

Sexual Assault & The Law

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FOR: THE CONSENT WORKSHOP



- Sexual Assault is the legal term used in Canada to refer to any form of sexual contact without voluntary consent. This can include forced or unwanted kissing, fondling, vaginal penetration, anal penetration, and/or oral sexual contact (Adapted from Canadian Criminal Code).
- Sexual violence means any sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent. It includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation. For further clarity, sexual assault includes rape.



- Acquaintance sexual assault is sexual assault where the survivor knows the person who committed the sexual assault. The offending acquaintance may be someone the survivor hardly knows (e.g. a friend of a friend) or someone the survivor is close with (e.g. a partner).
- Coercion refers to using pressure, threats, and/or intimidation to force another to give in or submit to sexual activity. Some examples of coercion are:
 - Constantly putting pressure on someone or refusing to take no for an answer;
 - Making someone feel guilty ("If you love me, you'll...");
 - Threatening to withhold something or do something to make someone comply ("I"II break up with you...", "I"II tell everyone you...");
 - Being emotionally manipulative ("I can't live without you...", threatening to harm one's self);
 - Using physical or verbal intimidation to force someone into submitting or complying (not allowing someone to leave, previous or implied threats of violence).



- Consent is defined as a voluntary agreement to engage in the sexual activity in question. Consent or a "yes" that is obtained through pressure, coercion, force, or threats of force is not voluntary. (Criminal Code of Canada Section 273.1)
- In addition, the Criminal Code provides **five specific situations where consent is not obtained**: (Adapted from the Criminal Code of Canada Section 273.1)
 - Consent is not obtained if someone else says 'yes'.
 - Consent is not obtained if the accused abuses a position of trust, power or authority.
 - Consent is not obtained if the person does not say yes, or says or implies no through words or behaviors.
 - Consent is not obtained if the person is not capable of giving consent. (I.e. drunk or high, unconscious or sleeping).
 - Consent is not obtained if the person changes their mind.
 - https://youtu.be/fGoWLWS4-kU



IT'S SIMPLE AS TEA



Age of Consent according to the Criminal Code of Canada is 16 years. Although children under the age of 12 cannot consent to any kind of sexual activity, youth aged 12 and 13 can consent if the other person is less than two years older, while youth aged 14 and 15 can consent if the other person is less than five years older. Until 18 years of age, no one can consent to sexual activity if the other person is in a position of power, trust or authority over them, or if they are in a relationship of dependency with that person.



- ▶ I thought a person consented" is not a valid defense (Criminal Code of Canada Section 273.2)
 - According to the Criminal Code of Canada, it is not a defense for a person being charged to claim that they believed the other person consented to the sexual activity in question if their belief arose from self--induced intoxication, recklessness, or willful blindness. Also, a mistaken belief as to the survivor's consent is not a defense unless the accused took all reasonable steps to ascertain that the survivor was consenting.



- Sexual Harassment is often confused with sexual assault as they are both experiences of sexual violence. Sexual harassment is defined as any unwanted sexual communication or attention that is offensive, intimidating, or humiliating, whether in verbal, written, or visual form. An example might include a teaching assistant (TA) repeatedly asking a student on a date and implying that their grades could benefit from doing so.
- Sexual harassment includes unwanted attention, demands, or a pattern of jokes or insults that affect your job, work, school environment or your chances to obtain a service. Sexual harassment falls under Human Rights Law, a civil legislation, not the Criminal Code of Canada



▶ **Sexual Exploitation:** Taking advantage of another person through non-consensual or abusive sexual control. This may include the digital or electronic broadcasting, distributing, recording and or photographing of people involved in sexual acts without their consent.



Sexual Assault Statistics

Offenders:

- ▶ Males are the majority of perpetrators in all sexual assaults (Scarce, 1997).
- ▶ It is estimated that 5% of sexual assaults against females and 20% of sexual assaults against males are committed by females (Finkelhor and Russell, 1984).
- The majority (88%) of perpetrators in male sexual assaults are straight men (Hodge and Canter, 1998).



Prevalence:

- National statistics report that 1 in 3 females and 1 in 6 males will experience sexual assault at some point in their life (Statistics Canada, 2006).
- ▶ It is estimated that 1 in 2 girls and 1 in 3 males will be sexually abused by the time they reach the age of 16 (Badgley, 1984).
- In over 75% of child sexual abuse incidences, the abuse is committed by a family member or someone well known to the child (Badgley, 1984).
- Across Canada, 82% of all sexual assaults are perpetrated by someone the survivor knows (Statistics Canada, 2008).
- Alcohol is the most common rape drug used in drug-facilitated sexual assaults (ElSohly, 1999; LoVerso, 2001).



