

Sexual Assault: Consent & Age of Consent

What is Consent?

The Criminal Code of Canada defines consent as a voluntary agreement between two people to engage in a specific sexual activity at a specific time.

- Consent that is obtained through pressure, fear, force or threats of force (either to yourself or to someone else), is not voluntary consent
- No means no
- Saying yes to one sexual activity does not mean yes to every sexual activity
- If a person is a child, is drunk, has passed out, is asleep, has been drugged, or is dependent on the abuser, they are unable to give consent
- The person must give an overt indication of consent (for example saying yes)
- Silence, passivity or ambiguous conduct do not imply consent

Also, remember that:

- Consent is based on choice
- Agreeing to having sex because of guilt, pressure, sense of obligation or just to fit in with the group is not true consent
- Consent is possible only when there is equality between both people

Using Consent as a Defence to a Sexual Assault Charge Consent cannot be used as a defence if:

- Someone else (a third party) says “yes” for the person
- The person is not capable of giving consent because they are a child, are drunk, are passed out, are asleep, have drugged, are dependent on the abuser, etc
- The accused abuses a position of trust, power or authority, such as a teacher, an older sibling, a parent, a babysitter, a relative, a coach
- The victim says “no”
- The victim says “yes” and then withdraws or takes back consent. At any time a person may change her/his mind. At the point a person withdraws consent, continuing the sexual activity becomes a criminal act
- The accused was drunk or high
- The accused did not determine if the victim consented or said yes
- There is no such thing as implied consent

Consent means saying “yes” because you want to!! “No” always means no. If someone tells you to stop a sexual activity, and you continue with it, you are committing a crime.

SEXUAL ASSAULT IS A CRIME

Age of Consent Under the Criminal Code of Canada

The Age of Consent, or Age Of Protection in Canada is designed to help protect youth from adult sexual predators, and not to regulate consensual teenage activity. As such, the legislation is as follows:

The Age of Consent for non-exploitative sexual activity (sexual activity which does not involve prostitution or pornography and where there is no relationship of trust, authority or dependency between the persons involved) as of 2008, is now 16 years of age.

However, the following exceptions apply:

- Youth aged 12 or 13 can consent to non-exploitative sexual activity with persons who are no more than 2 years older.
- Youth aged 14 or 15 can consent to non-exploitative sexual activity with persons who are no more than 5 years older
- To engage in anal sex, both people must be 18 years of age or older, or married

Sexual Exploitation

Charges can be laid if someone who is in a position of trust or authority over a person under the age of 18, has or attempts to have sex with that person; touches that person in a sexual manner; invites that person to touch them in a sexual manner.

Sexual Interference and Invitation to Sexual Touching

The same as sexual exploitation except the person committing the crime is not in a position of trust or authority.

A Person in a Position of Trust and Authority:

- Has a responsibility to protect a child's safety
- Is responsible for the child's well being
- Helps the child develop spiritually, emotionally, physically, etc
- Includes a family member, neighbour, coach, teacher, religious leader, family friend, group leader

The Children & Family Services Act

- A child, under 16 years of age, is in need of protection if they have been or are at risk of being sexually abused by a parent or guardian, or if the parent or guardian knows or should know of the possibility of sexual abuse by another person, and fails to protect the child
- A person who suspects that someone under 16 years of age is or was being abused, whether proven or suspected, is legally obligated to report that information to a child welfare agency. Punishment for professionals or officials can be fines up to \$5000 and/or imprisonment. Other people can face fines up to \$2000 and/or imprisonment
- No action can be taken against a person for reporting abuse, unless the report is done falsely and maliciously