

Defining Sexual Assault

Sexual Assault: the legal term used in Canada to refer to any form of sexual contact without voluntary consent. This can include forced or unwanted kissing, fondling, vaginal penetration, anal penetration and/or oral sex (Adapted from Canadian Criminal Code).

Consent: defined as a voluntary agreement to engage in the sexual activity in question. Consent or a “yes” that is obtained through pressure, coercion, force, or threats of force is not voluntary”. (Criminal Code of Canada Section 273.1)

In addition, the Criminal Code provides five specific situations where consent is not obtained. (Adapted from the Criminal Code of Canada Section 273.1)

- Consent is not obtained if someone else says ‘yes’.
- Consent is not obtained if the accused abuses a position of trust, power or authority.
- Consent is not obtained if the person does not say yes, or says or implies no through words or behaviors.
- Consent is not obtained if the person is not capable of giving consent. (I.e. drunk or high, unconscious or sleeping).
- Consent is not obtained if the person changes her/his mind.

Age of Consent: according to the Criminal Code of Canada, the age of consent is 16. Although children under the age of 12 cannot consent to any kind of sexual activity, youth aged 12 and 13 can consent if the other person is less than two years older, while youth aged 14 and 15 can consent if the other person is less than five years older. Until 18 years of age, no one can consent to sexual activity if the other person is in a position of power, trust or authority over them, or if they are in a relationship of dependency with that person.

When believing a person consented is not a valid defense (Criminal Code of Canada Section 273.2)

According to the Criminal Code of Canada, it is not a defense for a person being charged to claim that he/she believed the other person consented to the sexual activity in question if his/her belief arose from self-induced intoxication, or recklessness/willful blindness. Also, a mistaken belief as to the survivor’s consent is not a defense unless the accused took all reasonable steps to ascertain that the survivor was consenting.