Other Quick Facts:

- The information below is taken from documents published by the Government of Ontario and the Ontario Women's Directorate together with the Ministry of Training, Colleges and Universities:
- Sexual assault is about power and control, not sexual desire.
- Even though sexual violence often goes unreported, there are 460,000 reports of sexual assault in Canada each year.
- Of every **1,000** sexual assaults, only **33** are ever reported to police. Of these 33 reported cases, **12** result in charges being laid, **6** are prosecuted and **3** lead to a conviction.
- Sexual assault is a gender-based crime whose victims are overwhelmingly women—more than 93% of reported adult victims are female, and 99% of accused perpetrators are male.



- One in three women will experience some form of sexual assault in her lifetime.
- Sexual assault victimization rates are five times higher for women under 35 than for women 35 or over.
- Between 15% and 25% of college- and university-aged women will experience some form of sexual assault during their academic career.
- Over half of sexual assaults of postsecondary students involve drugs or alcohol.



- Women with disabilities are three times as likely to be forced into sexual activity through force or the use of threats as women without disabilities.
- Worldwide, 35% of all women have experienced either physical or sexual intimate partner violence or non-partner sexual violence.
- ▶ In 82% of sexual assaults, the assault is committed by someone known to the victim. This can include, for example, a family member, a friend or an acquaintance.



Reporting:

- About 1 in 10 sexual assaults are reported to police (General Social Survey on Vicitimization, 2004).
- Only 1% of acquaintance sexual assaults are reported to the police (Russell, 1984).
- ▶ It is estimated that over 80% of survivors who are sexually assaulted do not report due to feelings of shame and humiliation or fear of re-victimization through the criminal trial process (Fassel, 1994).



Alcohol & Drug-Facilitated Sexual Assault:

- In a survey conducted at the University of Alberta, it was found that over half of the sexual assaults experienced by students took place when the survivor of the assault was under the influence of alcohol or drugs (LoVerso, 2001). In addition, research shows that this is not a new phenomenon, and has been a reality for university students for many years (Koss, 1988).
- In a drug- facilitated sexual assault, the perpetrator uses alcohol or other drugs (sometimes referred to as "date rape" drugs) as a method to decrease resistance from the person they are assaulting. The use of drugs or alcohol also ensures that the survivor may not recall enough details about the assault for charges to be laid against the perpetrator. The alcohol or drugs may have been taken voluntarily by the survivor, or forced upon them by the perpetrator. The most common drug used in this type of assault is alcohol.



- Much of the information about date rape drugs emphasizes ways in which survivors can stay safe from these drugs, especially while drinking in bars. Examples include only accepting drinks from people you know, or keeping an eye on your drink at all times. These statements are misleading for several reasons. Firstly, drugs can be used in many locations, not just in bars.
- ▶ The Sexual Assault Centre has seen cases where drugs were used at house parties, restaurants, and while camping. Also, it is more common for a friend, partner, or acquaintance to use drugs on someone than it is for a stranger. In addition, these statements are almost always directed at women, but people of all genders can experience drug -facilitated sexual assault.



Types of drugs:

- Alcohol. Alcohol is by far the most prevalent substance used to commit sexual assault and is easy to use because it is legal and socially accepted. Although it is not often readily recognized as a tool used by perpetrators, almost half of the sexual assaults that young adults experience take place under the influence of alcohol.
- In some cases, perpetrators take advantage of the fact that an 1 individual is drinking. In other cases, the perpetrator is actively involved in ensuring that an individual gets drunk by buying drinks, encouraging them to drink, or pouring drinks with more alcohol than usual. In either case, when an individual is severely impaired by alcohol, they are legally unable to consent to sexual activity.
- Unlike other date rape drugs, alcohol is also often used by the perpetrator on themselves. By using alcohol, the perpetrator lowers their own inhibitions and attempts to excuse themselves for committing the sexual assault. In other words, perpetrators use alcohol purposefully to aid them in committing the sexual assault.



Other drugs:

Some of the more well-known drugs used in drug-facilitated sexual assault include Rohypnol (also known as "roofies", "the forget pill" or "flunitrazepam"), GHB (Gamma-hydroxybutyrate), Ketamine, and Ecstasy. The effects of each of these drugs vary; however, they all have certain common side effects or symptoms used in drug-facilitated sexual assault. These symptoms include sedative effects that, depending on the drug, can last from 30 minutes to 24 hours. Other effects include short-term memory loss, vomiting, numbness, or a temporary inability to move. Some of these drugs may pose serious health risks, especially when combined with alcohol.



