



Community Legal Information Association of Prince Edward Island, Inc.

Sexual Assault

As an adult in Canada, you have the right to choose when or if you engage in sexual activity. Sexual activity without your consent is sexual assault and it is against the law.

In this pamphlet, we address some of the questions most often asked about sexual assault. The answers will give you basic information.

This pamphlet provides information on sexual assault against adults only. Sexual offences against children and young persons are not covered in this pamphlet.

For more information on children and young persons, CLIA has a publication called “The Age of Consent: Young People, Sex and the Law.”

What is sexual assault?

Sexual assault is any sexual activity done without consent. Sexual assault can include actions from touching to sexual intercourse. There are three types of sexual assault offences defined in the *Criminal Code of Canada*:

- Sexual Assault - examples are touching, fondling, kissing, intercourse or any other bodily contact for a sexual purpose. This includes sexual assault accomplished by threats to the victim (either threat to use a weapon or threat to cause bodily harm).
- Sexual Assault with a Weapon, Sexual Assault with Threats to a Third Party or Sexual Assault Causing Bodily Harm - examples include the offender using or threatening to use a weapon, the offender threatening to hurt someone else to get you to “give in”, the offender injuring you in some way.
- Aggravated Sexual Assault - examples include situations in which you are wounded, maimed or disfigured. Wounding is a serious kind of cut or bruise, maiming is a crippling injury, and disfigurement is visible disfiguring damage. If your life is endangered by the sexual assault the charge is also aggravated sexual assault.

The penalties and procedures for dealing with sexual assault depend on the extent of the assault and the amount of violence used.

Can I get help after a sexual assault?

You can get immediate medical attention through a hospital emergency department or from your doctor. A medical examination may be an important step in gathering evidence if you decide to report the assault.

You can get support and crisis counselling through the PEI Rape and Sexual Assault Centre's crisis line: 566-8999 or 1-800-289-5656. You can reach the Centre's counselling services at 368-8055.

People who have been sexually assaulted may need support and information to help them to deal with the effects of the assault. You may wish to use service agencies and private counsellors in your community. Check the yellow pages under Marriage, Family and Individual Counsellors.

Victim Services provides information about the criminal justice system, short term counselling and emotional support, court preparation, help in preparing a victim impact statement, referrals to other services, assistance under the *Victims of Family Violence Act*, and financial information: Charlottetown 368-4582; Summerside 888-8218.

Do I have to report the assault to the police?

You do not have to report the assault. It is a good idea to see a doctor so that you can be examined for possible injuries.

If I go to a doctor, will they report the assault?

If you are an adult, medical practitioners do not report the assault. The doctor will explain the risk of pregnancy and sexually transmitted infections (STIs). You may want evidence collected, even if you don't use it immediately.

How soon do I have to report the assault to the police?

The sooner you make the report, the sooner the police will be able to investigate the offence. They will be able to talk to witnesses while memories are fresh and collect evidence before it is lost.

What happens if I report the assault?

If you report the assault, the police will take a statement from you. The police may also want a medical report and may want to photograph any injuries. Depending on the circumstances, the police may visit the scene of the crime to collect evidence and interview witnesses and others who may have information about the assault.

Most sexual assaults are committed by someone known to the victim. If the assault was committed by someone known to the victim or by a stranger, the police will conduct an investigation. In many cases, the police will be able to find and question the accused and

may arrest him or her. The police will charge the accused if they have enough evidence. You may wish to contact the PEI Rape and Sexual Assault Centre or Victim Services to ask for someone to support you at this time. It might not be possible to have a support person with you when giving your statement to police, but they can wait nearby to support you afterwards.

Will everyone know that I've been assaulted?

The police do not release the name of victims and do not always release information about incidents of sexual assault. Sometimes, they may make a statement to warn the public without identifying the victim.

If your case goes to court, you can ask the Crown Attorney to request a publication ban. The judge will order that your name, or anything else which could identify you, is not published in any document or broadcast or transmitted in any way.

Is there anyone who can help me once I tell the police I've been assaulted?

Victim Services helps victims of crime. Victim Services staff members work closely with the police to give you information about court dates, times and procedures. They also provide emotional support, short-term counselling and referrals to other counselling agencies on request. This service is free and confidential. Call 368-4582 (Charlottetown) or 888-8218 (Summerside).

The PEI Rape and Sexual Assault Centre also offers free and confidential counselling to victims of sexual assault. Call 368-8055.

Can my spouse be charged with sexual assault against me?

Your spouse can be charged with sexual assault if he or she sexually assaults you. Married spouses can testify against each other, though they are not legally required to do so. Common-law spouses can be required to testify against each other.

Can I be required to testify against my spouse in a sexual assault case?

Married and common-law spouses can be required to testify in cases where one spouse is accused of assault against a victim under the age of 14.

What if I agreed to the sexual activity with the accused?

