 March 27, Council considered a report from the Community Policing Committee requesting Council support for a number of recommendations to the Federal Department of Justice which would improve protection for children from extreme harm from adults. The recommendations had been forwarded to the Community Policing Committee from its subcommittee, the Task Force on the Sexual Exploitation and Prostitution of Children and Youth, and were in response to a Federal consultation process on child victims and the criminal justice system.

Council approved and forwarded six of the seven recommendations proposed by the Task Force and Community Policing Committee, but referred the following recommendation back to the Committee and Task Force for further review:

“THAT Council support an amendment to the Criminal Code of Canada to clarify that apparent consent or acquiescence cannot be considered a mitigating factor in sentencing when a victim is under the age of consent”.

It is the understanding of Task Force members that Council support for the recommendation in question was withheld because the proposal was viewed as fettering the ability of the judiciary to take into account the specifics of a case. In most cases, it is against the law in Canada to have sexual relations with a child under the age of fourteen years (except for circumstances where a twelve or thirteen year old is sexually involved with someone less than two years older). However, questions were raised as to whether a sixteen year old in a consensual sexual relationship with a thirteen year old should be punished in the same manner and with the same severity as a thirty year old in a relationship with the same thirteen year old, or as a person perpetrating a sexual attack against the thirteen year old.

This report elaborates on the Task Force’s position on the issue, and reiterates the Task Force’s request that the Committee and Council support the original recommendation.

2.0 RATIONALE

The Task Force has reconsidered and discussed the recommendation in question on two occasions. Those discussions have been enhanced by additional information provided by the Crown Counsel to the Provincial Prostitution Unit and others working on the front lines with high risk children and youth. As well, two Task Force members attended a recent Department of Justice *Regional Roundtable on Child Victims* held in Vancouver at which the issue was discussed.

Members of the Task Force agree that the ability of the courts to reflect the particulars of a case in sentencing through consideration of mitigating and aggravating factors is important. However, they maintain that apparent consent or acquiescence to sexual activity by a child under the age of consent should not be accepted as a possible mitigating factor. They believe that in cases of child sexual assault, the interests of the child victim - and not the perpetrator - must be paramount. Canada has an age of consent enshrined in the Criminal Code because, as a society, we believe that children are harmed - sometimes for life - when they are sexualized at an early age and must be protected from that harm. Children under the age of fourteen years cannot be expected - nor is it fair to expect them - to understand the potentially severe later life consequences of childhood sexual activity. Task Force members believe that, in cases of child sexual assault where the judiciary wishes to pass a lighter sentence, other possible mitigating factors would suffice, such as age of the offender,

age difference between the victim and the offender, the offender's level of innocence or ignorance about the effects of the assault on the victim, the nature of the relationship between the victim and the offender, and the degree of remorse shown by the offender.

Task Force members do not believe that their argument would be weakened if the age of consent were raised to sixteen years. Evidence from the legal experts the Task Force has consulted suggests that fourteen and fifteen year olds are more likely to be sexually exploited by pimps and johns than twelve and thirteen year olds, who are more often assaulted in situations other than the sex trade. The Task Force maintains that it is critical to protect those young people who are more likely to become involved in the sex trade from the sexual predators.

3.0 SUMMARY AND CONCLUSIONS

Members of the Task Force on the Sexual Exploitation and Prostitution of Children and Youth believe that the integrity of the law protecting children from sexual assault by adults is undermined if apparent consent or acquiescence is allowed as a mitigating factor when sentencing in cases where the victim is under the age of consent. They believe that the long-term interests of the child victim must be paramount, and that other - more appropriate - mitigating factors are available to the judiciary should it wish reflect the particulars of a case in sentencing.

Members of the Task Force request that the Committee and Council support the following recommendation:

“That the Criminal Code of Canada be amended to clarify that apparent consent or acquiescence cannot be considered a mitigating factor in sentencing when a victim is under the age of consent.”

It is further requested that this recommendation be forwarded to the Federal Department of Justice as part of Burnaby's response to the Federal consultation on *Child Victims and the Criminal Justice System*.


D. G. Stenson, Director
PLANNING & BUILDING

JS/sa

cc: City Manager
Deputy City Manager, Corporate Services
29 Director Parks, Recreation and Cultural Services
OIC - Burnaby RCMP
City Solicitor