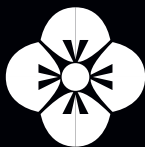


NO MEANS NO



Understanding Consent to Sexual Activity



Public Legal Education
and Information Service
of New Brunswick

NO MEANS NO

Understanding Consent to Sexual Activity

This pamphlet provides information on what is meant by the age of consent to sexual activity and an overview of Canada's laws on sexual assault, and other offences involving sexual exploitation.

This pamphlet does not contain a complete statement of the law in the area of sexual assault and laws change from time to time. Anyone needing specific advice on his or her own legal position should consult a lawyer.

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Consent to Sexual Activity

What does it mean to consent to sexual activity?

To consent to sexual activity means to agree freely. The law requires that a person take reasonable steps to find out whether the other person is consenting.

What is the age of consent to sexual activity?

The age of consent in Canada is 16 years. This is the age that criminal law recognizes the legal capacity of a young person to consent to sexual activity. Generally, it is legal to have sexual contact with someone who is 16 years or older if they agree to have sex with you.



Are there situations where a 16 year old cannot consent?

Yes. It is important to know that in some situations a person must be 18 years old to consent to sexual activity. Depending on what you are doing and who you are doing it with, sexual activity with a person under 18 years-old is illegal. A person under 18 years of age cannot consent to sexual activity if:

- The other person has a relationship of trust or authority over them, or they are dependent on that person. The law does not consider that someone under 18 years freely agrees when a person who has power over them uses it to get their consent. People in positions of trust or authority include, for example, a teacher, coach, babysitter, family member, minister or doctor;
- it involves exploitative activity, such as prostitution or pornography;
- they are paid, or offered payment, for sex;
- there is anal sex (unless they are a legally married couple).

What about persons under 16 years old?

There are exceptions for young persons under 16 years of age who have consensual sexual activity with someone close in age. These exceptions make sure the law does not label consensual activities between young people as criminal offences. It is not a criminal offence if:

- a young person 14 or 15 years of age consents to sexual activity with someone less than 5 years older
- a young person 12 or 13 years of age consents to sexual activity with someone less than 2 years older

These exceptions only apply if the older person is not in a position of authority or trust and there is no exploitation. In fact, by law, someone 18 years or older cannot have sexual relations with **anyone** under 18 years of age if they are in a position of authority or trust over them.

Important: The law also says that children under the age of 12 years can **never** legally consent to sexual activity.

Can someone else, such as a parent or friend, consent for me?

No. Only **YOU** can give your consent.

Is saying “no” the only way to show that I do not consent?



No. You can show by your words OR actions that you do not consent. Actions, such as struggling and trying to leave, show that you do not consent. The police will not charge you with assault if the force you use is reasonable. You can use the force that is necessary to protect yourself from the attacker.

What if I did not resist because I was too afraid?

Even if you did not resist because you were too afraid, the attacker cannot say that you consented. You are not expected to put your life at risk. The law does not consider that you freely agreed just because you did not struggle or resist.

What if I agree to the sexual activity at first, and then I change my mind?

Once you show that you no longer agree to the sexual activity, there is no longer consent. Also, consenting to one kind of sexual activity does not mean you consent to any other sexual activity. You can say NO to anything at any time.

Can a person say that I consented if I was drunk?

No. If you are drinking or under the influence of drugs to the extent that you are unable to make a decision, the law does not consider that you consented.

What if the person thought that I consented?

If the person honestly and reasonably believed he or she had your consent to sexual activity, it may be a defence. However, a person **cannot** use this defence if:

- he or she recklessly or on purpose ignored that the victim was not consenting;
- he or she was drunk at the time; or
- the victim was drunk at the time.

Can my spouse force me to into sexual activity without my consent?

No. The police can charge anyone with sexual assault who forces sexual activity on you. It does not matter if the person is your spouse, your common law partner or your date.

What if I agreed to see someone that I met in a “chat room” on the Internet?

