



VESTA
Social Innovation
Technologies

YOUR RIGHTS

A Sexual Violence Survivor's Handbook



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A User-Friendly Guide for People Who Experienced Sexual Violence

Volume 1: Sexual Violence & Reporting

TABLE OF CONTENTS

1	What Is Sexual Violence?
3	What About Consent?
5	Myths & Facts About Sexual Violence
7	How Do I Tell Family, Friends or My Employer?
9	What Are My Options?
10	Barriers to Reporting
13	Reporting – When, Where & How
20	Court Proceedings
26	Pre-Trial Proceedings
34	The Criminal Trial
40	Conclusion
41	Where Can I Go For Help?
47	Glossary
52	Index

What Is Sexual Violence?

Under the Criminal Code (R.S.C., 1985, c. C-46 (Canada))

What Is Sexual Assault?

Sexual assault is any non-consensual sexual activity, such as unwanted sexual grabbing, kissing, fondling as well as rape.

Sexual assault can be experienced by any gender, within domestic partnerships, friendships or with strangers. A common misconception is that sex workers can't be assaulted, but assault can happen to anyone such as a sex trade worker by a client. Some examples of what sexual assault looks like includes rape, sexual abuse, sexual harassment, stalking, indecent exposure, degrading sexual imagery, cyber harassment, trafficking or sexual exploitation.

Examples of What Real Life Sexual Assault Can Look Like

“My husband wants to have sex when he comes home drunk, I tell him I'm not in the mood, but he pressures me anyway. He doesn't remember what he's done in the morning, so I don't make a big deal out of it.”

“When I was underage, my babysitter asked if I wanted to practice kissing.”

“I was working as an escort and one of my clients forced himself onto me. Even though I said no he said he thought I was just playing along to the role play.”

“I play for a college basketball team, when the coach is alone with me, he grabs me in places that make me uncomfortable. He always waits until I am alone.”

Examples of What Real Life Sexual Harassment Can Look Like

“At work, people comment on my sexual orientation and ask me inappropriate questions about what sex is like for me.”

“A friend of mine went through my phone and sent himself explicit photos of myself without my knowledge or consent.”

Sexual Assault

271 Everyone who commits a sexual assault is guilty of

(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

R.S., 1985, c. C-46, s. 271, - R.S., 1985, c. 19 (3rd Supp.), s. 10 - 1994, c. 44, s. 19 - 2012, c. 1, s. 25 - 2015, c. 23, s. 14

How Are These Experiences Defined in Canada?

Below are some definitions that can help identify how these experiences are defined in Canada and the criminal code. This definition may vary in other countries like the **United Kingdom, United States** and **Australia**. Please connect with local support if you are outside of Canada.

Rape

Any non-consensual penetration of the vagina or anus with any object or body part. Rape also includes penetration of the mouth with someone's sexual organ without consent.

Sexual Exploitation

When a person in a position of trust or authority uses that power to start or attempt sexual activity with another person. It can be direct or indirect and may include touching, violence, coercion, or the use of threats.

Voyeurism

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.

Cyber Harassment

The use of communication technologies such as the internet, social networking sites, websites, email, and text messaging to repeatedly intimidate or harass others. This can include insulting or threatening emails, posts, spreading embarrassing or private photos online, and blackmailing an individual with private information.

Sexual Harassment

Defined by engaging in a course of unwelcome actions or words that are annoying, distressing or agitating to the person experiencing them. More than one event must take place for there to be a violation, however, depending on the circumstances, one incident could be significant or substantial enough to be sexual harassment.

The most common understanding of sexual harassment is conduct such as making passes, soliciting sexual favours, sexual touching, etc., however the definition of sexual harassment also includes conduct that attack a person's sexuality or conduct that is directed at a person because of their sexuality.

Generally, human rights law clearly recognizes that sexual harassment is often not about sexual desire or interest at all. In fact, it often involves hostility, rejection, and/or bullying of a sexual nature.

What About Consent?

Consent is actively and verbally expressing that you are interested in a sexual activity with someone. You cannot give consent while you are sleeping, or under the influence of drugs or alcohol. Consent can be withdrawn at any time, and you do not need to explain why.

“Consent is freely given, reversible, informed, enthusiastic and specific”.

The law requires that a person take reasonable steps to find out if the other person is consenting. If you did not say yes, it is not consent.

What About Minors?

Generally, the legal age of consent in Canada is 16, however there are varying ages of minority within each province. If you or someone you know is under 18 and experienced any form of sexual violence, it is important to consult local support for help with your specific case.

The information below is a very brief guide to sexual violence as it pertains to individuals who are underage. Experiences involving minors may require additional support. **This guide is meant for information only and does not replace legal advice.**

Sexual Offences Specific to Minors

There are specific offences that only apply to minors. Remember that the definition of minors may vary according to province. The experience of the offences below is considered sexual violence under the Criminal Code of Canada.

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 illegal. This offense can often be a part of the ‘grooming’ process.

**No Means No:
Understanding
Consent to Sexual
Activity**

Source: Public Legal
Education & Information
Service of New Brunswick

What Is Grooming?

Grooming is the start of the sexual abuse process that involves building trust with a child, and the adults around them, in an effort to gain access to and control the child. This is a power play used to reduce the likelihood of the child disclosing details and increasing the likelihood the child will repeatedly return to the offender. Offenders groom adults around the child to make it easier to gain access to the child.

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.

Things to Know if You Are Under 18

In some situations, sexual activity with someone under the age of 18 is illegal. A person under 18 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. Examples of people in positions of power can include teachers, a coach, babysitter, family member, religious leaders, or doctors.

Things to Know if You Are Under 16 in Ontario

There are **2 exceptions** to individuals under 16 who engage in sexual activity with someone close in age.

- A person 14 or 15 years of age can consent to sexual activity with someone less than 5 years older.
- A person 12 or 13 years of age can consent 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.

What if You Are Under 12?

Children under the age of 12 can never legally consent to sexual activity.

Myths & Facts About Sexual Violence

When it comes to sexual violence, can you separate Myths from Facts? Here are some misconceptions and the truth about sexual violence.

MYTH

Many people believe that sexual violence won't happen to them or someone they know, but that's not true.

FACT

It doesn't matter about your social status, race, or background - sexual assault can happen to anyone. However, there are people who are more at risk of experiencing assault: people with disabilities, those who are a part of the LGBTQ+ community, especially those who are trans. Some people, believe that sexual violence is committed by strangers, but again, most sexual assaults (**82%**) are committed by someone you know and trust.

MYTH

Another myth is that sexual assaults happen in public, and in dark alleys.

FACT

Most often, assaults happen in homes and private places.

MYTH

Some people believe that if someone is passed out (from drugs, alcohol, etc.) it is okay to have sex with that person.

FACT

If anyone is unconscious or incapable of consenting due to the use of alcohol or drugs, they can't legally give consent. Without consent, it is sexual assault.

MYTH

If the act of rape did not occur, this means it wasn't sexual violence.

FACT

Any unwanted sexual contact is considered to be sexual violence. A survivor can be severely affected by all forms of sexual violence, including unwanted fondling, rubbing, kissing, or other sexual acts. Many forms of sexual violence involve no physical contact, such as stalking or distributing intimate visual recordings. All of these acts are serious and can be damaging.

MYTH

If there is no physical harm on the victim, then it was not sexual assault.

FACT

Lack of physical injury does not mean that the person did not use threat by a weapon or other coercive actions that don't leave physical harm, but psychological ones.

MYTH

If an individual did not scream or fight back, this means that they have given consent.

FACT

Being afraid or paralyzed with fear is most likely the reason. Often people believe that the perpetrator will become more violent if you struggle, and if you are under any influence, this may also prevent resisting. There is a widely held belief that if someone is not crying or visibly upset, then it's not a big deal. The fact is, each person responds to trauma differently. They may cry or stay calm. They may be silent or get very angry. Their behaviour is not an indicator of their experience. It is important not to judge anyone by how they respond to the assault.

MYTH

Some believe that if the assault was not reported, it does not constitute as sexual assault.

FACT

A sexual assault is a sexual assault, and only **10%** of known occurrences are reported to the police. People sometimes think that women make up stories and tell lies about sexual violence, but the number of false reports for sexual assaults are very low and consistent with the number of false reports for other crimes in Canada. Sexual assault carries such a stigma that many women prefer not to report for fear of being revictimized.

MYTH

If someone cannot give chronological details, or if there are gaps in the telling of the sexual violence, then it did not occur.

FACT

Often shock, fear, embarrassment, and distress can impair memory. Many survivors attempt to minimize or forget the details of their assault as a way of coping with trauma. Memory loss is also common when alcohol and/or drugs are involved.

MYTH

Those with disabilities do not experience sexual assault.

FACT

People with disabilities are at a high risk of experiencing sexual violence or assault. In fact, they are twice as likely to be assaulted than able-bodied people.

MYTH

You can't sexually assault your spouse because you're in a relationship.

FACT

Sexual assault can occur in a married or other intimate partner relationship; a partner still needs consent to engage in any and all sexual activities. [Learn more about Intimate Partner Violence.](#)

How Do I Tell My Family, Friends & Place of Employment That I Have Been a Victim of a Crime?

What Should I Say to My Employer or Family and Friends?

Your story is always up to you. You decide how much detail you want to give about your story. Just because someone asks questions doesn't mean you have to answer them.

For an Employer

You might say:

- “I would like to disclose some personal information, can you confirm it will be kept confidential? I have been sexually assaulted and may be called to testified in court during work hours. I would rather not go into details at this time. Can I count on your support?”
- Or, “I have been sexually assaulted”. . . *choose what you want to disclose* . . . “Can I count on your support and discretion?”

For Family & Friends

You may want to tell all of your family at the same time or choose the person you feel most comfortable with and tell them first to get their support. You may want to disclose everything or only some details.

You might say:

- “This is hard for me to say, and it might be difficult for you to hear, but I want you to know that I've been sexually assaulted, and I need your support.” *Tell your story*
- Or, “I don't feel comfortable telling you all the details right now, but I want you to know I've been sexually assaulted and can really use your support right now.”

Who Might You Tell if You Don't Have or Don't Want to Talk to Family or Friends?

Before disclosing a sexual assault to someone, it is important to consider if you can trust the person. Here are some ways you can tell:

- They're easy to talk to.
- You feel safe with them.
- They treat you respectfully.
- They do what they say they are going to do.
- They have helped you in the past.
- They show they care for you.

