

Sexual Assault

GUIDEBOOK ONE



METRAC
ACTION ON VIOLENCE



Sexual Assault Guidebook One



If you have been sexually assaulted, there is no right or wrong way to react. Sexual assault can happen to anyone and every person who experiences a sexual assault has different needs and different reactions. You should make the best decision for yourself. Whether or not to report the sexual assault to the police or to any other institution is always your choice.

The guidebook will help you understand the law and explain your legal options, so that you can make a decision that feels right for you.

TABLE OF CONTENTS

• What is Sexual Assault.....	2
• What is Consent.....	3
• Age of Consent.....	4
• Exploitation and the Age of Consent.....	5
• Other Sexual Offences and the Age of Consent.....	5
• Getting Support for Yourself.....	6
• Legal Options.....	7
The Criminal System.....	8
Human Rights Complaint.....	12
Victim Quick Response Program.....	13
Disciplinary or Professional Governing Body.....	14
Making a Civil Claim.....	15
• Independent Legal Advice Program.....	17
• Myth vs. Reality	18
• Restorative Justice.....	22
• Doing What is Best for You.....	23

What is Sexual Assault?

Sexual assault is **any unwanted physical contact of a sexual nature or in a sexual situation, done on purpose without your permission (consent)**. It includes attempts and threats of unwanted sexual conduct. Sexual conduct can be anything from kissing and sexual touching to sexual intercourse.

Anyone, regardless of their race, age, sexual orientation, class, religion, profession, economic status, and/or ability, can be sexually assaulted.

Anyone can commit sexual assault – it does not matter whether you were in a relationship with the person.

Sexual assault is a **criminal offence**. There is no time limit to report sexual assault to the police.

Some examples of sexual assault are:

- Someone kissing you or forcing you to kiss them
- Nonconsensual touching of your genitals, breasts, buttocks, thighs or elsewhere on your body, even if wearing clothes
- Someone forcing or coercing you to masturbate them or yourself
- Forced vaginal sexual intercourse (rape)
- Anal rape
- Any sexual act done to someone who is unconscious
- Taking advantage of a position of trust or authority to get sex
- Threatening to harm you or someone else if you do not agree to any sexual act
- Removing or attempting to remove your clothing

What is Consent?

According to Canadian law, “consent” means freely agreeing or giving permission for something to happen. Under the law consent is voluntary, active, ongoing, and conscious.

- **Voluntary:** Consent must be freely given and not based in fear. Consent is not voluntary where someone coerces, pressures, or threatens you or someone else with violence in order to get you to agree to sex. If someone uses their position of authority or trust in order to get you to agree to sex or sexual touching, this is not consent.
- **Active:** Only a clear “YES” (by words or actions) means YES for each sexual act. Consent must be given at the time of sexual activity. Silence does not mean yes. Consent cannot be assumed or implied. The person doing the touching must take reasonable steps to know the other person consents to every sexual act.
- **Ongoing:** If you agree to have sex with someone or start to have sex with someone, but then change your mind – any sexual contact after you take back your consent can be a sexual assault in law. A person must be capable of giving, refusing, or taking back consent to every sexual act. Even if you are in a relationship with someone and have had sex in the past, it does not mean that you give consent to all sexual contact in the future.
- **Conscious:** If a person is unconscious or extremely impaired so that they are incapacitated by drugs or alcohol, they cannot legally consent to sexual contact. Saying “yes” to sex while you are incapacitated, or unconscious is not consent.

Only you can give consent. No one else can consent to sexual activity for you.

Age of Consent

In Canada, **you must be 16 years old** to be able to give legal consent to sexual activity.

If you are under 16, you can only give consent in specific cases:

Age of the Person Consenting	Age of the Person Initiating Sexual Activity
If you are 14-15 years old	You can legally consent to activity with someone less than 5 years older than you, but not older
If you are 12-13 years old	You can only legally consent to activity with someone less than 2 years older than you, but not older
If you are under 12 years old	Under the law you cannot give consent for sexual activity with anyone.

The rules listed above for consensual sex between young people do not apply where the person initiating sex is **exploiting** the other person. Exploitation is defined next.



Exploitation and the Age of Consent

If there is any “**exploitation**” in the relationship you are in, the age of consent is **18 years old**. This includes situations like:

- The person is in a position of **trust, or authority** over you, like a coach or teacher
- You are **dependent** on the person for important things in your life, like with a family member

A relationship can also be exploitative in other ways, such as through power and control.