Consent is a complicated legal term. You give consent when you voluntarily agree to take part in the sexual activity. However, no consent is given if:

- Someone else consented for you
- You were not capable of giving consent at the time
- The other person abuses a position of trust, power or authority to get your consent
- You express in words or actions a lack of consent to take part in the sexual activity
- You express in words or actions a lack of consent to continue the sexual activity
- If someone used threats to get your consent

Sometimes, a person is incapable of giving consent. For example, you are incapable of giving consent if:

- You are unconscious or passed out or otherwise unaware of what is happening around you
- You have a physical or mental disability that prevents you from communicating consent

Sometimes the accused will claim the victim consented. The accused may believe consent was given because the accused:

- was intoxicated
- was reckless or willfully blind to the victim's wishes
- did not take reasonable steps to find out if the victim was consenting.

This is not an acceptable defence under the *Criminal Code*.

Does there have to be a witness to the assault?

There does not have to be an independent witness to the assault. The accused can be convicted based on your evidence. Sometimes there is evidence such as medical evidence indicating that you were assaulted. The judge or jury must be satisfied beyond a reasonable doubt that the accused sexually assaulted you or they cannot find the accused guilty of the offense.

What does the Crown Attorney do?

The Crown Attorney is a lawyer who works for the state. The Crown Attorney is not your personal lawyer. You are a witness for the Crown Attorney's case.

The Crown Attorneys' Office has adopted a victim-oriented approach to prosecuting sexual offences. Staff members try to prepare cases in ways that do not cause further trauma to victims. The Crown Attorney will meet with you and make decisions about your case after talking with you, with the investigating police officer and with the Victim Services worker. When you meet with the Crown Attorney, you will be asked to review your statement to police and prepare to testify in court. Try to answer all of the questions you are asked, even if they are embarrassing.

Will I have to give evidence in court?

If the accused pleads guilty, you will not have to give evidence. If the accused pleads not guilty, you will usually have to give evidence in court. As the victim, you may be the only witness to the sexual assault.

Where will the case be heard?

Depending on the charge, the case may be heard in Provincial Court or Supreme Court.

The *Criminal Code* sets out the procedure to decide which courts will try offences. There are three categories of offences:

- **summary conviction offences**,
- **indictable offences**, and
- **dual procedure offences** (this means the offence may be summary conviction or indictable depending on the circumstances).

The decision to proceed by summary conviction or indictment in dual procedure offences is made by the Crown Attorney's office.

Criminal Code summary conviction offences are tried in Provincial Court. The accused has no say where this is tried.

Dual procedure offences may be tried in either court. The accused has a choice in these cases. He or she may choose Provincial Court judge, Supreme Court judge alone, or Supreme Court judge and jury. This choice is called an election.

Indictable offences are tried in either court, depending on whether the accused elects Provincial Court judge, Supreme Court judge alone, or Supreme Court judge and jury.

Is there anything I need to do?

If the case goes to trial, you may wish to prepare a victim impact statement. The victim impact statement describes the harm done to you by the assault and may include information about physical injuries, emotional effects, and any financial loss you may have suffered. The purpose of the victim impact statement is to give the judge information to use when deciding on a sentence. Victim Services staff will explain victim impact statements so you can make an informed decision about whether to prepare one. They will help you prepare and file the document with the court.

CLIA's pamphlet "A Guide for Witnesses" tells you about being a witness in a criminal trial. CLIA's "Criminal Trial Procedures" pamphlet describes the criminal process.

Is there any way to make testifying easier?

If you have a mental or physical disability and cannot give evidence without help, there are testimonial aids that you or the Crown Attorney may be able to apply for. The judge will grant your application as long as he or she does not believe that these testimonial aids would interfere with the proper administration of justice. In other situations, the judge will consider the application if it is necessary to allow the witness to give a full and candid account.

These aids may include testifying behind a screen, testifying by closed-circuit television or having a support person with you when you testify. In order to have an application for aids granted, you must be able to show that, without these aids, you would be unable to provide a full and candid account of what happened.

For more information, please read CLIA's pamphlet "A Guide for Witnesses".

Will I be cross-examined by the accused?

If the accused represents himself or herself, you or the Crown Attorney can apply for an order to have a lawyer conduct the cross-examination instead of the accused. If the judge believes that you would be unable to give a full and candid account of the incident, the judge will appoint a lawyer to cross examine you instead of the accused.

The judge may refuse an application to have a lawyer cross examine you if the judge feels it would interfere with the proper administration of justice.

Will the accused be kept in jail until the trial?

Usually the accused will be released until the trial. If you are afraid that the accused will contact you or harm you, you can ask the police to help you get an undertaking that puts conditions on the accused. These conditions can include that the accused not go near your home or your work and that the accused not speak to you or contact you by phone. If the accused is not likely to show up in court, or presents a danger to the public, then the Crown may ask for a "show cause" hearing. This may result in the accused being held in jail until the trial.

Can I change my mind and withdraw charges or refuse to give evidence in court?

If charges have been laid by the police against the accused, you cannot withdraw them. Only the Crown Attorney can withdraw charges against the accused.

If you receive a subpoena, you must go to court to give evidence. The subpoena gives the date and time you must be there. If you do not obey a subpoena, the judge can issue a warrant for your arrest.