Detection of Drugs:

All date rape drugs are processed by the body quickly and are thus difficult to detect. When testing for drugs, the closest to the time of the drugging as possible is best, as after 72 hours detection will be impossible. It also varies depending on the drug used; for example, GHB can be untraceable in only 12 hours, whereas rohypnol will be traceable up to 72 hours. Drugs are detected through a urine sample test, but rohypnol can also be detected through a blood test.



- Indications of a Sexual Assault: In drug -facilitated sexual assaults, it is possible that the survivor has little or no recollection of a sexual assault. The following are some indications that a drug-facilitated sexual assault may have occurred:
 - Physical Indications:
 - Soreness in the genital or anal areas
 - Marks or bruises on the skin
 - Abnormal discharge and/or bleeding
 - Other Indications:
 - Loss of memory for a whole part of an evening or day
 - Waking up in different surroundings and not knowing how they got there
 - Waking up with clothes missing or put on differently
 - A sense that something wrong happened or that something is "not right"



Acquaintance Sexual Assault:

- Sexual assault is any form of sexual contact without voluntary consent. Acquaintance sexual assault is sexual assault where the survivor knows the person who committed the sexual assault. The offending acquaintance may be someone the survivor hardly knows (e.g. a friend of a friend) or someone the survivor is close with (e.g. his or her partner).
- In acquaintance sexual assault, coercion is one of the primary tools used to force sexual contact.



Acquaintance Sexual Assault:

- Because coercion is a less clear form of violence, many people dismiss it as less serious, but it is not. Verbal and emotional threats or tactics are just as damaging and controlling as physical threats. The following are examples of the many different forms of coercion:
 - Constantly putting pressure on someone
 - Making someone feel guilty for not complying
 - Refusing to take "no" for an answer
 - Threatening to withhold something or to do something to make someone comply
 - Being emotionally manipulative
 - Using body position or physical size to threaten someone into submitting or complying



Acquaintance Sexual Assault:

In some cases, if the survivor was under the influence of alcohol or drugs at the time of the assault, this can make the survivor feel that they are to blame because they chose to ingest drugs or alcohol. However, choosing to get drunk or high is not choosing to be sexually assaulted. Section 273.1 of the Criminal Code of Canada clearly states that one cannot consent to sexual activity if one is "blacked out, impaired by alcohol or narcotics, unconscious, [or] sleeping."



- The FBI annual statistic on sexual assault finds that 1 in 8 men will be sexually assaulted at some point in their life. This is a fairly conservative statistic, and most research shows that the number of men who experience sexual assault or sexual abuse in childhood or as adults is in fact higher.
- Yet, sexual assault is still considered by many to be a women's issue, and our cultural ideas about sexual assault make it very difficult for male survivors to disclose their experiences and reach out for support. In order to gain an understanding of men and boys' experiences of sexual assault and sexual abuse, it is essential to address some the misconceptions about male survivors of sexual violence.



- Myth: Sexual assault of males is a rare occurrence.
- ► Fact: A recent study in Canada (Sexual Offences Against Children) reports that an estimated one in three boys will be sexually assaulted before the age of 18. Also, in one study involving college men aged 19-24, 30% admitted to being survivors of sexual assault. Both males and females are 1 vulnerable to sexual exploitation



- Myth: Males are only assaulted and abused by gay men.
- Fact: The great majority of perpetrators against men and boys are heterosexual men. The motivation for sexual violence is to gain a sense of control and power over another person, not to achieve sexual satisfaction. Females also commit sexual assault against males.



- Myth: Males assaulted by another male are, or become, gay as a result of the sexual assault.
- Fact: A person's sexual orientation does not change as a result of a sexual assault experience. Some survivors do feel confused about their sexual orientation after a sexual assault or sexual abuse, particularly if they experienced physical arousal during the assault. For example, if a straight man is sexually assaulted by another man and has an erection during the assault, he may worry that this must mean that he is gay or that he wanted the sexual assault to happen. Yet, it is very common to experience arousal during a sexual assault. This arousal can be a fear response, or it can be because a healthy body usually physically responds to sexual touch, even if the touch is not wanted.



- Myth: Males can protect themselves from being sexually assaulted.
- Fact: Persons of any gender are vulnerable to sexual assault. Because men are often physically stronger than women, some people mistakenly think that men should be able to defend themselves. Yet, there are many ways that perpetrators commit sexual assault, and most often, coercion is used. Any person of any size or physical strength can be coerced.