Also, think about whether this individual is likely to respond in a supportive way. Are they likely to believe you? Can they be someone who provides you with emotional support?

Do they know the perpetrator? That may impact how they respond to your disclosure.

Some Helpful Videos

- [Signal for Help](#)
- [Telling Your Partner of Your Sexual Assault](#)
- [When to Tell a New Relationship About Your Abuse, Assault](#)



What Are My Options? What Can I Do After the Abuse Happened?

How to Get Help Disclosing Your Story

If you aren't sure how to disclose your story to your family, or you want support after telling someone and they didn't believe you, there is help available.

Here Are Some Options:

- You can speak to a therapist through online therapy.
- Call the National Sexual Assault Hotline. Call **1-800-656-HOPE (4673)** and talk to someone who is trained to help individuals deal with sexual assault.
- Chat online with RAINN. Go to online.rainn.org, and chat with a trained individual who can help.

How to Deal With Unsupportive Responses


It would be wonderful if everyone supports you when you disclose that you were sexually assaulted. Unfortunately, not everyone is going to respond in a helpful way.

They may ask questions or provide comments that aren't helpful such as:

- What were you wearing?
- What did you do to try to stop it from happening?
- Why didn't you tell me sooner?
- I don't think that really happened.

If the person you disclose it to responds in such a judgmental or unhelpful manner, remember that it's not your fault. **You are not alone.**

Also, just because someone isn't supportive doesn't mean that everyone else in your life will respond the same way.



**Should You Tell
People You
Were Sexually
Assaulted?**

Source:
[verywellmind.com](https://www.verywellmind.com)

Barriers to Reporting

Deciding to report sexual violence may not be an easy decision.

Below are some barriers to reporting as identified by survivors for you to consider so that you are prepared to make an informed decision.

1. Beliefs About the Justice System

Some biases are implicit, others are explicit, but all biases such as those relating to gender, race and sexual orientation affects how the legal system may respond to different groups. These varying responses can result in unfortunate outcomes such as consequences for perpetrators and the types of solutions available to survivors.

2. Legal System Employees' Attitude

Even though there are many employees who are exceptionally helpful, some police, lawyers and other legal system employees have been seen abusing their power and perpetuating myths and stereotypes. This does not need to become a reason not to report, just something to be aware of so that you can be prepared to self advocate or bring someone with you who can help advocate for you.

In Canada...



Almost 90% of sexual assaults are perpetrated against women.

Rainn



Approximately 5% are reported to police.

Canadian Women's Foundation



Only 11% of the cases reported eventually lead to a conviction.

Statistics Canada

3. Personal Repercussions of Reporting

There may be personal risks to consider such as retaliation by the perpetrator, privacy violations, impacts on financial security and employment, and a range of unwanted legal and other ramifications.

In order to mitigate these risks it is important to protect yourself by documenting the events, opening up to someone you can trust and creating a safety plan. Reporting to police may ripple into other areas such as your place of employment, your lifestyle or struggles with mental health, children services becoming involved if you have children or any history with the justice system being brought up. You can prepare yourself and make an informed decision by talking to a lawyer first to understand how reporting your experience may impact other areas of your life.

Retaliation from a perpetrator can impact your finances if you are dependent on the offender, their family or their close social circle. Retaliation can also be abusive; physically, mentally and/or emotionally. If the perpetrator is a professional such as a co-worker or caregiver, retaliation can impact your access to support or your professional life. For these reasons it is important to have a safety plan.

How to Make a Safety Plan

- Where are your safe places? This could be a friend you trust that the perpetrator does not know about or a domestic violence shelter.
- Inform your support network. This can include Human Resources at work, a counsellor, family or friend.
- Come up with a safe word that signals you need help. This is a word you can casually use in a sentence to your children or friend so that they know you may be in trouble.
- Pack a bag. If you are living with the perpetrator or they know where you live, it may be necessary to go somewhere safer. Make sure to pack identification, clothing, money and medication.
- Get your own money. If you are financially dependent on the offender getting your own bank account, applying for social services or getting your own credit card will help you obtain financial freedom.

HELP Tool Kit - Safety Planning

*Source: Department of
Justice Canada*

RAINN Safety Planning

Source: RAINN

Safety Planning For Those Living With Abuse

*Source: VESTA Resource
Library*

4. Criminal Justice System Process

From filing a police report to the trial, there may be demands on time and energy. There is also the concern of psychological impacts such as the risk of re-traumatization.

During a trial you may be asked about past sexual experiences, involvement with the justice system, lifestyle choices or mental health struggles. You may also need to express details of the event that can be re-traumatizing. Prepare yourself for the possibility of a long process as it may take several months to a couple of years from the time you report to the end of the court proceedings and trial.

Some other barriers to reporting may include enduring recurring abuse, stigmas associated with drug and alcohol use, fear of not being believed and a lack of knowledge of the justice system. Despite these barriers survivors have expressed that they decided to report in order to take back their power, protect other women and hold the perpetrators accountable.

Survivor Stories Courtesy of RAINN

Click each box to read different survivor stories. There are resources available to help you with your decision and support you through the process regardless of your decision to report.

L'Tomay

Drew

Nikki & Lisa

We Are Here: Women's Experiences of the Barriers to Reporting Sexual Assault

Source: westcoastleaf.org

Reporting - When, Where & How

First Steps: Deciding if You Want to Report

In Ontario there are specific places, people and practices that support individuals who experience sexual violence. The trauma and stress experienced is valid and the supports in place are meant to provide the most private and respectful process to support you with this experience.

Having said that, we acknowledge that even under the best circumstances, reporting sexual violence may be difficult. **Remember, it is your choice if you want to report or not.** You can still seek/obtain support and counselling for your experience regardless of your decision to report.

Regardless of how you seek justice, your experience of sexual assault is valid. Some people prefer to seek justice in the criminal legal system, but many others don't. Additionally, there are other systems of justice, but they might not be available in your area such as Restorative Justice.

Sexual Assault/Domestic Violence Care Centre (SA/DVCC)

There are **37 hospital clinics across Ontario** that specialize in supporting survivors of sexual assaults and/or domestic violence. They provide emergency services, follow-up health care, counsellors and safety planning to all survivors regardless of gender identity. They also document, take photos and collect evidence if the survivor chooses. If you have experienced any type of sexual assault or domestic violence, you can go to a hospital for support. When you arrive, you will be taken to a private space right away in order to protect your privacy.



Sexual Assault Evidence Kit (SAEK)

You can request that evidence is collected even if you do not want police involved. Evidence can be kept for 6 months before it is destroyed. Physical evidence can be collected within 12 days of the assault, however, there is a greater chance at collecting forensic evidence within 72 hours. This kit is completely voluntary and should you choose to use one, it is recommended that you try not to urinate, shower or wash the clothing worn during the assault prior to collecting evidence. It can take anywhere from 1 to eight hours to complete this process and the duration is dependent on the experience including any injuries sustained. The survivor can take as many breaks as needed throughout this process and can deny having any segment of the kit completed.

Sexual Assault Nurse Examiner (SANE)

There are trained nurses at every SA/DVCC. They are specially trained and may collect evidence from anywhere on your body in addition to a toxicology screening. You can choose to have a support person present during your examination.

Sexual Assault Response Team (SART)

A community based team that coordinates the response to victims of sexual assault. This team can include hospital personnel, advocates, law enforcement and other professionals with a specific interest in assisting victims of sexual assault.

Victim/Witness Assistance Program (VWAP)

Should you choose to report, there are VWAP in or near the court in all 54 court districts in Ontario. The program's staff will help you understand the court process and give you updates on the court case. They will help you communicate your needs to the Crown Attorney and the police. In some cases, they can set up a pre-trial interview with the Crown Attorney. But they cannot discuss the evidence in the case with you.

They can let you know what to expect on your court date, and might give you a tour of the court. They can also ask for a copy of your police statement for you to review before the trial. They can refer you to other services that might offer you support, such as help planning for your safety. Throughout the court process, the staff are also available for emotional support.

When Can I Report?

If you are in immediate danger or fear for your safety, or if the sexual assault just happened, CALL 911*

*for anywhere in Canada or the USA

There are many reasons why people do not report - feeling like no one will believe them, fear of retaliation, mistrust of the legal system or bad experiences with institutions. Many people do not feel safe with Police but no matter what, we all deserve justice and healing. If you are fearful of the Police, but still would like to report, we encourage you to connect with your community, family, friends, counsellor, or a local sexual assault centre so that you don't have to make the report alone.

If you are not in immediate danger, it is okay to take your time and consider your options. **There is no statute of limitations on sexual assault in Canada.** This means that even if a sexual assault happened several years ago, you can still report it to the police. It's okay to wait until you feel ready, even if that takes years. Every person is unique and responds to sexual assault differently, so it is important to make this decision for yourself and according to how you feel.

Remember, you can make your decision with support, and you don't need to do this alone. Professional supports, such as those offered through your local sexual assault support centre, can provide emotional support and guidance in making this decision, including information on your options.

It may also be helpful to consult with a lawyer and connect with a therapist if possible. See the resource section of this guide for more information on professional supports you can access.

When to Report

There are three general ways to report a sexual assault.

Phone the Police

To report a sexual assault, you can call the Police Non-Emergency line. When you call you will reach a dispatch officer, who will send uniform police officers to you. When the police officers arrive, they may offer to take you to the hospital to receive medical attention and have any evidence of the sexual assault on you documented. (As per SART Kit/SART Nurse).

The police officer will start a police report in which she/he gets personal information from you and information about the occurrence. The officer may ask you several things, including the name, address, and physical description of the suspect if you know the person. You will be asked to provide a statement about what happened.

Once the officer has completed his/her report and if there is no imminent safety risk to you, the officer will conclude their initial contact with you. In most cases you will be asked to provide a record statement which will occur at a police station. The investigating officer will make arrangements with you either on the day of reporting or a few days after. These recorded statements allow you the opportunity to share more information with the investigating police officer.

Please note: The factors of the sexual assault will determine who the investigating officer will be. Your file may be forwarded to a divisional detective, a sexual assault detective OR remain with the initial uniform patrol member. You will be kept informed at all times and notified if your file has been forwarded.

Go to a Police Station

You may also report a sexual assault by going to a police station and reporting it to the officer at the desk. At a police station, you may be asked to write a witness statement while the police officer starts a report. You should be aware you may have to write your witness statement sitting at a table in the waiting room, standing at the counter, or in a private room, depending on the station. Your investigation will be turned over to a member working the street, as front counter members do not investigate sexual assaults.