If you are under 18 and in an exploitative relationship, even if you say “yes” to sexual activity, the law will not see your consent as valid because of the power imbalance in the relationship. This means the other person may be committing a crime of sexual assault or sexual exploitation.

Other Sexual Offences and the Age of Consent

Sexual assault is one of many sexual offences. Other sexual offences include crimes related to child pornography and buying sexual services.

The age of consent for participating in pornography or sex work is 18 years of age. This means that if you are younger than 18, there is no valid consent, even if you say “yes.”

Getting Support for Yourself

Sexual assault can be traumatic. People experience trauma in unique ways and your response to an assault may be very different from other people. You may have strong emotions, thoughts, physical reactions, or not feel anything. This is all normal.

As you experience the effects of trauma, it is very important to find people who can give you the support you need. If you have just been sexually assaulted, there are some options available to you. You can:

- Call someone you trust, like a friend or family member
- Call your local sexual assault crisis line, where you can get confidential support
- Call the Assaulted women's helpline of Ontario at 1-866-863-0511
- Talk to a counsellor; you can visit www.ocrcc.ca to find a list of Ontario sexual assault centers
- Find a shelter at <https://www.sheltersafe.ca/>
- Call the police to report a sexual assault
- Go to the hospital for medical treatment

Remember, it is important that whatever decisions you make are yours and that you feel emotionally and physically safe.

Legal Options

Many survivors think that calling the police and using the criminal law is the only legal option they have. The truth is that this is just one option. You have other legal choices if you do not want to call the police.

This guide will explain the different options to help you make the best decision for yourself.

1.The Criminal System

It is your choice whether you report the sexual assault to the police. If you report the sexual assault, you will be engaging the **criminal system**. This is the only path which can lead to the person who assaulted you going to jail.

The criminal system focuses on the person who is charged with committing a crime (the "**accused**"). The survivor or the "victim" of crime who made a report to the police is called the "**complainant**." The system does not focus as much on the needs of the complainant. This can be very frustrating for survivors, who are not always informed about what is happening and who may feel as though they are being ignored.

The criminal court's goal is to determine the guilt or innocence of the person who is accused of sexual assault. The government lawyer responsible for proving that the accused is guilty in Court is called "Crown Counsel," the "Crown Attorney" or the "Crown."

The Crown represents the government, not the survivor. The accused's lawyer is called "Defence Counsel."

If you have the means, you have the right to hire your own lawyer to provide you with independent legal advice as the complainant.

If you decide to use the criminal system, the first step is to call the police. Sexual assault is a criminal offence and criminal charges are laid by the police, not by the survivor. The survivor is considered a witness to the crime.

There is no time limit for reporting sexual assault, but the sooner you report, the easier it might be for the police to gather evidence.

Tips for Making a Complaint

- The police will ask you to describe what happened by asking questions.
- If you need to take breaks while talking to the police, ask for them.
- If you are reporting a sexual assault that happened a long time ago, you may find it helpful to write down some notes about what happened before you go to the police so you do not lose track of what you want to tell them. However, if you have these notes in the interview, they may be disclosed to the accused and you can be cross examined on their content at trial.
- The police will take notes or videotape what you say to them. This is your **'statement.'**
- The police may ask you to swear an oath or affirm to tell the truth. In addition, they may read you a 'caution' to you before you make a statement, warning you that you could be criminally charged for lying or making a false statement.
- Get the division number, names and badge numbers of the officers who interviewed you, so you can follow up with them about the outcome of your complaint.

The police should listen to what you tell them.

The police may investigate further. They will then decide about whether to lay a criminal charge. Legally, they can only lay a charge if they believe there are reasonable grounds to believe a crime was committed.

After charges are laid, the file will go to the **Crown Attorney**, who will prepare the legal case against the accused person. This can be a very long process. A criminal matter can take one to three years to complete. It can even be longer if there is an appeal.

Because sexual assault is a criminal offence, the court must be convinced **"beyond a reasonable doubt"** that the accused committed the crime. Although this term is difficult to define, it basically means that there can be no other reasonable

explanation than that the accused committed the offence. The accused does not have to prove they did not commit the offence. Instead the Crown must prove that they did commit it beyond a reasonable doubt.

This can mean that the survivor's story and credibility is questioned more than the accused. You will need to be prepared to say what happened to you in detail and at different times of this process. You will be cross examined. This can be hard to experience.

Possible Outcomes:

- The Crown may decide to withdraw the charges without going to trial. This could be for many reasons. Some include:
 - The Crown decides that it is not in the public interest to proceed (for example, if the assault is minor, the accused has no criminal record and has completed counselling);
 - The complainant does not wish to testify at trial, or the Crown likely cannot prove its case.