- Myth: You can't sexually assault a man because men always want and are ready for sex.
- ▶ Fact: Sexual assault is not sex. If a man wants sex, he wants to choose who it is with and what it consists of. Sexual assault is an act of violence that takes away any choice or control the person has. Our society's expectation that men always want sex can be very damaging to male survivors who therefore feel that they "should have wanted" this experience and thus cannot be upset about it.



- General Myths About Sexual Assault/Abuse/Violence (University of Ottawa, Sexual Violence: Support and Prevention)
- ► The following portion of the table below presents some of the myths associated with sexual abuse, taken from Developing a Response to Sexual Violence: A Resource Guide for Ontario's Colleges and Universities, Information Guide for Sexual Assault Victims as well as a training guide prepared by a Quebec regional health and social services agency for staff and others who provide psychosocial support to victims of sexual assault If interested in seeing the full table contact me.



Myth	Reality
It is not sexual violence if the partners are in a relationship.	Sexual violence can occur in a marriage or other intimate partner relationship.
It wasn't sexual violence because the person didn't report it to the police.	Just because a person doesn't report the assault doesn't mean it didn't happen. Fewer than 1 in 10 survivors report the crime to police.
The person didn't scream or fight, so it wasn't sexual violence.	The person can become paralyzed with fear and be unable to fight back. They may be afraid that by struggling, the perpetrator will become more violent. Under the influence of drugs or alcool, they may be unable to react or resist.



The person isn't crying or visibly upset, so it wasn't a serious sexual assault.	Each person reacts differently. They may cry or be calm, be silent or very angry. Their behaviour is not necessarily an indicator of the trauma they experienced.
The person doesn't have any obvious physical injuries, such as cuts or bruises, so it's not sexual violence.	Lack of physical injury doesn't mean the person wasn't sexually assaulted. The perpetrator may use threats, weapons or other types of coercion that do not leave physical marks. They may have been unconscious or otherwise incapacitated.
It wasn't rape, so it wasn't sexual violence.	Any unwanted sexual contact is considered sexual violence. Many forms of sexual violence-such as stalking or distributing intimate videos-involve no physical contact. All of these acts are serious and can be damaging.
It's no big deal to have sex with a person who is drunk, stoned or passed out.	If the person is unconscious and cannot legally give <u>consent</u> or is incapable of consenting due to the use of alcohol or drugs, it's sexual assault.
If it really happened, the person would be able to remember what happened and in the proper order.	Shock, fear, embarrassment and distress can all impair memory. Many survivors attempt to minimize or forget the details of the assault as a way of coping with the trauma. In addition, memory loss is common if alcohol or drugs were involved.



Offenders can't control their sexual urges.	Sexual assault is an act of violence. It is not about sexual desire. These assaults are not about attraction or an inability to control urges. They are about control over another person. There are no physiological conditions that prevent offenders from being able to control themselves. Everyone has control over their body's sexual urges.
All offenders have mental health problems.	Most of the time, the alleged attacker is a member of the victim's family or an acquaintance who has no mental health problems.
All men who sexually assault other males are homosexuals.	There are offenders who have preferences as to the sex or age of their victims. Most men who sexually assault other males are heterosexual.
One way to stop sexual violence is to ignore it.	Ignoring sexual violence has the opposite effect, which could lead the individual to perpetuate sexual violence, quickly realizing the vulnerability of the target pe
Sexual harassment, sentimental office stories and flirting are all the same.	The difference between flirting and sexual harassment is consent. Flirting is muland wanted, sexual harassment is not. Sexual harassment occurs when there consent on the part of the target person.

Consent Generally:

- Canada has a broad definition of sexual assault. It includes all unwanted sexual activity, such as unwanted sexual grabbing, kissing, and fondling as well as rape.
- Sexual activity is only legal when both parties consent. Consent is defined in Canada's Criminal Codein s. 273.1(1), as the voluntary agreement to engage in the sexual activity in question. The law focuses on what the person was actually thinking and feeling at the time of the sexual activity. Sexual touching is only lawful if the person affirmatively communicated their consent, whether through words or conduct. Silence or passivity does not equal consent.



A Person Cannot Say They Mistakenly Believed a Person Was Consenting if

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- that belief is based on their own intoxication; or
- they were reckless about whether the person was consenting or;
- they chose to ignore things that would tell them there was a lack of consent; or
- they didn't take proper steps to check if there was consent.