Depending on the time frame between the sexual assault and reporting, you may be asked if you want to attend the hospital for a SART examination. (As per SART Exam/SART Nurse). If you consent to a SART exam, the SART nurse will contact a Sexual Assault Detective. The detective may attend the hospital to take over the investigation.

Depending on the circumstances, the initial investigating division may continue the investigation, or your file may be taken over by the Sexual Assault Section. You will get a copy of your statement and file number for your records.

Go to the Hospital

You may also report a sexual assault to the police by going to a hospital to get examined. At the emergency department of the hospital, tell the triage nurse you have been sexually assaulted and/or you would like to see a **SART (Sexual Assault Response Team) nurse**. SART is a team of female Registered Nurses who have been trained specifically to care for people who have been sexually assaulted. The sooner you go see an SART nurse to collect evidence after an assault, the better. When you can access an SART nurse can vary based on your region. Some regions require you to access this service within 72 hours after the assault, while other regions can treat you within 12 days. SART nurses are available 24 hours a day, and usually arrive within an hour of being called.

To find out how long you have in your area, check out the hospital's website. You can also call the hospital and ask to speak to someone who would know the answer to this.

By asking for an SART nurse, you are not automatically reporting the assault to the police. The SART nurse will ask you if you want to report to the police. If you do not want to report, the SART nurse will provide you with your options which can include a physical and genital exam to assess any injuries that may have occurred. She will also talk with you about sexually transmitted diseases, and for female victims, about pregnancy concerns. The SART nurse will discuss treatment options such as emergency contraception and medicines to combat sexually transmitted diseases. She will also give you information about follow-up medical care.

If you choose not to report to the police, you can still receive medical attention at any hospital.

If you do decide to report to police, the SART nurse will call a detective with the Sexual Assault Division and a police officer will come to the hospital to speak with you. You may speak to a uniform police officer or a Sexual Assault detective who attends in plain clothes. The police officer will ask you what happened and may take a recorded statement while at the hospital. If you are not up to giving a full verbal statement at this time, the police officer will wait a few days to have you come into a police station to give a recorded statement. The police officer will give you her/his card and make arrangements to speak with you again about the sexual assault.

Remember that most of the SANE nurses are female.

Additional Ways to Report

- You can report to your teacher/professor, school office, or any designated reporting person or system for your school.
- You can report to a hospital or clinic staff if you feel it is safe to do so.

Free Independent Legal Advice

Pursuing justice through the legal system can be overwhelming. You are not alone if you feel overwhelmed or confused, as the justice system can be difficult to navigate. Here is a quick list of services that provide free advice to get you started. For additional services, you can visit [the Legal Aid section of our Resource Library](#).

Independent Legal Advice from the Ministry of the Attorney General

If you are a victim of sexual assault living in Ontario, you are at least 16 years old, and would like to speak to a lawyer, you may be eligible for up to four hours of [free legal advice by phone or video conversation](#) (Skype or Zoom). This service does not include legal representation in court. This service is confidential and is available any time after a sexual assault has occurred. Visit the link to apply for this service or call **1-855-226-3904**.

Barbara Schlifer Clinic

If you identify as a woman or non binary you can contact [the Barbara Schlifer Clinic](#) intake line and they will schedule a consultation with a lawyer. You can call the clinic at **416-323-9149 ext. 234**.

Luke's Place

This is [a free Virtual Legal Clinic for Women](#) dealing with abuse and family law issues. For an appointment please call or email them directly at **1-866-516-3116** or Intake@LukesPlace.ca.

Can I Bring Someone With Me?

You may be entitled to bring a support person with you, and although they may not be able to be in the room with you when you make the report, they can wait with you and be there for support afterwards. It can be a trusted friend or family member or more formal support such as a sexual assault centre worker, teacher, counsellor, etc.

What Happens When I Report a Crime?

If you are anywhere in Canada or the USA - CALL: 911

If It's a 911 Call: When the Officer Arrives

- An ambulance will be called if you need one.
- You will be asked to give basic details about what happened.
- Depending on the nature of the sexual assault, you may be asked to consider having a Sexual Assault Evidence Kit done at the hospital.
- You will be provided with contact information for Victim Services if you live in Toronto.
- Your case will be referred to a trained Sexual Assault Investigator.

When the Sexual Assault Investigator Takes the Case

- A suitable place to do a detailed interview will be chosen.
- You will be asked if you would prefer being interviewed by a male or female investigator.
- You will be kept updated on the progress of the investigation.
- You will be told if charges will be laid, if appropriate.
- You will be told of your right to complete a Victim Impact Statement. You may be referred to someone at the Victim Witness Assistance Program.

When Charges Have Been Laid

- Charges will be laid if there is enough evidence to support the investigation.
- Charges may not be laid. This does not mean the police don't believe you. It may mean there is not enough evidence to proceed.
- The case can take several months, or years, to make its way through the court process. You will continue to be supported during this time.
- For more information about the court process, please visit www.courtprep.ca or ask your Victim Witness Assistance Program worker, if one has been assigned to you.

In some situations, the victim will decide if they wish to report the crime to the police or not. In other circumstances, the crime may come to the attention of the police, and they will arrive at the scene of the assault. The actual procedures for reporting a crime vary by jurisdiction, so you should check with your local police. When and if you do report a crime, you may be required to make a statement. If you decide to go to your local police station to report a crime, you may request that the officer taking the report be of a certain gender. If you are uncomfortable at any time, tell the officer or detective, and you may be able to take a break or continue the report at a later time.

Police & Court Procedures

The criminal justice process begins when an offense is committed. If and when the crime is reported, the police usually handle the investigation up to the laying of charges. Once a suspect is apprehended, an information is laid (charges are laid) and the prosecution of the accused may be undertaken by the Crown.

What Is a Statement?

A statement is a written record of your complaint and includes everything that you can remember about the assault. This report will be used by officers conducting the investigation and may be used at a later time during court proceedings.

You may want to record the name and badge number or get the business card of the officer who took your statement so that you can contact them if you remember anything else of significance about the crime.

In most cases, you will be asked to give a brief description of (or sometimes ask to write down) what happened to you to a police officer, or you may ask to speak with someone from the sexual assault division if they have one in your area. The police will take notes and may videotape your conversation. This is your statement. Prior to your statement the police may caution you that you could be charged if you are lying or making a false statement. *This is not because they don't trust you, but because you may be questioned about your statement in court at a later time, and to protect the public from false accusation.*

You must be sure about everything in your statement. **Do not guess about anything - if you don't remember, say so. You can always add later to your statement when you remember.**

Sample Questions

- Your name, address, and contact number.
- The exact time and location where the crime took place.
- Names and addresses of the people involved if you know them.
- A description of each of the people who were involved in the crime - hair color and length, build/weight, height, female or male and race.
- A description of what you saw, witnessed or experienced.
- If a vehicle was involved, the licence plate number, color and type of vehicle and any injuries.

Some questions the police ask may make you feel uncomfortable. You may wonder why they are important but things that do not seem important to you can help police arrest someone.

Completing Your Statement

Police will ask you to read the statement and sign it. Don't sign any statement unless you agree with what is written. Ask for clarification if you are unsure and make changes or add anything that you feel is relevant and missing. You can ask for a copy of your statement to review later. You can also add missing information at a later date when you remember.

A report is then created, and that report or written statement will usually be used to investigate your claim. The goal of the police investigation is to determine if they have enough evidence or proof to be able to lay charges.

Know that if the police decide to lay charges or not is dependent on how much evidence they can gather and doesn't negate what happened to you.

You can set boundaries with your assigned officers on when or how they can contact you. Having a victim services advocate as your liaison between the police and you can be extremely helpful in setting those boundaries and maintaining some control.

Who Sees My Witness Statement?

A copy of the witness statement is usually given only to the Crown attorney and Defence counsel, who can ask questions about your statement at the trial. Defence counsel will likely give a copy of the witness statement to the accused as they prepare for trial.

Some Helpful Resources

- [Sexual Assault: First Steps in the Criminal Process](#)
- [Making a Police Statement - Information for Accused](#)



Restorative Justice

Everyone has different ways of healing; there is no one “right way.” Sometimes we find comfort in those around us, and sometimes we simply find comfort in our own homes. While the obvious solution to seek justice may be to rely on legal institutions such as prisons or courts, that may be difficult for many. Another option you may not be aware of is Restorative Justice.

What Is Restorative Justice?

Restorative justice (RJ) focuses on repairing the harm caused by looking and thinking about crime using a holistic, collaborative, and humanizing approach. It views crime not only as a violation of the law but also of people, relationships, and communities.

RJ can be requested by victims of a crime; however, most programs require the voluntary participation of the offender and that they accept responsibility for their actions. This method of justice holds the offenders responsible for their actions by providing parties affected by the crime an opportunity to address their needs and to seek a resolution that can amend the wrongdoing, preventing further crime, harm, and victimization.

When effectively used, restorative justice can lead to better outcomes for victims and offenders and reduce the number of cases that go to trial.

How Is Restorative Justice Different From Transformative Justice?

Restorative justice is an alternate model of the justice process where victims, communities and offenders affected by an injustice have an opportunity to discuss how they have been impacted and decide what should be done to repair the harm. Within the RJ model, offenders are asked to acknowledge their crime and attempt to atone for it.

While coming from the same background as restorative justice, transformative justice (TJ) seeks to change the larger social structure as well as the personal structure of those involved. Transformative justice wants to inform victims with answers as to why they were victimized, recognizing the wrong that has occurred, providing restitution, and establishing peace.

Both TJ & RJ concepts are essentially reaching for the same goal. Transformative Justice (TJ) is a political framework and approach for responding to violence, harm and abuse. Restorative Justice is an approach focused on repairing harm that's occurred in a community by using techniques that involve all parties; the victim, the offender, their social networks, justice agencies, and the community.

Restorative Justice

Source: VESTA
Resource Library

Is Restorative Justice the Right Choice for You?

As with any decision, it is important to explore which option works for you. Restorative justice can be used with varying programs at multiple stages of the criminal justice process. **Please inform yourself on the options available to you before making a decision, as always it is best to consult a legal professional to fully understand the implications before you make a decision.** Most RJ programs are not equipped to deal with serious cases involving power inequalities, such as domestic violence. Some programs have developed partnerships with appropriate supporting agencies to offer RJ in some of these cases, but that is not the norm.