If the charges are withdrawn, the Crown may ask that the accused enter into a **peace bond** so that they cannot have contact with the victim for a period of time (often one year).

- The accused can decide to plead guilty. You may be asked for a victim impact statement. Depending on the seriousness of the assault, the sentence can include jail time.
- If the matter goes to trial:
 - It is possible that there could be a mistrial. This is decided by the judge when there are concerns about unfairness in the trial.

- The Crown can decide to withdraw the charges based on your testimony or other issues that might arise.
- If the trial finishes, there will be a verdict of guilty or not guilty.
 - If the accused is found not guilty after a trial, the case is over. Any conditions imposed (such as a requirement that they stay away from you) are no longer in place.
 - If they are found guilty, the trial moves into a separate hearing to decide on the penalty. This is called a sentencing hearing.
- After trial, it is possible that the Crown or defence may bring an appeal. If the appeal is successful, and the matter proceeds to trial again, you will be asked to testify again.

For more information on the criminal trial process, visit **Sexual Assault: The Criminal Trial** on www.owjn.org.



2. Human Rights Complaint

Sexual assault is not only a criminal offence. It is also a form of **sexual harassment**.

Sexual Harassment:

A form of discrimination based on your sex. This can be comments, actions or behaviors that are not welcome or that offend or insult you. Harassment is often a pattern of behaviour that occurs over time but can also be a serious one-time incident.

The Ontario Human Rights Code protects people in Ontario against discrimination at work, in housing, receiving goods, services and facilities, and membership in associations and trade unions. Some examples are:

- Schools
- Hospitals
- Membership in professional association such as the Law Society of Ontario if you are a lawyer or membership in the Ontario Nurses Association

This means that if you were sexually assaulted at work, by a landlord or trying to access a government service, you could make a human rights complaint.

There is a time limit of **one year** from the incident to file an Application.

You do not need a lawyer to make a claim. You can receive free legal help from the Human Rights Legal Support Centre.

Possible Outcomes:

- You could receive money and compensation for losses due to injury, lost wages, or damage to property
- You could be reinstated to a former job, or require someone to give a service
- There could be public interest remedies for systemic change – for example, implement a workplace training or develop a new policy

For help and more information about the human rights process, contact the **Human Rights Legal Support Centre**
Toll Free: **1-866-625-5179**
or TTY Toll Free: **1-866-612-8627**

3. Victim Quick Response Program +

The Victim Quick Response Program + (VQRP+) is a new program that was created in the fall of 2019. It replaces the Criminal Injuries Compensation Board, which no longer exists.

The VQRP+ is designed to provide quick financial support to victims of violent crime in Ontario.

In order to qualify:

- The crime must have happened in Ontario; and
 - There must be a direct link between the crime and the expense;
 - There must be no available public funded service that can meet the same need (e.g. crime scene clean up, travel expenses to access medical treatment, immediate short term counselling);
 - There needs to be some report or disclosure of the crime, such as, to police, a domestic violence or sexual assault shelter or centre, or a hospital.

For more information about eligibility and the application process, go to: <https://www.ontario.ca/page/get-help-if-you-are-experiencing-violence#section-8>

4. Disciplinary or Professional Governing Body

Many jobs have organizations that are in charge of the people who work in that profession. They have strict rules that the professionals must follow if they want to keep their licenses to do those jobs. Sometimes you can report a sexual assault to the disciplinary committee or professional body who set the rules for the profession of the offender.

To determine if this is an option for you, consider:

- Where does the offender work?
Some jobs have licensing bodies, like doctors, teachers, lawyers, nurses, among others.
- Do you work somewhere together?
If so, you might have a union or a workplace complaint procedure.
- Do you go to school together? Your campus is required by law to have a policy for sexual violence.

These organizations have complaint processes for people to report inappropriate behaviour by the professional, and committees that investigate the claims and decide if the professional should be allowed to keep working.

Each situation will have different options based on the responsible governing body.

Reporting to disciplinary or professional governing bodies will require you to show proof that the sexual assault happened. This process can be slow and confusing at times. There is usually a hearing where both sides will tell their side of the story of what happened. If there is a hearing, you will likely be cross examined. You might be asked to mediate with the perpetrator.

It is a good idea to get legal advice from a lawyer or your community legal clinic to better understand your rights and options.

