

SEXUAL VIOLENCE

The Criminal Code of Canada and Sexual Assault

In Canada, the Criminal Code defines sexual assault as: “any unwanted sexual act done by one person to another or sexual activity without one person’s consent or voluntary agreement” (Department of Justice, 2010). The Criminal Code further details the crime of sexual assault in levels as they relate to the degree of force used in the sexual assault.

The following is a simplified description of the offenses (taken from Part VIII, Criminal Code of Canada):

Section 271: Sexual assault occurs if a person is touched in any way that interferes with their sexual integrity: this includes kissing, touching, intercourse and any other sexual activity without his/her consent.

Section 272: Sexual assault with a weapon, threats to a third party or causing bodily harm occurs if a person is sexually assaulted by someone who has a weapon or imitation weapon and threatens to use it; the offender threatens to harm a third person, a child or a friend if the person does not consent to a sexual act; the offender causes harm to the person; or more than one offender assaults the person in the same incident.

Section 273: Aggravated sexual assault occurs if the person assaulted is wounded, maimed, disfigured, beaten or in danger of losing her/his life while being sexually assaulted.

Some laws focus on age. These laws were not created to stop teenagers from sexual activity, but to protect them from being taken advantage of by someone older or with more power. “Consent” is when you agree to a sexual activity with someone else. However, there are certain situations when someone cannot legally give consent:

- Anyone who is 12 or 13 cannot legally consent to sexual activity with someone who is more than 2 years older.
- Anyone who is 14 or 15 cannot legally consent to sexual activity with someone who is more than 5 years older.
- Anyone who is 17 and younger cannot consent to someone who is in a position of trust or authority (coach, teacher)
- Consent cannot be given if the person is pressured into sexual activity with violence, weapons, or threats.
- If someone is drunk or high, they cannot give legal consent. For example, if someone passes out due to drinking it is illegal to have sex with them. This is an extreme example of being too impaired

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to consent. It is important to know that one does not have to be unconscious to be too impaired to consent. If a person is incapacitated by drug or alcohol ingestion, it is illegal to have sex with them, touch them in a sexual way or take sexual pictures of them.

- If someone is unconscious (for any reason) they cannot give legal consent to sexual activity.

It is important to know that saying 'no' is not the only way people resist unwanted sexual advances. Some people stay quiet during the assault because they are scared that the offender might hurt them even more if they yell, or some people 'zone out'/dissociate and imagine they are somewhere else or not in their body in order to make the assault less scary.

Laws Prior to 1983:

Before Canadian laws changed in 1983 with the passing of Bill C52, rape was defined at the time in Section 143 of the Criminal Code as:

- A male person commits rape when he has sexual intercourse with a female person, who is not his wife, without her consent, or with her consent if the consent is extorted by threats or fear of bodily harm,
- Is obtained by personating her husband, or
- Is obtained by false and fraudulent representations as to the nature and quality of the act.

What is the significance of Bill C52?

- Changes the term from rape to sexual assault—focus on violence rather than sex.
- Other forms of sexual activity beyond penile/vaginal sexual intercourse are included.
- Tiers of sexual assault changed to parallel existing 'assault' offences—level 1, 2, 3.
- Abolished spousal immunity.
- Limited admissibility of past sexual history of victim.

For more information on sexual assault laws in Canada, see Criminal Code at: <http://laws.justice.gc.ca/en/C-46/>

*Information referenced from AASAS First Responder to Sexual Assault & Abuse Training book; module 5, page 4.