Many of the programs available through RJ require the voluntary participation of the offender and that they accept responsibility for their actions. Some, but not all programs require the participation of victims. Programs can take place at different stages of the criminal justice process. For example, some programs may require the offender to plead guilty, others may take place after charges have been laid. Some initiatives take place after conviction but before sentencing occurs (pre-sentence programs), while others take place after an offender has been sentenced (post-sentence programs).

The following is a list outlining different types of restorative programs available throughout Canada, as provided by the Correctional Service of Canada Dispute Resolution Unit.

Types of Restorative Justice Programs

Circles

Similar to mediation, but involving community members and/or family in addition to the victim and offender.

Circles of Support and Accountability

Groups of volunteers, often from faith communities, that form a "covenant" with a released high-risk sex offender. The Circle helps provide a healthy environment for the ex-offender by advocating with various systems, dialoging the ex-offender about their attitudes and behaviours, and mediating concerns with the community. The victim's participation is not required.

Community-Assisted Hearings/Releasing Circles

This is available to offenders who are indigenous. This process is similar to a parole hearing in that it occurs within the prison. It differs from a traditional hearing in that all participants, including members of the board, the offender, their parole officer, their support person, aboriginal elders from the community, the hearing assistant and the victims (if they are present), sit in a circle for the purposes of the hearing.

Conferencing

The victim, the offender, their supporters, and community members work toward reparation, facilitated by an independent third party.

Healing Circles

Ceremonies intend to bring conflict to a close. They allow the participants to express their feelings, and indicate that the offender and victim have undergone personal healing.

Peacemaking Circles

Rooted in Aboriginal tradition, this program is based on the belief that the primary responsibility for addressing the problems of crime lies in the community and not just with those directly impacted. These circles focus on trying to uncover underlying problems, and to restore balance.

Sentencing Circles

The victim, offender, family, and community members, meet with a judge, lawyers, police, and others to recommend to the judge what type of sentence an offender should receive. The victim and the community have the opportunity to express themselves, address the offender, and may also take part in developing and implementing a plan relating to the offender's sentence.

Surrogate Victim/Offender Restorative Justice Dialogue

A victim or an offender may choose to meet with someone who committed a similar crime or who was similarly victimized, instead of meeting with the specific offender or victim in his or her case. This has proven beneficial to many victims who want to experience a restorative meeting, but who, for whatever reason, cannot bring themselves to meet the offender in their case.

Victim Offender Mediation Programs (VOMP)

Trained mediators bring victims and offenders together in a safe and structured setting to discuss the crime, its impact, and any agreement to address it. The offender is afforded opportunities to make apologies, provide information and to develop reparative plans and gain insight for personal growth. More indirect variants also exist where there is an exchange of letters or videos between the victim and their offender.

Victim Panels

A group of victims who speak to an offender about the impact that a crime has had on their lives. Victim-offender panels bring together victims with offenders who have committed a similar crime to that which they have experienced.

How to Get Connected to a Restorative Justice Program

Referral to RJ programs in Canada can occur at various entry points within the criminal justice system. These include: **pre-charge** (referral by police), **post-charge** (Crown), **pre-sentence** (courts), **post-sentence** (corrections), or **pre-revocation** (parole).

Accessing Services through the Restorative Opportunities (RO) Program is available to people harmed by the offence requesting to communicate with the offender who caused the harm. Services provided by the RO program are available to registered victims, victim representatives acting on behalf of registered victims, and non-registered victims impacted by the crime.

If you are interested in Restorative Opportunities, you may contact **the Restorative Justice Division** at **1-877-730-9673** or **by email**. You can also call **CSC's Victim Services Division toll-free** at **1-866-806-2275** where the call will be directed to the appropriate Victim Services Officer.

Some Helpful Resources

- [Understanding Transformative Justice and Restorative Justice](#)
- [Restorative Opportunities Program - Correctional Service Canada](#)
- [Getting fair outcomes for victims in Canada's criminal justice system \(PDF\)](#)
- [Restorative Justice - A Worthy Approach](#)
- [Restorative Justice in Canada: What Victims Should Know \(PDF\)](#)



Pre-Trial Proceedings

You will notice that the section below refers to victims rather than survivors. This is because during legal proceedings plaintiffs in sexual violence cases will be referred to as victims.

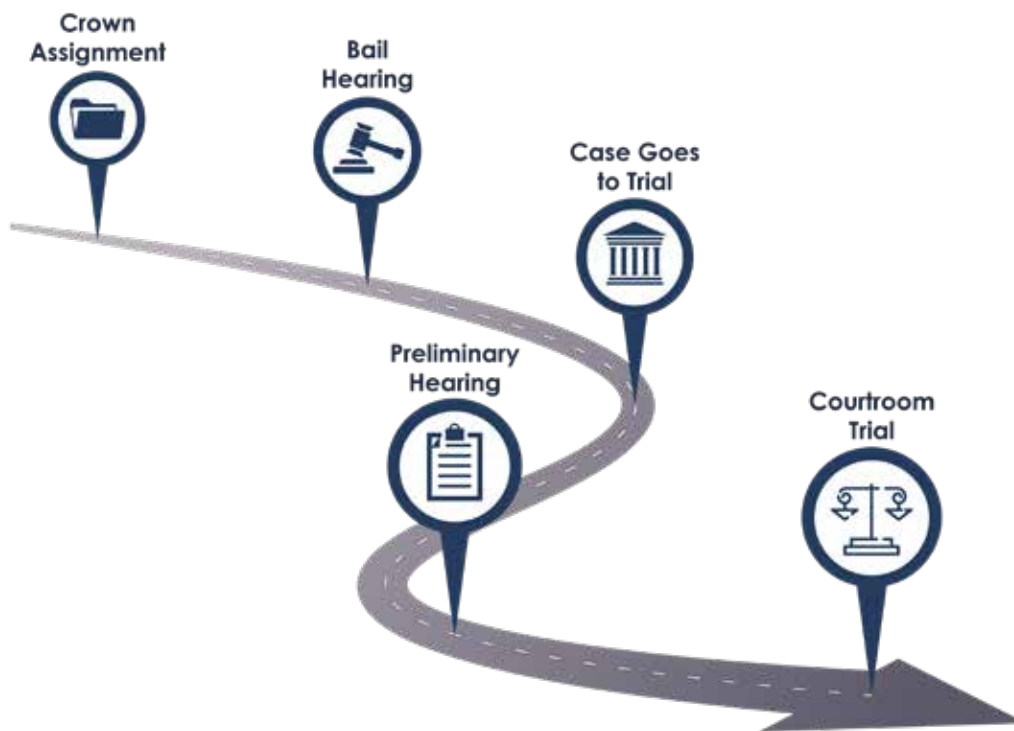
The term “**victim**” focuses on the harm that was caused whereas the term “**survivor**” is often used to describe people who have started or completed their recovery and reclaimed their power despite the trauma and victimization that they experienced. **If the word “victim” does not resonate with you, please know there is nothing wrong with that.**

To learn more about the difference between these terms, visit our blog post [“The Power of Labels: Survivor and Victim.”](#)

When Will a Crown Be Assigned to My Case?

A Crown counsel is the lawyer for the Queen and the government during the trial. In Canadian criminal cases, the harm is perceived to have been committed against the State. The Crown is representing the society, of which you are a part of. **Crown counsel is not and can never function as the victim’s lawyer.**

The Crown counsel will usually be assigned to your case as soon as possible following the laying of charges. In some cases, however, Crowns are not assigned until late in the process. A case may have a couple of different Crowns before it goes to trial.



What's a Bail Hearing? Can Everyone Get Bail? Can the Accused Get Bail at a Later Time if They Were Initially Refused?

A bail hearing is where a Justice of the Peace or Judge determines if a person who is charged should be released or stay in custody until trial. Consideration for bail is a serious issue in Canada, and **the accused is presumed innocent until they have been found guilty in a court of law.**

An arrest doesn't mean that the accused will be found guilty, and bail is often granted in many cases. Generally speaking, the accused will only be detained if they are seen as a flight risk, a threat to public safety, or their release would undermine the confidence in the administration of justice.

It is up to the Crown to make sure that an accused is denied bail. In order to do so they must show just cause (or legally sufficient reason). If the accused has no previous criminal record, the Crown may have to disclose some of the case evidence in order to detain the accused. A bail hearing will generally happen shortly after an arrest. **You may not even be aware of the hearing, but if you are and want to attend, be prepared to hear details of the assault.**

If the accused is refused bail, they may be able to get bail at a later time. He or she can apply to a higher court for a review of the detention order and can do so many times. A bail hearing may also be referred to as a show cause hearing. The Crown must show cause as to why the accused should not be released.

Do All Accused Have a Bail Hearing?

No. An accused may be released by police with an appearance notice, a promise to appear, a recognizance, or a summons without a bail hearing. All of these are agreements that the accused enters into, stating that they will appear in court at a later date. The accused may also waive a bail hearing.

I Am Fearful of the Person Who Is Asking For Bail. What Is the Best Way to Express My Fears to the Court?

If you are afraid of the person who is asking for bail, tell the Crown ahead of time. Arrange for a meeting with the Crown before the bail hearing so that you may communicate your concerns effectively. Your fears must be taken into consideration by the judge or officer of the court when determining if bail should be denied to protect the safety of the public. The police and Crown may ask for a provision in the accused's bail to prohibit him or her from contacting you, either directly or indirectly. If the offender is released on bail, you may want to apply for a peace bond.

A peace bond is a court order under section 810 of the Criminal Code that requires the defendant to "keep the peace" for a certain length of time and to obey any other conditions of the peace bond. A peace bond does not cost anything, and a person can get one without a lawyer. Peace bonds are enforceable by police across Canada and are supervised like a probation order.

What Conditions Can Be Placed on an Accused Released on Bail to Ensure the Safety of the Victim?

The safety of the victims and witnesses to the offence must be a primary consideration in bail decisions. Amendments to the Criminal Code in December 1999 requires:

- That the responsible judicial officer (officer-in-charge, justice of the peace or judge) consider the safety and security of the victim in any decision about an accused's bail.
- Where an accused is released pending trial, the judge will consider including as a condition to bail that the accused abstain from any direct or indirect communication with the victim and any other condition necessary to ensure the safety and security of the victim.
- The particular concerns of the victim will be considered and highlighted in decisions on the imposition of special bail conditions, including firearms prohibitions and in criminal harassment offence.