Just because you agreed to meet someone, does not mean that you consented to sexual activity. If you are a young person under 18 years who has been “lured” into a meeting for the purpose of sexual activity, a court would determine exploitation by considering your age, the age difference between you and the accused, the nature of the relationship between you and the accused, and the amount of control or influence the accused had over you.



An Overview of Sexual Offences

What is sexual assault?

Assault is the intentional use of force against somebody without his or her consent. Trying to use force or threatening to use force may also be assault. Touching, slapping, punching, kicking or pushing are examples of assault. Sexual assault is any kind of assault that is of a sexual nature. Fondling and sexual intercourse without a person's consent are examples of sexual assault.

Are there different kinds of sexual assault offences?

Yes. Sexual offences apply to different types of sexual contact, not just sexual intercourse. The difference between offences depends on the nature of the assault and how much force the person uses.



Sexual assault is forced sexual activity where the attacker does not physically injure you. The law recognizes a range of offences and punishments. The person who commits a serious sexual assault may be charged with an indictable offence.

Sexual assault with a weapon or threats to a third party is forced sexual activity where the attacker uses a weapon, or threatens you with a weapon, or threatens to hurt another person.

Sexual assault causing bodily harm is forced sexual activity where the attacker physically injures you. “Bodily harm” means any injury that affects your health and comfort and is more than temporary or trifling in nature.

Aggravated sexual assault is forced sexual activity where the attacker seriously injures you. An injury is serious when the attacker wounds, maims, disfigures or endangers your life.

Are there other sexual offences?

Yes, there are several other sexual offences. This booklet will briefly touch on the following:

Invitation to sexual touching is touching or inviting, counselling or inciting a person under 16 to touch, directly or indirectly, with a part of the body or with an object, any part of the body for a sexual purpose.

Sexual interference involves touching for a sexual purpose, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years.

Luring a child is communicating with a young person using a computer in order to arrange or commit certain sexual offences. Depending on the offence, the age of consent ranges from 16 to 18 years.

Voyeurism is the secret observation by any means or recording of any person for a sexual purpose, in circumstances where there is a reasonable expectation of privacy.

It is important to remember that a young person 16 years of age or more but under 18 years of age cannot consent to sexual activity with someone in a position of trust or authority over them or with someone on whom they are dependent. The courts would determine exploitation by the wrongful conduct of the exploiter rather than the consent of the young person. The law also provides for the protection of persons with mental or physical disabilities without any age restrictions.



Your Rights as A Victim of Sexual Assault

If my attacker is charged, will I have to go to court?

If the accused pleads not guilty, you may have to give evidence of what happened at a preliminary hearing and at a trial. A preliminary hearing is a hearing where a judge decides whether there is enough evidence to send the case to trial. If the case goes to trial, the Crown prosecutor can call you as a witness to testify, even against your partner or spouse.



Can I get help and support if I go to Court?

Yes. Victim Services Coordinators can explain the court process to you and help you understand what will happen in court. Contact the provincial Victim Services Office nearest you. They can explain the measures that exist to help vulnerable

victims to testify in court. They will also tell you about other services and programs for victims such as counseling and crime compensation.

Can the defence lawyer ask questions about my past sexual activities?

Only if the judge decides this information has something to do with the case. A judge holds a hearing to decide whether to let a defence lawyer use such evidence at the trial. You do not have to say anything at this hearing. The Crown prosecutor and the Victim Services Coordinator will explain the process to you.

Can the defence lawyer use my past sexual activities to suggest that I consented this time?

No. The law recognizes that your past sexual activities with anyone else but the accused do not have anything to do with the issue of consent. The defence lawyer cannot use evidence about your past sexual activities to show:

- you were more likely to have consented to the sexual activity in question; or
- you are not believable because of your past sexual activities.

Is the trial open to the public?

Yes. Usually the trial is open to the public but you have a right to keep your identity protected. If the Crown prosecutor asks, the judge must order that no person in the media publish or broadcast your identity. This is called a publication ban. Victim Services will explain the various protections that may be available.



Sentencing in Sexual Offence Cases

What happens when an offender is found guilty?