5. Making a Civil Claim

If you are sexually assaulted, another option is to consider suing the offender in civil court. The civil system is different from the criminal system in many ways:

- A civil suit is a private action between you and the person who harmed you. There is no time limit to bring a civil action against your assaulter. You can do this even if there is a criminal case against the perpetrator, or even if the criminal case did not find them guilty.
- The “burden of proof” is lower than for a criminal trial.

You need to prove your case on a **“balance of probabilities.”** This means that it is more likely than not that the sexual assault happened. This is how it is sometimes possible for an accused to be found not guilty in a criminal case, but to lose a civil suit.

In the civil suit, you have more control over the process. You have control over how you want to continue, whether you want to settle the case, and whether to appeal if you lose.

However, civil cases can be **very expensive**.

If you have experienced abuse at an institution, such as being sexually assaulted by an employee of a church or school, you may also have a complaint against the institution for not preventing the abuse, in addition to the abuser. Some lawyers take institutional claims of sexual assault on contingency. This means that the lawyer is confident about your case and will only get paid their fees from your award for damages if you are successful.

Civil cases can also take a long time to complete. It is not unusual for people to have cases in the court for 1-2 years or more.

It is important to talk to a lawyer about representing you in court. It is also important to keep in mind that during this time, you may have to see the person who harmed you. This can be very difficult.

Possible Outcomes:

The court may order the assaulter to compensate you for harms and costs you suffered, including “physical and emotional” harm. This is called **“damages.”**

- The court may also order the other party to pay your legal costs. However, it is unlikely that the amount the court orders in costs will cover what you paid your lawyer.

A civil suit only makes sense if you are suing someone who will be able to pay the damages if you win your case. Before you bring a civil suit, you should consider whether it will be financially worth your while to do so.



Independent Legal Advice Program

It can be hard to come to a decision about what legal option to take. If you are looking for advice on what to do, you can see if you are eligible to speak to a lawyer at the Independent Legal Advice Program, a program run by the Ontario Ministry of the Attorney General.

The program provides survivors of sexual assault up to **4 hours of free independent legal advice** in Ontario (in person or by telephone). You get a list of lawyers who participate in the program. Lawyers in this program can only give legal advice. They cannot represent you in Court.

You can use this program if:

- You are a woman, man, trans or gender-diverse person;
- You are at least 16 years old;
- The sexual assault happened in Ontario;

The service is confidential (private) and there is no time limit for using the service – it is available to you any time after the assault happened. Survivors in all income brackets are eligible.

To access this program, you need to contact the Barbra Schlifer Commemorative Clinic by either: Telephone: 1-855-226-3904 or Email the clinic at <https://www.schliferclinic.com/contact-us/>

For more information about the program visit here: <https://www.ontario.ca/page/independent-legal-advice-survivors-sexual-assault>

To find out more about this program, read the OWJN article **Ontario Government Program on Legal Advice for Survivors of Sexual Assault Program**.

MYTH vs REALITY

Many people, including people who work in the legal system, still believe many myths and stereotypes about sexual assault. As a result, sexual assault is one of the most underreported crimes. It is important to be able to recognize when people are using these myths and stereotypes and to speak out against them.

Myth: Sexual assault usually happens in unfamiliar places.

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Myth: Sexual assault usually committed by strangers.

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Myth: It is your fault if you are assaulted because of the way you dressed or behaved.

.....

Myth: I was drunk or high, so it was not sexual assault.

.....

Myth: I did not scream or fight back, so it was not sexual assault.

.....

Myth: If I do not report it to the police, it was not sexual assault.

Reality: Most sexual assaults happen in private places such as residence rooms or houses¹.

.....

Reality: About 83% of victims know the person who assaulted them². These people may be acquaintances, dates, or intimate partners.

.....

Reality: No one asks to be violated. Unfortunately, some people, including police officers, continue to treat sexual assault survivors with disrespect if they feel the person's actions or inactions led to the sexual assault (e.g. "She was asking for it"). The clothes you were wearing do not matter in the law. It is never your fault.

.....

Reality: If you were unconscious or unable to agree to the sexual contact because you were impaired, you did not legally consent.

.....

Reality: Victims of many crimes can become unable to react out of fear or incapacitated due to the drugs or alcohol. Legally, consent cannot be assumed by a failure to fight back.

.....

Reality: Reporting to the police is your decision. Less than 1 of 10 victims report sexual assault to police³. You do not have to report if you are not comfortable. This does not mean that the sexual assault did not happen.

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1. JustFacts, Sexual Assault, April 2019, Statistics Canada, Available at: <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2019/apr01.html>

2. Brennan & Taylor-Butts, Sexual Assault, 13.

3. Ibid at 8.

Myth: He was drunk, so he did not know what he was doing.