What Happens if the Accused Violates the Bail Conditions?

If you become aware that the accused has violated the bail conditions, contact the police. Anyone who fails to comply with bail conditions, without lawful excuse, may be found guilty of a summary offence. If the accused is arrested and charged with breach of bail conditions they can be held in jail until a bail revocation hearing is held. Depending on the type of breach, a judge may release the person, increase the bail money, or impose a sentence. Once that sentence is served, the accused will be released again. If, however, the breach is serious, bail will usually be revoked.

Will My Case Go to Trial?

Most criminal cases are settled by negotiated plea. This means no trial and a sentencing hearing will usually follow. Victims who wish to submit a victim impact statement can do so even without a trial. Your impact statement is important to the court in sentencing, the judge must consider any harm you have suffered when choosing an appropriate sentence for the offender. Your impact statement is also important to the paroling authorities, who will use it to determine if the offender is ready to return to the community. As soon as possible, victims should discuss when and how to submit their statement to the Crown or the victim services provider.

What Is a Plea Bargain? Do I Have a Say?

Plea bargaining occurs when the Crown and the defence come to an agreement wherein the accused pleads guilty. The guilty plea usually comes in exchange for a benefit such as reducing the charge against the accused or where the two sides agree upon a sentence.

The Canadian Victims Bill of Rights (2015) provides that a prosecutor can be asked if “reasonable steps have been taken to inform the victims of plea agreements for murder or serious personal injury offences. In cases involving an indictable offence with a maximum punishment of 5 years or more:

- a) a victim asks to be informed of plea agreements, and
- b) whether reasonable steps were taken to inform the victims of the agreement.

Victims appreciate being updated on their cases and can better understand a plea bargain if the reasons are explained to them. It is also important to note that Crowns don't need the victim's permission before proceeding with a plea. A plea bargain can be made at any time including, up to, and during the trial. If you know that there is the potential for a plea bargain in your case, and you wish to be involved, ask the Crown.

Why Would a Crown Want a Plea Bargain?

If a plea bargain occurs in your case, it doesn't mean that the offence is less serious or that the Crown doesn't believe you. Plea bargaining is often used when either the Crown or the defence's case is weak, to save time and money, and to reduce the volume of cases in the court system. Since Crowns have a good idea of typical sentencing for a particular crime, they can negotiate with the accused for a similar term and reduce the need for a trial.

If the Crown Fails to Confer With the Victim's Family Before Offering or Accepting a Plea Bargain, What Is the Family's Recourse?

The Canadian Victims Bill of Rights (2015) provides victims with a right to Information, Protection, Participation or Restitution. It also provides victims with a right to file a complaint for an infringement or denial of any of their rights under the Act. Each Crown's office will have a procedure for victims to file a complaint.



**Canadian
Victims Bill
of Rights**

— Source: Government
— of Canada

If I Am Called to a Plea-Bargaining Conference, Will I Be Allowed to Have My Lawyer or a Victim Services Worker Present?

If you would like to have your lawyer or a victim services worker present, speak with the Crown. Most Crowns will not object.

When the Case Is Strong, With Overwhelming Evidence, and I Don't Agree That a Plea Bargain Should Be Offered or Accepted, What Can Be Done to Stop the Process?

There is nothing victims can do to stop the plea-bargaining process. It is often difficult for victims to understand why Crowns would plead down charges against the accused, especially when the case seems so strong. Speak to the Crown and have them explain the reasons, ultimately, it is the judge who has the final discretion in accepting or rejecting a plea. Regardless of a plea bargain, you still have the right to submit a victim impact statement if and when the offender is convicted.

What Is a Preliminary Hearing/Inquiry?

As set out by the Criminal Code, a preliminary hearing is a court proceeding that is held before the trial. Preliminary hearings are similar to trials but are usually much shorter. The inquiry may be conducted by a Provincial Court judge or, in some circumstances, by a justice of the peace. A preliminary inquiry isn't concerned with establishing the guilt or innocence of the accused. It is not a trial. The purpose of the preliminary hearing is to determine whether or not there's enough evidence to proceed with a trial.

During the preliminary hearing the Crown Prosecutor can call witnesses to convince the judge that there's sufficient evidence against the accused to proceed with a trial. During a preliminary hearing, the judge may proceed with the charges, drop the charges, downgrade the charges, or upgrade the charges. In most cases the judge will find there is enough evidence to proceed with the charges and will order a trial. If the judge finds that there's not enough evidence to try the accused on the charges that have been laid, the charges against the accused will be dropped. In some cases, a judge may rule that the evidence does not warrant the actual charges laid and may downgrade the charges or if the evidence warrants it, charges could be upgraded.

If the preliminary hearing does not proceed as planned, it could be for several reasons: The accused may plead guilty; the accused has waived their right to a preliminary hearing; or the Crown has opted to proceed to direct indictment (very rare).

How Is This Different From a Pre-Trial Conference?

A pre-trial conference is a less formal meeting between the Crown, defence and a judicial official (but not the trial judge). It is generally held outside of a courtroom and may take place at any time prior to a trial. Issues addressed in pre-trial conferences vary by province but are generally limited to procedural items.

Victims do not attend pre-trial conferences.

Is It Important for Me to Attend a Preliminary Hearing?

It is important to attend the preliminary inquiry because this stage often acts as a test of the Crown's case against the accused. It is not uncommon for a guilty plea to be entered following a preliminary hearing. If the accused pleads guilty, there will not be a trial. In these cases, the preliminary hearing is then the only opportunity for victims to hear important evidence, facts, and details of the crime.

The victim should also consider attending the preliminary inquiry because evidence may be introduced during this stage that will not be allowed at trial, as the rules of evidence are less strict at preliminary hearings.

What Is a Voir Dire?

A "voir dire" is a trial within a trial. It is a hearing held, without the presence of the jury, to determine whether an issue of fact or law will be admissible. For example, a voir dire may be used in order to decide whether certain aspects of an expert witness' testimony will be allowed during the trial.

What Is a "Change of Venue?"

Most cases are tried in the community courthouse nearest to where the offence took place. In rare circumstances, a trial can be moved to another location. A 'change of venue' is requested when either party feels that the potential jury pool may have been tainted due to mass media coverage of the case.

According to section 599. (1) of the Criminal Code, an application for change of venue may be made by either the accused or the Crown if the judge is satisfied that:

- The ends of justice so require; or
- That a jury panel will not be available.

The Victim's Role During the Trial

The Canadian Victims Bill of Rights (2015) provides victims with the right to Information, Protection, Participation and Restitution. With respect to Information, it is important to note that victims must request information about their case, such as:

- a) Status and outcome of the investigation; and
- b) Progress and outcome of proceedings.

With respect to Participation, victims' views are to be considered and victims also have the right to present a victim impact statement.

- Every victim has the right to share their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under the Act and to have those views considered.
- Every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered.

Some victims will be called as witnesses in the case against the accused. The Crown Attorney/Prosecutor (all provinces) or Public Prosecution Service of Canada (all territories) represents the State in criminal matters.

Who Represents the Victim During the Trial? Do I Have/Need a Lawyer?

Crown counsel is not and can never function as the victim's lawyer. Although the Crown appears to be representing the interests of the victim, the Crown is the lawyer for the Queen and the government during the trial. In Canadian criminal cases, the harm is perceived to have been committed against the State. This is why cases are referred to as Regina v. Smith (or R. v. Smith), Regina being the Queen in Latin. The Crown is truly representing the society, of which you are a part.

It is generally not necessary for victims to hire a lawyer during the trial as they rarely have a legal role in the court process. However, victims may need their own lawyers for specific issues such as publication bans or attempts by the accused to get copies of a sexual assault victim's personal psychiatric records.

Who Advises Me of Court Dates?

The Crown's office should advise victims of upcoming court dates. If they do not, the court-based victim services (available in most provinces/territories) should have the information available for you. If you are called as a witness, you will be issued a subpoena. A subpoena is a court order telling a person specifically when to come to court to testify. If you are subpoenaed, you cannot attend trial before you are called as a witness. If you wish to observe the proceedings after delivering your testimony, you can apply to the judge for permission to remain in the courtroom. Speak with the Crown about this as soon as possible.

Where Do I Sit In the Courtroom?

Victims usually sit on the right-hand side of the courtroom, behind the Crown. Be aware that the courthouse is a public place and seats are not specifically reserved for the victims. You may try speaking to the Crown or police to see if they can reserve some seats for you.

While in Court, if the Accused Makes Threatening Remarks or Signals at Me, What Should I Do?

If you are threatened by the accused in any manner, tell the Crown. Additional charges may be laid.

Will I See and Meet Family Members of the Accused in the Hallways?

You are likely to see the accused's family members in the courtroom and throughout the courthouse, including the washrooms. If you do not wish to interact with them or speak to them, you are not required to do so. You should tell the Crown if members of the accused's family seek you out or harass you.

Sexual Assault: The Criminal Trial

After charges have been laid in a sexual assault case and the first appearances in court have taken place, if the accused has plead “not guilty” to the charges, there may be a trial. This section explains what happens at the trial.

When Will the Trial Happen?

Unfortunately, there can be long delays in the court system. The trial should happen **6 months to 1 year after a preliminary inquiry**, or between **3 to 6 months if there is no preliminary inquiry**. Delays often happen because the court is busy and there is a backlog, conflicting schedules, unavailable witnesses or because the accused is trying to delay the trial as long as possible. Before the trial there will be at least one hearing to determine the date of the trial (the “set date”). Usually there are many more hearings than just this one.

Will There Be a Jury?

Many charges can be laid in a sexual assault trial; this is called “hybrid offences” meaning the Crown can proceed by way of summary conviction or indictment. Summary conviction usually happens when it is a first offence for the accused. There will be no jury and the case will proceed directly to trial once the accused has entered a plea of not guilty. If the Crown goes by way of indictment, which is often the case when the crime is more serious or the accused has a lengthy record for similar offences, **it is the accused’s choice whether there is a jury or not.**

What Is the Order in Which Things Happen at the Trial?