If the offender is found guilty, he or she will be sentenced. Usually the judge will not sentence the offender immediately. The judge will set a date for sentencing and may ask for a pre-sentence report on the offender. The pre-sentence report is done by a probation officer. The probation officer will find out about the offender's background, family, education, employment record, and previous criminal record.

Can victims tell the Court how the crime has affected them?

Yes, victims have the right to make a written Victim Impact Statement when the accused has been found guilty or if there is a finding of not criminally responsible due to a mental disorder. (See the pamphlet *Victim Impact Statements*). The judge will also read your victim impact statement at the sentence hearing or the Review Board Hearing if you have written one and it has been filed with the court.

What type of sentence might an offender get?

The punishments for sexual assault and sexual offences reflect the seriousness of the offence and may range from a fine, to life in prison. The judge can also give a suspended sentence or probation. In deciding what sentence to give the judge looks at:

- the seriousness of the offence;
- the circumstances surrounding the offence;
- the harm to the victim;
- the amount of force used by the offender;
- the offender's attitude towards the crime;
- the offender's previous criminal record;
- the kinds of sentences that have been given for similar offences; and
- the prevalence of the crime in the community (general deterrence).

What You Can Do if You Have Been Sexually Assaulted

What should I do if someone sexually assaults me?

Call the police or RCMP. In an emergency dial 911. Tell the police where you are and what happened. The police can take you to the hospital right away where healthcare professionals can do an examination and gather evidence. Certain municipal police forces have victim service units. These units often offer crisis counseling. Also, they may have staff or volunteers who will accompany the police when they are talking to a sexual assault victim.

What will the police want to know?

The police will ask you a lot of detailed questions. Write down everything you can remember, including:

- what happened,
- where,
- the time of the assault,
- a description of the person who assaulted you (name and address if possible).

The police will either write your answers in a statement or they will use audio or videotape to record your answers.

What if I do not call the police?

Even if you do not call the police right away, **get medical attention**. Go to the nearest hospital. The healthcare professional will examine you for injuries and explain the risk of pregnancy, AIDS and sexually transmitted diseases. A specially trained healthcare professional may be available at the hospital to help you and to give you support.

You can also get support and help 24 hours a day from a sexual assault centre or a crisis line. They have experience talking to people who have been sexually assaulted. They can give information and answer your questions.

To help the police gather evidence, DO NOT:

- shower or bathe;
- change or throw away your clothes;
- wash your hands or comb your hair;
- take any drugs or alcohol.

What You Can Do if You Have Been Sexually Assaulted

*I was sexually assaulted six months ago.
Can the police still lay charges?*

It depends on the seriousness of the assault. There is no time limit for reporting and laying charges for a serious sexual assault (an indictable offence). However, there is a six month time limit for laying charges for a sexual assault which the law considers less serious in nature

(a summary conviction offence). In any case, the sooner you call the police, the easier it is for them to collect the evidence needed to prove the charge.

If you wish to talk to somebody or gather information, check out these resources:

R E S O U R C E S

Public Legal Education and Information Service of New Brunswick has many free publications about the law, including:

- *Services for Victims of Crime*
- *Being a Witness*
- *Victim Impact Statements*
- *Vulnerable Victims of Crime: Making it Easier to Testify*
- *Picture this... a guide to the Criminal Justice System*

Check their website at:
www.legal-info-legale.nb.ca or email
pleisnb@web.ca to order copies.



**Public Legal Education
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of New Brunswick**

For more information about sexual assault, contact the Fredericton Sexual Assault Crisis Centre. They can offer support at the time of crisis and tell you about resources and counseling services in your area.

**Fredericton Sexual Assault Crisis
Centre 24 Hour Crisis Line:**

506-454-0437

Just need to talk or learn about resources in your area? Contact Chimo at:

**Chimo Help Line
1-800-667-5005**

You can get more information on support and services for victims of sexual assault from your provincial Victim Services Office.

Look in the provincial Blue Pages of your phone book under *Victim Assistance Services*.