.....

Myth: Someone who has had sex with a lot of different people cannot be sexually assaulted.

.....

Myth: Elderly people and people with disabilities do not get sexually assaulted.

.....

Myth: People cannot be sexually assaulted by someone they are in a relationship with.

.....

Myth: If it really happened, the survivor would be able to easily remember all the facts and in the proper order.

.....

Myth: Sex workers cannot be sexually assaulted because of the kind of work they do.

Reality: Being drunk is not a valid defence for sexual assault and does not make it okay.

Reality: If a person has consented to sexual activity in the past with others, it does not mean that they cannot be sexually assaulted. Consent must be active and ongoing. It can also be taken back at any point.

Reality: Sexual assault does not discriminate based on age, race, religion, sexual orientation, profession, class, gender identity/expression and/or ability. People with disabilities are victims of sexual assault twice as much as people without disabilities⁴.

Reality: Sexual assault can happen in intimate relationships. It does not matter how well you know someone, if you do not want to have sexual contact with them and they make you, it is sexual assault.

Reality: Shock, fear, embarrassment, distress and alcohol or drugs can all make it hard to remember events. Attempting to minimize or forget the details of the assault is also a way to cope with trauma. Just because someone cannot recall all the details of the event does not mean sexual assault did not happen.

Reality: Anyone can be sexually assaulted, regardless of their profession, clothing, or anything else. Sex workers can face real barriers in reporting assault because of attitudes towards their work. If you are in this situation, you can look for help from community organizations to provide you with support.

1.
2.
3.
4. <https://www.rapevictimadvocates.org/what-you-need-to-know/myths-and-facts/>

Restorative Justice

Restorative justice is a system of criminal justice that focuses on community healing and rehabilitation as opposed to a system based in punishment. It is based in Indigenous understandings of justice. Restorative justice focuses on the harms experienced by survivors and the personal accountability of the offender.

A restorative justice approach to sexual assault cases in a criminal court might involve a sentencing circle. In a sentencing circle, the offender, survivor, Crown, defence counsel and judge all participate. In addition, the offender and/or survivor's family or close friends might be present. There may also be a police or probation officer. If the offender or survivor is Indigenous, an elder might be present.

In the circle, the offender listens to the impact and harms of the assault. The survivor may speak directly to their abuser without being cross examined by defence counsel. The offender may also speak. The goal is for the offender to hear from their community about the impacts of their actions so that they may be more accountable and have insight into the harms they have caused.

Sentencing circles and restorative justice approaches to addressing sexual assault are very rare in the criminal justice system. If you have made a criminal complaint and are interested in going through a restorative justice approach, you should seek your own legal advice and consider hiring your own lawyer to advocate with the Crown Attorney on your behalf. Further, the accused person must agree to participate and must be willing to take responsibility.

Doing What is Best for You

No matter what path you choose, the legal system can be a difficult and frustrating place for survivors of sexual assault. It is important that you check in with yourself and consider what you hope to achieve – for example, if you are looking to gain money for your losses or if you are looking for a criminal punishment. Consider the expense and length of the process and the effect this might have on your emotional well being.

Remember that in all cases, you have the right to be informed and the right to be consulted on any decisions made for you.

You have the right to hire a lawyer. If you are working with a lawyer, you can ask for updates on a regular basis. Where possible, you can assert your own control over what is shared with you and what happens with the case.

Resources

The following is a small sampling of the resources and services available across Ontario to assist you if you have experienced a sexual assault and are looking for support.

Crisis Services:

Assaulted Women's Helpline

1-866-863-0511

1-866-863-7868 (TTY)

#SAFE (cell phone)

In Ontario, you can visit the Ontario Coalition of Rape Crisis Centres website (www.ocrcc.ca) to find the closest crisis centre.

Femaide (French crisis line):

1-877-336-2433 or 1-866-860-7082

Legal Services:

Legal Aid Ontario

1-800-668-8258,

TTY 1-866-641-8867

Toronto: 416-979-1446 (accepts collect calls)

Toronto TTY: 416-598-8867

Lawyer Referral Service of the Law Society of Ontario

www.findlegalhelp.ca

416-947-5255 or 1-855-947-5255

Barbra Schlifer Commemorative Clinic

Toronto: 416-323-9149 x 278 (legal intake)

TTY: 416-323-1361

Further Resources:

<http://owjn.org/getting-support/>

Disclaimer: This is general information only. If you need legal advice, you should contact a lawyer.

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