- 1. Jury selection** (if there is one). The accused chooses whether they want to have a jury.
- 2. Pre-trial motions** (these are used to decide on specific issues related to the trial, such as if certain evidence should be allowed to be heard, if a witness can testify or tell their story in court etc).
- 3.** The Crown makes its **opening statement** to the court.
- 4. Examination-in-chief** of Crown witnesses. The Crown calls its witnesses to testify.
- 5. Cross-examination** of Crown witnesses. The Crown witnesses are questioned by the defense.
- 6. Re-examination** of Crown witnesses. The Crown may re-question its witnesses.
- 7.** The defense calls its **witnesses** (if any).
- 8.** The Crown **cross-examines the defense witnesses**.
- 9.** The defense may **re-examine its witnesses**.
- 10.** Each side gives its **closing statement**.
- 11.** The **judge “charges” the jury** (if there is one). This is when the judge explains the law to the jury.
- 12.** The jury or judge alone delivers the **verdict**.

What Is Cross-Examination?

During a trial, both sides have the chance to ask questions of each other's witnesses. The defence lawyer will try to convince the judge or jury not to believe you or to try to show that your version of events is less believable than the accused's version. This usually involves trying to discredit you by asking many questions about the sexual assault and your character. Defence counsel also often tries to focus the Court on stereotypes or myths about consent and sexual assault to try to discredit you.

There are strict rules about what can and cannot be asked in a sexual assault trial, but defence lawyers sometimes try to get around those rules. A good Crown Attorney will interrupt inappropriate questions by objecting to them, and a good judge will tell you that you do not have to answer them.

The cross-examination is almost always the most difficult part of the trial. Here are some key things to remember when you are being cross examined:

1. Focus on what you know.
2. Do not lie about anything.
3. Say that you do not remember when you are unsure.
4. Do whatever it takes to make yourself feel comfortable: wear clothes that you like, speak slowly, drink water, pause, ask for a break. Some women find that it is helpful to focus on a support person in the court whom they know believes them.
5. Trust that the judge and/or jury will be able to tell the difference between the truth and dishonesty.
6. Try to remember that it is the defence lawyer's job to try to make you look bad.

What Is the “Criminal Standard of Proof?”

Because sexual assault is a criminal offence, it must be proved “**beyond a reasonable doubt**” that the accused committed the crime. This means that there can't be any other reasonable explanation for the crime; only that the accused committed it.

In a sexual assault trial, the Crown must prove three things:

1. That the accused intended to touch you (purposely touched).
2. That the accused knew you were not consenting or giving permission to what was happening.
3. That the act itself happened.

The accused doesn't have to prove they did not commit the offence; the Crown must prove that they did.

How Does the Accused Defend Themselves at Trial?

The following are the most common defences raised by an accused.

1. Defence lawyers tend to argue that the victim consented to sexual contact. This is probably the most common defence since most criminal charges of sexual assault are laid in circumstances where the victim and perpetrator know one another.
2. Defence lawyers sometimes argue that the accused had an “honest and mistaken belief” in consent. This means that, even though the victim did not consent, the accused honestly believed that they did.

What Does “Lack of Consent” Mean?

Lack of consent means that you did not want that person’s sexual advances, you didn’t accept the sexual advances, or you didn’t show a desire to engage in sexual activity.

The responsibility lies with the person who starts the sexual contact to make sure that the other person is consenting to the sexual activity. A lack of consent can be expressed by words or actions. Even if a victim doesn’t say “no” out loud, they can communicate it through body language. Submitting or agreeing to sexual contact out of fear is not consent. If someone coerces or intimidates you into agreeing to sexual activity, this is not consent.

A lack of consent is probably the most difficult to prove in a criminal sexual assault trial. It is hard to prove that a sexual assault occurred because there are generally no witnesses other than the accused and the victim. **The evidence generally consists of what the accused and the victim say happened.**

Not surprisingly, the two versions are often entirely contradictory, so the judge or jury must decide who is more believable. Because the criminal standard of proof requires that the Crown prove the charges “beyond a reasonable doubt,” **even if the court believes the victim, it must acquit the accused if it has a reasonable doubt that an assault took place.**

When the two people know each other, and even more when they have a prior sexual history, judges and juries might rely on myths and stereotypes about sexual assault and what a “victim” should act or look like. This is also the case in other circumstances: for example, where the victim is a sex trade worker or where alcohol or other drugs are involved.

What Is the Defence of “Honest and Mistaken Belief” in Consent?

This defence is raised if the victim says they didn't consent to the sexual activity and the accused says they thought the victim did. Criminal law is reluctant to send a “morally innocent” person to jail, so **if the accused says that, although they may have been wrong, they had an honest belief that the victim was consenting, and the court may not convict them.** This defence is especially common in cases where the accused and the victim have a prior sexual history and in cases where the victim was consenting to a certain amount of sexual activity and then wanted it to stop.

This defence must have an “air of reality” to be accepted by the court. This means the mistaken belief must be based on some evidence. For example, the accused could argue that they believed there was consent because the victim “invited them in” or “they took off their clothes”. This area of the law is problematic because it is so easy for courts to rely on stereotypes to determine that it was reasonable for the accused to believe that the survivor was consenting.

Will My Sexual History Be Brought Up in Court?

In the past, a complainant's sexual history was almost always a topic in court. Now, the law has changed, and sexual history should only be raised when it is relevant to an issue in the trial. For example, if the accused and the victim have a prior sexual history together, the accused may be able to enter details of that if they are relevant to the case.

Unfortunately, in some jurisdictions (depending on the judge, Crown Attorney, and defence lawyer), the victim's sexual history is still brought up at trial, even when it isn't relevant. Your local sexual assault centre can work with you to prepare you for this aspect of the trial.

Will Any of My Personal Records Be Used at the Trial?

This issue is referred to as “**disclosure**” or “**production of personal records.**” The defence can apply to the court to gain access to private records, such as diaries and doctor's or therapist's notes. If the defence makes a request for your personal records, they may be turned over to the judge, who will consider whether they are relevant to an issue at trial. The judge will then decide whether all or some parts of your records will be given to the defence.

Individuals reporting a sexual assault to the police should consider keeping information about diaries or therapy private in order to prevent the defence from asking for these records. If an application for production of your records is made by the defence, you and whoever created the records (e.g. your therapist), will be served with a court notice and will be given the opportunity to argue to the judge why those records should NOT be provided to the defence.

You may wish to hire a lawyer if this happens. Depending on your financial circumstances, you may be eligible for a legal aid certificate to allow you to hire a lawyer to represent you in this hearing.

What Happens to the Defendant if They Are Convicted?

A person found guilty of sexual assault may receive a penalty of **up to 10 years in jail for an indictable offence**, or **up to 18 months in jail for a summary conviction**. If threats or weapons were used or if the victim received serious injuries, the maximum penalties may be higher. **In most cases, someone who is convicted of a sexual assault does not go to jail.**

IMPORTANT TO NOTE, in most cases: Penalties are usually very minimal. Men found guilty of sexual assault, particularly first offenders, are often given suspended sentences or probation and sometimes even an absolute discharge, which means they will have no criminal record.

What Is a Verdict?

Following a trial, whether by judge alone or by judge and jury, there will be a verdict of guilty or not guilty. If the accused is found not guilty, the case is over. **Any conditions imposed on them (such as a requirement that they stay away from you) are no longer in place.** If they are found guilty, the trial moves into the sentencing phase.

How Does the Judge Decide on a Penalty?

If the defendant is found guilty, the judge will listen to arguments from both the Crown and the defence before deciding on the appropriate penalty.

- The defence may argue that the accused is a person of very-good character and may present witnesses to give evidence about this. Defence counsel will also argue that a jail sentence will have an undue negative impact on the offender's life.
- The Crown will argue about the importance of protecting society and will talk about the impact on you.

You will have the opportunity to submit a "victim impact statement" in which you can talk about the impact that the assault has had on you.

This statement will be given to the defence lawyer and, if they object to it, you will have to agree to be cross-examined during the sentencing hearing. If you are not prepared to do this, then the statement will not be provided to the judge.

You should not submit your victim impact statement until the accused has been found guilty. If you provide it to the Crown before or during the trial, it will be disclosed to the defence at that point. The defence will be able to cross-examine you on the statement before the trial is over. There may be a delay before sentencing to allow the two sides to prepare their arguments. As well, the judge may ask for a pre-sentencing report from a probation officer. This will indicate what type of person the accused is and whether there is a chance for rehabilitation.

Sexual Assault: The Criminal Trial

Source: Ontario
Women's Justice
Network

Sexual Assault and Civil Actions

Victims of sexual assault and other sexual offences can seek damages through **civil actions**.

Civil action seeking damages are civil lawsuits initiated by plaintiffs against defendants for alleged wrongful conduct. Depending upon the jurisdiction, there may be other remedies available for victims as well, such as criminal proceedings, criminal injuries compensation, human rights complaints, labour grievances, and public or private inquiries.

In human rights legislation, it is a discriminatory practice, and thus contrary to the law, to harass an individual on any of the prohibited grounds, including sex (see for example, Canadian Human Rights Act R.S.C., 1985, c. H-6, s. 14).

The civil justice system plays an important role to determine how society compensates various claims, such as claims of sexual assault and other sexual offences. A civil action will frame the issues and develop principles for compensation. In the past two decades, civil actions for sexual assault have become more frequent and hence, a body of case law has developed that provides guidance to lower courts when assessing non-pecuniary damages (**intangible losses such as pain and suffering**) for the impacts of sexual assault.

Civil and criminal law recognize that sexual assault has a harmful impact — particularly psychological and emotional harm — on victims, and potentially on family and friends of victims. Yet, despite years of court decisions, it remains difficult to quantify in monetary terms these intangible impacts. Aggravated or punitive damages may be awarded to punish the defendant and deter others from such actions. **If there has been a conviction in a criminal process, the sentence may be deemed to serve the punitive function.** Pecuniary damages are awarded for economic losses (e.g., lost wages, medical expenses, future loss of earning and future costs of care) with the goal of restoring the plaintiff to the same position they would have been in, had the injury not occurred.

All these damages, if awarded, are costs to the defendant. There are significant costs to both the plaintiff and defendant in civil actions and legal aid is available in only a few jurisdictions (BC, Alberta, Quebec) provided the applicants meet eligibility and merit criteria. There are also costs to the court system.

A review of civil sexual assault cases in Canada found that between 2001 and 2011, there were 67 cases involving female plaintiffs where damages were awarded (average pain and suffering award: \$271,000) and 38 similar cases with male plaintiffs (average pain and suffering award: \$193,000). The specific circumstances of these cases are unknown, and they could include cases of childhood sexual abuse in the past or current adult sexual assault.