Who is Responsible For Ensuring Consent:

- ▶ The responsibility for ensuring there is consent is on the person who is initiating or pursuing the sexual activity. When someone has said no to sexual contact, the other person cannot rely on the fact that time has passed or the fact that the individual has not said no again to assume that consent now exists.
- No one can legally consent in advance to sexual activity in the future when they will be unconscious. No one can legally consent to activity where they will suffer bodily harm, such as activity that will cause serious bruises, stitches or broken bones.



- ▶ Who is Responsible For Ensuring Consent:
 - ► The law about sexual activity involving young people has recently changed. Generally, the age of consent for sexual activity is 16 years. However, the age of consent is 18 years where the sexual activity involves prostitution, pornography or occurs in a relationship of authority, trust or dependency (e.g., with a teacher, coach or babysitter).
 - The Supreme Court of Canada has said consent laws should not be based on stereotypes. Therefore, judges and juries cannot rely on the fact that a person has consented to sexual activity with someone in the past to mean that they consented the next time. It also means that someone's sexual history should not be used to show that they automatically consented. There are rules about when a person's past sexual history can be brought up in court.



Options for survivors of Sexual Assault:

- For many people, the time immediately after experiencing a sexual assault can be very confusing. It can be difficult to know what to do and where to turn.
- ▶ The following information may be of help when considering the options that are available. It is important to recognize that some people will not choose any of the options provided below. Doing nothing is also an option. Since every person's experience and recovery process is unique, only you know what is right for yourself.



Consider telling someone you trust:

- Consider talking to someone whom you feel would be a safe person to talk to perhaps a friend, family member, teacher, or community member. Although it is not often easy to talk about the experience, especially when disclosing for the first time, talking to a trusted friend or other support person may lessen feelings of isolation and provide some emotional comfort.
- Remember, you are not to blame for what was done to you. Your local sexual assault centre can offer confidential, empathetic support and any information you need to be able to make decisions that are right for you:



Consider seeking medical attention:

If the sexual assault experience was recent and you are concerned about sexually transmitted infections (STIs), pregnancy, or possible injuries it is important to consider seeking medical attention. Although a physical exam after a sexual assault can be very difficult, there are services in Toronto.



- Consider your reporting options:
 - ► Toronto Police Services
 - ► Phone #: 416-808-7474



WHERE CAN I GET FREE LEGAL ADVICE:

- 1. Ministry of Attorney General
- 2. Barbra Schlifer Commemorative Clinic



- Ministry of Attorney General: Independent Legal Advice for Survivors of Sexual Assault Pilot Program:
 - If you are a survivor of sexual assault living in the City of Toronto, the City of Ottawa, or the District of Thunder Bay, you may be eligible to receive up to <u>four hours of free legal advice</u> to help you make informed decisions about your next steps.
 - This service is confidential and is available to you at any time after the sexual assault has occurred.
 - Legal representation is not provided under this pilot program (e.g., the lawyer cannot speak for you in court).
 - This program is available to all eligible women, men, trans and gender-diverse people.



- Ministry of Attorney General: Independent Legal Advice for Survivors of Sexual Assault Pilot Program:
- You can access the program if:
 - you are at least 16 years of age
 - the sexual assault happened in Ontario
- How to access the program
 - ▶ Follow these steps:
- Complete the voucher request form. The voucher you request must be for your own use.
- Send your completed voucher request form by email to LLAvoucher@ontario.ca.
- ▶ If you have questions, you can call the pilot program toll-free at: 1-855-226-3904.



Barbra Schlifer Commemorative Clinic:

- They provide free legal services to women who have experienced violence and abuse.
- ▶ This option is only available to people who identify as women and people with non-binary gender identity living in the City of Toronto who would benefit from a women-centred space.



Barbra Schlifer Commemorative Clinic:

- ► To access legal advice at the Barbra Schlifer Commemorative Clinic call: 416-323-9149 ext 234 or fill out and submit an Intake form.
 - give you information about your legal rights, legal protections available to you, and your legal options in and out of court
 - advocate on your behalf in such areas as human rights and criminal injuries compensation
 - advocate for you within the legal mechanisms that deal with violence by doctors, therapists and other professionals



Sources

Credit:

- Ministry of Attorney General
- Barbra Schlifer Commemorative Clinic
- University of Alberta Sexual Assault Centre
- University of Ottawa, Sexual Violence: Support and Prevention
- LEAF: Women's Legal Education And Action Fund, The Law of Consent in Sexual Assault

