

NO MEANS NO



Understanding Consent to Sexual Activity



Public Legal Education
and Information Service
of New Brunswick

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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 booklet provides general information on what is meant by the age of consent to sexual activity and an overview of some of Canada's laws on sexual assault and other offences involving sexual exploitation of children. This booklet 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. 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. For example, even if a 14 year old agreed to sexual activity with her/his 19 year old basketball coach, the law does not consider that the consent was freely given.

Important: The law also says that children under 12 years of age 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. Your consent must be on-going. In other words, you can take back your 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 high on drugs and unable to make a decision, the law does not consider that you consented. You must be conscious to give consent.

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 carelessly or on purpose ignored that you were not consenting;
- he or she was drunk or high at the time; or
- you were drunk or high at the time.

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

No. The police can charge anyone who forces sexual activity on you with sexual assault. 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 online?

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” (see definition on page 5) into a meeting for the purpose of sexual activity, a court would determine exploitation by considering how old you are, the age difference between you and the person accused of the crime, the nature of the relationship between the two of you, and the amount of control or influence that he or she 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. Grabbing someone's breast or having 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 rape. 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 person does not physically hurt you. The law recognizes a range of offences and punishments.

Sexual assault with a weapon or threats to a third party is forced sexual activity where the person 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 person physically injures you. “Bodily harm” means any injury that affects your health and comfort and is more than temporary or minor in nature.

Aggravated sexual assault is forced sexual activity where the person seriously injures you. An injury is serious when the person wounds, 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 inviting a child under the age of 16 to touch directly or indirectly, the body of any other person.

Sexual interference is touching a child under the age of 16, whether directly or indirectly, for a sexual purpose.

Providing sexually explicit material to a child is “grooming” a child using pornography in order to commit a sexual offence.

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.

Sexual Exploitation: The law considers it to be sexual exploitation for anyone in a position of trust or authority over a young person, to engage in sexual activity with them. This includes a person on whom the young person is dependent. A young person is a person 16 years of age or more, but under 18 years. The courts would determine exploitation by the wrongful conduct of the person in the position of trust 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.

Publication of Intimate Images without Consent: It is an offence for someone to knowingly post, distribute, sell or make available an intimate image, film, or recording of another person without that person’s consent. An intimate image is a picture or video of a person who is nude, partially nude, or engaged in sexual activity. The photos can be of a child or an adult. Even if the individual consented to the pictures or videos, it is an offence to distribute them if the individual had a reasonable expectation of privacy at the time they were taken.

Your Rights as A Victim of Sexual Assault

If the person who sexually assaulted me is charged, will I have to go to court?

If a person is charged with an offence he or she would be called the “accused” and would have to enter a “plea”. If the plea is “not guilty” then you may have to testify about 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 tell you about the special supports and assistance to help victims of sexual

offences when they testify. They will also tell you about other services and programs for victims such as counseling and crime compensation.

Can the defence lawyer get copies of my counseling or medical records and ask me questions?

Only if the judge decides this information has something to do with the case. A judge would hold hearings to decide whether the defence lawyer can have the records. You can have a lawyer represent you at any hearing about your third-party records and make arguments to the judge if you do not want the accused to have them. 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. Your past sexual activities with anyone other than the accused would not be considered relevant to the issue of consent for this particular offence. 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 put out 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 a person is found guilty?

When a person is found guilty, he or she is referred to as the “offender” and 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 which can be filed with the court when the accused person has been found guilty. (See the pamphlet *Victim Impact Program*). The judge must consider your statement, among other things, in deciding on the sentence. If you wish, you can ask to read your statement aloud at the sentencing hearing.

What type of sentence might an offender get?

The punishments for sexual assault and sexual offences may range from a fine, to life in prison. The judge can also give a suspended sentence or probation. Convictions for child exploitation offences carry a mandatory minimum sentence.

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 message that it would send to others in the community about society’s disapproval of the crime (general deterrence).

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.

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.

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.

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 get information, check out the resources below.

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:

- *You are not alone: Tips for Teen Victims*
- *Services for Victims of Crime*
- *Being a Witness*
- *Victim Impact Program*
- *Vulnerable Victims of Crime: Making it Easier to Testify*
- *Picture this... a guide to the Criminal Justice System*
- *Internet Safety: Tips for Teens*

Check our website at:

www.legal-info-legale.nb.ca or email pleisnb@web.ca to order copies.

You can get more information on support and services for victims of sexual assault from your provincial **Victim Services Office**. And check out the **Directory of Services for Victims of Abuse**.

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

Fredericton Sexual Assault Centre
24 Hour Crisis Line:
506-454-0437

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

Chimo Help Line
1-800-667-5005
or
Kids Help Phone:
1-800-668-6868