Sexual Assault and Other Sexual Offences

Source: Government
of Canada

Conclusion

VESTA recognizes that sexual assault is a complex issue that can be extremely traumatic. This handbook is not intended to address all outcomes associated with this event in your life. Our hope is that our straightforward guide is able to bring clarity to some of the common questions people may have. In this guide, we covered topics like definitions, the way the Canadian criminal code outlines terms, myths and the important details regarding reporting and court proceedings.

We acknowledge that there are many other important topics which were not covered such as the mental health and financial difficulties that may arise after experiencing sexual violence.

We believe that your mental health, wellbeing and recovery deserve careful attention and we encourage everyone to seek professional guidance from people and communities that provide the individualized and unique support you deserve.

The research available is unanimous; a lot of work still needs to be done to make the reporting process less problematic for victims. There are many organizations that are doing great work with research and supports, many of which can be found in our resource guide.

VESTA is also working hard at utilizing technology to make both identified and anonymous reporting possible; the choice is yours. We believe that together we can combat rape culture and create a community where sexual violence survivors feel supported and heard.

We welcome you to provide feedback and hope that you are able to use this guide to take back your power and make informed decisions that are right for you and your situation.

Legal Disclaimer: This handbook provides general information that is intended, but not guaranteed, to be correct and up-to-date. Vesta Social Innovation Technologies does not assume any responsibility for actions or non-actions taken by people who have used this handbook for information, and no one shall be entitled to a claim for detrimental reliance on any information provided or expressed.

Where Can I Go For Help?

For Ontario residents, [click here to look up resources in your area.](#)



Ontario Resources & Support

- Call 2-1-1
- Toll Free: 1-877-330-3213
- [Chat Online](#)

Find Shelters Across Canada

- [ShelterSafe.ca/Get-Help](https://sheltersafe.ca/get-help)

Toronto Shelter Intake Line

- 416-338-4766

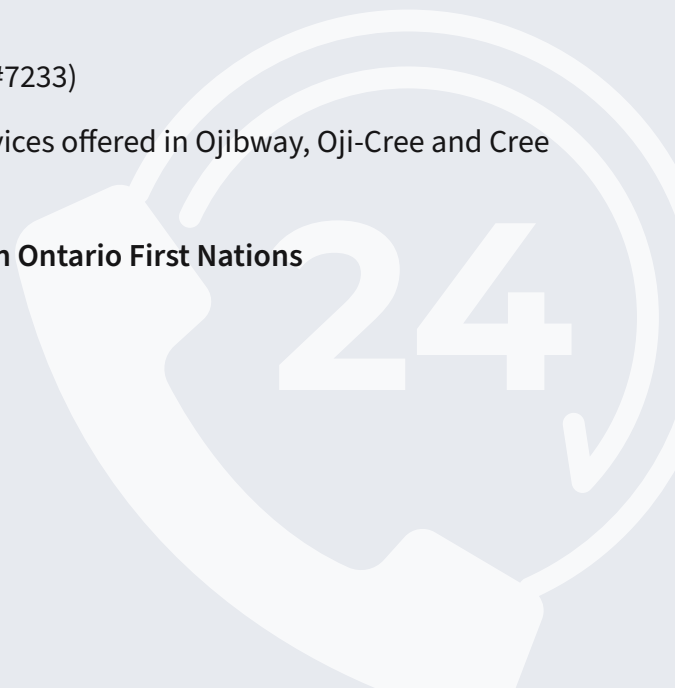
Canadian 24/7 Crisis Lines

Ontario

- **Assaulted Women's Helpline** - With assistance in up to 154 other languages
 - 1-866-863-0511
 - TTY: 1-866-863-7868
 - Rogers, Fido, Bell & Telus: #SAFE (#7233)
- **Helpline for Aboriginal Women** - Services offered in Ojibway, Oji-Cree and Cree
 - 1-855-554-4325
- **Anishnaabe Kwewag Gamig Northern Ontario First Nations**
 - 1-800-388-5171
- **Victim Support Line**
 - 1-888-579-2888

Alberta

- **Family Violence Multilingual Line**
 - 780-310-1818



British Columbia

- **VictimLink BC**
 - 1-800-563-0808
 - TTY: 604-875-0885
 - Text: 1-800-563-0808

Manitoba

- **Family Violence Helpline**
 - 1-877-977-0007
 - TTY: 1-888-987-2829

Newfoundland & Labrador

- **Domestic Violence Help Line**
 - 1-888-709-7090

Northwest Territories

- **YWCA - Not TTY Compatible**
 - 1-866-223-7775
- **Yellowknife:**
 - 1-867-873-8257

Nova Scotia

- **Transition House Association**
 - 1-855-225-0220

Nunavut

- **Baffin Regional Agvvik Society: Qimaavik Transition House**
 - 867-979-4500

Prince Edward Islands

- **Family Violence Prevention Services**
 - 1-800-240-9894
 - [Chat online](#)
 - [Helping Tree Resource](#)

Quebec

- **SOS Violence Conjugal**
 - 1-800-363-9010

Saskatchewan

- **Crisis & Abuse Line**
 - 1-800-214-7083
- **Abused Women's Crisis Line**
 - 1-888-338-0880
- **North East Crisis Line**
 - 1-800-611-6349

Yukon

- **VictimLink BC**
 - 1-800-563-0808
 - TTY: 604-875-0885
 - Text: 604-836-6381

Legal Help

Legal Aid Ontario

- Toll Free: 1-800-668-8258
- GTA: 416-979-1446
- Bell Relay: 1-800-855-0511

Independent Legal Advice from the Ministry of the Attorney General

- 1-855-226-3904

Barbara Schlifer Clinic Intake Line

- 416-323-9149 ext. 234

Luke's Place

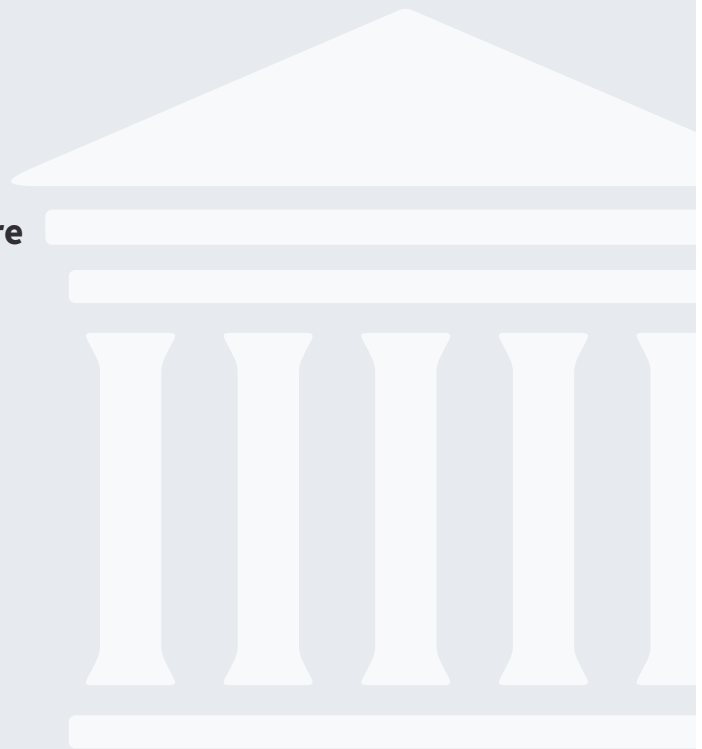
- [Virtual Legal Clinic](#)
- 1-866-516-3116
- Intake@LukesPlace.ca

Jared's Place Legal Advocacy Centre

- 905-522-0127 ext. 207
- Crisis: 905-387-8881
- Lac@IntervalHouseHamilton.org

Law Society of Ontario

- [Law Society Referral Service](#)
- 416-947-3300
- Toll Free: 1-800-668-7380



Help in Canada

If you are in immediate danger, in fear for your safety or in the event of an emergency, call 911 from anywhere in Canada.



Ontario Police Services: 24/7 Non-Emergency Line

- 1-888-310-1122

Toronto Police

- 416-808-2222

Kingston Police

- 613-549-4660

Vancouver Police

- 604-717-3321

Ottawa Police

- 613-236-1222
- TTY: 613-232-1123

Edmonton Police

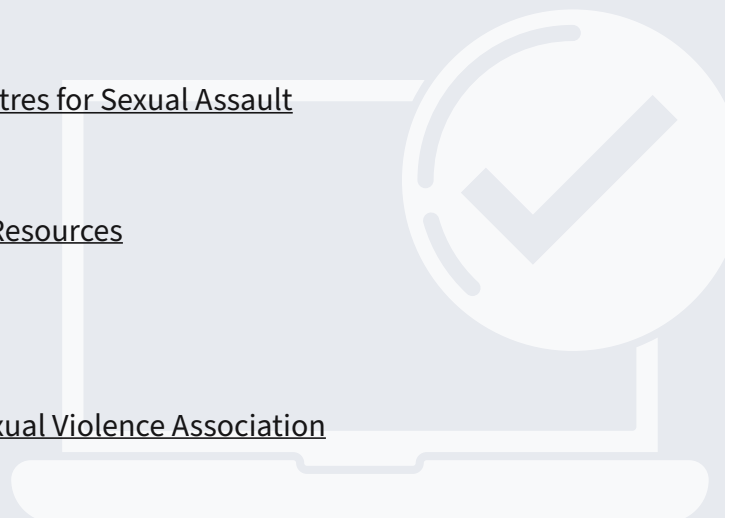
- 780-423-4567

St. John's RCMP

- 1-800-709-RCMP
- 709-729-8000
- TTY: 1-800-363-4334

Websites

- [Domestic Violence Treatment Centres for Sexual Assault](#)
- [Victim Services Resources](#)
- [Supports for Indigenous Women Resources](#)
- [Independent Legal Advice](#)
- [Durham Rape Crisis Centre](#)
- [RAINN - America's Largest Anti-sexual Violence Association](#)



Help in the United Kingdom

If you are in immediate danger, in fear for your safety or in the event of an emergency, call 999 from anywhere in the United Kingdom.