If you are afraid or you do not want to give evidence in court, talk to a Victim Services worker and the Crown Attorney.

Will my sexual history be discussed in court?

In general, the sexual history of the victim is not admissible as evidence in court. There are some situations when this may not be true.

Evidence of your sexual history may be allowed if:

- it has already been raised by the prosecution
- there is a dispute as to the identity of the person who committed the assault, or
- the accused wants to provide evidence of other sexual activity which you agreed to on the same occasion as the alleged assault.

Will my personal writings or medical records be used in court?

The *Criminal Code of Canada* tries to ensure that only relevant documents from the victims' and witnesses' personal and confidential records are made available to the accused. The procedures to determine the release of records include a review process in which the accused must show that:

- the records exist
- they are held by a named record holder, and
- they contain information which is relevant to the issue at trial.

The trial judge then examines the records or part of the records in private to decide whether any part of the record should be given to the accused. This has been a controversial area for courts to deal with. These procedures are intended to prevent invasion of a victim's private and confidential records.

What sentence will the offender get?

If the offender pleads guilty or is found guilty, he or she may be sentenced immediately. Usually the judge will set a later date for sentencing and may ask for a pre-sentence report on the offender.

The pre-sentence report is done by a probation officer. The probation officer will find out about the offender's background, family, education, employment record and previous criminal record.

The judge will also read your victim impact statement if it has been filed with the court.

The judge has many sentencing options including fines, discharges, probation or a jail term. The judge may choose one or more of these penalties.

The judge looks at the:

- seriousness of the offence
- circumstances surrounding the offence
- harm to the victim
- amount of force used by the offender
- offender's attitude towards the crime
- offender's previous criminal record
- kinds of sentences that have been given for similar offences
- prevalence of the crime in the community
- Community Legal Information Association (CLIA) has a pamphlet called "Sentencing" which provides more information on sentencing procedures.

What happens after the trial is over?

After the court process is over, Victim Services will continue to offer you information and support. They can help you with information about orders to refrain from contact, offender release dates and conditions, letters to the National Parole Board and anything else you may need to help you with the criminal justice system.

Can I get financial compensation for the pain and suffering of being sexually assaulted?

There are three possible ways that you could be compensated financially:

1. The judge may order the offender to pay restitution to cover actual financial costs to you.
2. You can apply to the Criminal Injuries Compensation Fund if you have suffered physical injuries and/or emotional trauma as a result of being sexually assaulted. Victim Services will help you to make the application. A Victim Services worker will document evidence during court proceedings and gather medical, hospital, police and other reports to support your claim. When the application for compensation has been completed, the Victim Services worker will write a case analysis and forward all of the documents to an adjudicator who will assess your claim.
3. You may wish to speak to a lawyer to get legal advice about launching a civil suit against the person who sexually assaulted you.

If I was sexually assaulted as a child, is there anything I can do now?

It may be possible to have criminal charges laid against the person who assaulted you. You can discuss your situation with the police.

You may also wish to think about a civil case or lawsuit - a lawyer can help you decide about this.

There are also counselling services available for survivors of childhood sexual assault.

Where can I get more information?

Community Legal Information Association (CLIA) provides information about the law and the justice system through a telephone inquiry line and a walk-in service, booklets, pamphlets, speakers' bureau, and workshops. 892-0853 or 1-800-240-9798

Lawyers' names and the names of law firms are listed alphabetically in the yellow pages in the PEI phone book under "Lawyers". You can also call the Lawyer Referral Service. You may see a lawyer for a 30 minute appointment for \$10.00 plus taxes. You can reach the Lawyer Referral Service Monday to Thursdays, from 9:00 a.m. to 4:00 p.m. 892-0853 or 1-800-240-9798

Victim Services has offices in Charlottetown, 368-4582 and Summerside, 888-8218.

The PEI Rape and Sexual Assault Centre has information, crisis support and crisis counselling available at 566-8999 or 1-800-289-5656. The Centre's counselling services are available at 368-8055.

Community Legal Information Association has pamphlets on all of the topics covered in this booklet. Copies are available, free of charge, if you would like to learn more about a topic.

- Court Orders for Your Protection
- Making a Safety Plan in Violent or Abusive Relationships
- The Age of Consent: Young People, Sex and the Law
- Family Violence and the Law
- A Guide for Witnesses
- Going to Court: Criminal Trial Procedure
- Going to Court: Civil Trial Procedure
- Sentencing

This pamphlet was published by Community Legal Information Association of Prince Edward Island Inc (CLIA) for information and education purposes only. It contains general information about the law. It does not contain a complete statement of the law in this area and is not a substitute for legal advice.

If you need legal advice contact a lawyer. If you do not know a lawyer, you may contact one through the Lawyer Referral Service (902-892-0853 or 1-800-240-9798). A 30 minute appointment with a lawyer through this service will cost you \$10 plus tax.

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For more information, you can telephone CLIA at 892-0853 or 1-800-240-9798, visit our website at www.cliapei.ca or email us at clia@cliapei.ca

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