

Understanding the Legal Definition of Sexual Assault in Canada: A Comprehensive Overview

by Rose Keith, KC

Content Warning: This article discusses sensitive topics related to sexual assault, including descriptions that may be triggering or upsetting to some individuals. Reader discretion is advised.

Sexual assault is a serious criminal offense, with significant legal implications for both the accused and the victim. Understanding the legal definition of sexual assault in Canada is crucial for individuals, legal professionals, and the general public to ensure that justice is served, and victims' rights are protected.

LEGAL DEFINITION OF SEXUAL ASSAULT IN CANADA

In Canada's criminal justice system, sexual assault is governed Section 271 of the Criminal Code. The elements of the crime of sexual assault are:

UNWANTED SEXUAL ACTIVITY

Sexual assault occurs when a person engages in any sexual activity with another person without their consent. This includes a wide range of acts, such as sexual touching, intercourse, and any other sexual contact.

LACK OF CONSENT

The core element of sexual assault is the absence of consent. Consent must be informed, voluntary, and ongoing throughout the sexual activity. It is important to note that consent cannot be given if a person is unable to provide it due to factors such as intoxication, incapacity, or coercion.

AGE AND CAPACITY

In cases involving minors, the legal definition of sexual assault takes into account the age of consent, which is 16 years in Canada. Engaging in sexual

activity with a minor under this age is considered sexual assault unless the individuals are close in age and meet certain conditions.

USE OF FORCE OR THREATS

Sexual assault may involve the use of force, threats, or the presence of weapons. These factors can further aggravate the offense, potentially leading to additional charges or more severe penalties.

PENALTIES FOR SEXUAL ASSAULT

The penalties for sexual assault in Canada vary depending on the circumstances of the case and the severity of the offense. Sentences may range from fines and probation to imprisonment. Some key considerations include:

SEXUAL ASSAULT

In cases of sexual assault without the use of a weapon or physical harm, the maximum penalty is 10 years of imprisonment. If the victim is under the age of 16, the maximum penalty increases to 14 years.

AGGRAVATED SEXUAL ASSAULT

If the sexual assault involves the use of a weapon, threats, or results in bodily harm, the maximum penalty is life imprisonment.

CONSENT AND EVIDENCE

Proving or disproving consent is often a central issue in sexual assault cases. Evidence may include eyewitness accounts, physical evidence, and the testimony of the victim and the accused.

IMPACT ON THE VICTIM

The court considers the impact of the sexual assault on the victim, including their emotional and psychological well-being, when determining the appropriate sentence.

LEGAL CONSIDERATIONS

Sexual assault is a crime in Canada, but it can also found the basis of many claims in our civil courts and tribunals including claims for damages, claims for breach of contract and a variety of regulatory claims. In our civil courts and regulatory tribunals, the test for determining whether sexual assault has occurred is different and the burden of proof rather than being proof beyond a reasonable doubt is on a balance of probabilities. Understanding the criminal charge of sexual assault is vital for anyone involved in civil cases involving sexual assault. An alleged perpetrator not being charged criminally has no bearing on whether a civil or regulatory proceeding should be brought, likewise a finding of innocent in a criminal court does not preclude civil or regulatory proceedings. When criminal charges accompany civil proceedings, it adds a layer of complexity in terms of understanding the different nuances in the criminal charge versus what is required to be proven in a civil or regulatory venue and understanding how the evidence in either venue can have an impact or be used in the other venue.

REPORTING AND SUPPORT

Victims of sexual assault are encouraged to report the incident to the police. It is important to understand that a decision of the police to not proceed with criminal charges does not have any

bearing on whether an individual should seek out remedies in a civil or regulatory forum. Be aware of the various victim services and organizations that provide assistance throughout the legal process that may be available to your client.

STATUTE OF LIMITATIONS

In Canada, there is no statute of limitations for sexual assault offenses or for claims for damages. This means that charges can be brought at any time after the incident, no matter how much time has passed and a claim for compensation can be brought. However, there are limitations for bringing claims in venues such as the human rights tribunal.

For anyone practicing in the area of sexual violence, whether before our civil courts or our tribunals, an understanding of the criminal offence of sexual assault is necessary to an understanding of the implications when police have chosen to proceed with criminal charges and when there is either an acquittal or a conviction for sexual assault. Beyond our legal practices, awareness of the legal framework surrounding sexual assault and the support available to victims is crucial to creating a safer and more just society. If you have any questions, please get in touch with [Rose Keith](#).



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