RASASC - Rape & Sexual Abuse Support Centre

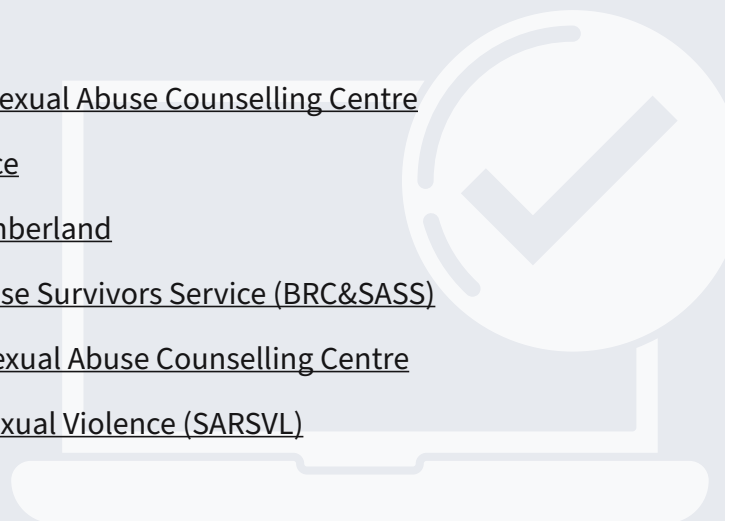
- National Helpline: 0808-802-9999
- *Open between 12:00-14:30 and 19:00-21:30 daily*

NIA - Gender Based Violence Support

- Sexual Violence Helpline: 0800-160-1036
- 24 hr National Domestic Violence Helpline: 0808-2000-247

Websites

- [North London Rape Crisis](#)
- [West London Rape Crisis Centre](#)
- [ARCH North East](#)
- [Darlington & Co Durham Rape & Sexual Abuse Counselling Centre](#)
- [Northumberland Rape Crisis, Grace](#)
- [Rape Crisis Tyneside and Northumberland](#)
- [Bradford Rape Crisis & Sexual Abuse Survivors Service \(BRC&SASS\)](#)
- [Kirklees & Calderdale Rape and Sexual Abuse Counselling Centre](#)
- [Leeds - Support After Rape and Sexual Violence \(SARSVL\)](#)



Help in the United States

If you are in immediate danger, in fear for your safety or in the event of an emergency, call 911 from anywhere in the United States.



RAINN - Rape, Abuse & Incest National Network

- [Online Chat Hotline](#)
- [Spanish Online Chat Hotline](#)
- 24/7 Hotline 800-656-HOPE (4673)

Polaris Project - Human Trafficking Support

- 24/7 Hotline 1-888-373-7888

Websites

- [National Sexual Violence Resource Centre](#)
- [National Organization for Victim Assistance](#)
- [National Street Harassment Hotline](#)
- [The National Center on Violence Against Women in the Black Community](#)



Glossary

Bail Hearing

A bail hearing is where a Justice of the Peace or Judge determines if a person who is charged should be released or stay in custody until trial.

Complainant

A term used in the Canadian legal system which refers to the victim of an alleged offence.

Crown Attorney

If the police charge the abuser with a crime, a police officer will prepare the case and a Crown Attorney will present the evidence in court. A Crown Attorney is a government lawyer who presents the case against the person accused of a crime in criminal court. They work for the government, they are not the victim's lawyer.

Crown Counsel

Crown counsel is not and can never function as the victim's lawyer. The Crown is the lawyer for the Queen and the government during the trial. In Canadian criminal cases, the harm is perceived to have been committed against the State. The Crown is truly representing the society, of which you are a part.

Consent

Actively and verbally expressing that you are into a sexual activity with someone. You cannot give consent while you are sleeping, underage or under the influence of drugs or alcohol. Consent can be withdrawn at any time.

Cyber Harassment

The use of communication technologies such as the internet, social networking sites, websites, email, and text messaging to repeatedly intimidate or harass others. This can include insulting or threatening emails, posts, spreading embarrassing or private photos online, and blackmailing an individual with private information.

Gender-Based Violence (GBV)

Violence that is directed at people because of their gender. Studies have shown that women and LGBTQ2+ people are more likely to experience sexual assault than men and non-LGBTQ2+ people in Canada. GBV covers many forms of violence, including sexual assault, sexual harassment, intimate partner violence, and domestic violence.

Grooming

The start of the sexual abuse process that involves building trust with a child, and the adults around them.

Intimate Partner Violence

A form of Gender Based Violence that refers to a broad range of behaviours such as emotional, physical, financial and sexual abuse caused by a current or former intimate or domestic partner.

Legal Aid Certificate

A document that confirms Legal Aid Ontario has agreed to pay for a certain number of hours of a lawyer's time to work on your legal issues. Not all lawyers accept these certificates.

Rape

Any non-consensual penetration of the vagina or anus with any object or body part. Rape also includes penetration of the mouth with someone's sexual organ without consent.

Restorative Justice (RJ)

Focuses on repairing the harm caused by looking and thinking about crime using a holistic, collaborative, and humanizing approach.

Sexual Assault Evidence Kit (SAEK)

A sealed box used to collect evidence. Physical evidence can be collected within 12 days of the assault, however, there is a greater chance at collecting forensic evidence within 72 hours. The kit is voluntary, can be completed even if the survivor does not want to involve police and will be held for 6 months before it is destroyed.

Sexual Assault Nurse Examiner

A specially trained nurse who may collect evidence from anywhere on your body in addition to a toxicology screening. You can choose to have a support person present during your examination.

Sexual Assault Response Team (SART)

A community based team that coordinates the response to victims of sexual assault. This team can include hospital personnel, advocates, law enforcement and other professionals with a specific interest in assisting victims of sexual assault.

Sexual Assault/Domestic Violence Care Centre (SA/DVCC)

Hospital clinics that specialize in supporting survivors of sexual assaults and/or domestic violence. They provide emergency services, follow-up health care, counsellors and safety planning to all survivors regardless of gender identity. They also document, take photos and collect evidence if the survivor chooses.

Sexual Assault

Any non-consensual sexual activity, such as unwanted sexual grabbing, kissing, fondling as well as rape. Anyone can be sexually assaulted at anytime, anywhere by anyone such as a sex trade worker by a client. Sexual assault can be experienced by any gender, within domestic partnerships, friendships or with strangers.

Sexual Exploitation

When a person in a position of trust or authority uses that power to start or attempt sexual activity with another person. It can be direct or indirect and may include touching, violence, coercion or the use of threats.

Sexual Harassment

Defined by engaging in a course of unwelcome actions or words that are annoying, distressing or agitating to the person experiencing them. More than one event must take place for there to be a violation, however, depending on the circumstances, one incident could be significant or substantial enough to be sexual harassment.

The most common understanding of sexual harassment is conduct such as making passes, soliciting sexual favours, sexual touching, etc. However, the definition of sexual harassment also includes conduct that attack a woman's sexuality or conduct that is directed at a woman because of her sex.

Human rights law clearly recognizes that sexual harassment is often not about sexual desire or interest at all. In fact, it often involves hostility, rejection, and/or bullying of a sexual nature.

Stalking

A behaviour rooted in power and control which is often used to cause fear. It is the repeated patterns of unwanted behaviours used to harass, threaten or intimidate.

Statement

A written record of the assault and includes everything that is remembered about the victimization. This report will be used by officers conducting the investigation and may be used at a later time during court proceedings.

Survivor

This term is often used instead of victim when referring to someone who experienced sexual violence. The term victim often focuses on the harm that was caused, whereas a survivor is defined by their resilience, strength and reclaiming of power.

Transformative Justice (TJ)

Seeks to change the larger social structure as well as the personal structure of those who are involved.

Victim

Defined in the Canadian Criminal code as “a person against whom an offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of the offence and includes, for the purposes of sections 672.5, 722 and 745.63, a person who has suffered physical or emotional harm, property damage or economic loss as the result of the commission of an offence against any other person.”

Victim/Witness Assistance Program (VWAP)

The program’s staff will help you understand the court process and give you updates on the court case. They will help you communicate your needs to the Crown Attorney and the police. In some cases, they can set up a pre-trial interview with the Crown Attorney. Throughout the court process, the staff can also give you emotional support.

Victim Notification System

A service that provides victims with telephone notifications when there are changes to the abusers' status of incarceration or those under community supervision such as probation, parole, and conditional sentences. You can call the Victim Support Line to request this service.

“Voir Dire”

A trial within a trial. It is a hearing held, without the presence of the jury, to determine whether an issue of fact or law will be admissible. For example, a voir dire may be used in order to decide whether certain aspects of an expert witness’ testimony will be allowed during the trial.

Voyeurism

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.

Index

B

Bail Hearing - 27, 47

C

Canadian Victims Bill of Rights - 29, 32

'Change of Venue' - 31

Circles - 23-24,

Circles of Support and Accountability - 23

Community-Assisted Hearings/Releasing Circles - 23

Complainant - 1, 37, 47

Conferencing - 24

Consent - 1-6, 36-37, 47

Court Proceedings - 12, 20-25

Criminal Standard of Proof - 35-36

Cross-Examination - 34-35

Crown Attorney - 14, 21, 32, 37, 47, 51

Crown Counsel - 26, 32, 47

Cyber Harassment - 1-2, 47

G

Gender-Based Violence - 48

Grooming - 3-4, 48

H

Healing Circles - 24

'Honest and Mistaken Belief' - 36-37

L

'Lack of Consent' - 36

Legal Aid Certificate - 37, 48

P

Peacemaking Circles - 24

Plea Bargain - 29-30

Preliminary Hearing - 30-31

Pre-Trial Motions - 34

Pre-Trial Proceedings - 26-33

R

Rape - 1-2, 5, 48-49

Restorative Justice - 13, 22-23, 25, 48

S

Safety Plan - 11

Sentencing Circles - 24

Sexual Assault/Domestic Violence Care Centre - 13, 49

Sexual Assault Evidence Kit - 14, 19, 48

Sexual Assault Investigator - 19

Sexual Assault Nurse Examiner - 14, 49

Sexual Assault Response Team - 14, 17, 49

Sexual Exploitation - 1-2, 49

Sexual Harassment - 1-2, 48, 50

Sexual Interference - 3

Stalking - 1, 5, 50

Statement - 16-17, 19-21, 28, 32, 34, 38, 50

Surrogate Victim/Offender Restorative Justice Dialogue - 24

Survivor - 12, 26, 37, 50

T

Transformative Justice - 22, 25, 50

V

Victim Notification System - 51

Victim Offender Mediation Programs - 24

Victim Panels - 24

Victim/Witness Assistance Program - 14, 19, 51

Voir Dire - 31, 51

Voyeurism - 2, 51