

INTRODUCTION TO SEXUAL ASSAULT

Everyday in Canada, women, children and men are sexually abused, assaulted and harassed in their homes, work places and communities. It is difficult to accurately determine the incidence, prevalence and patterns of sexual crimes in Canada today because many victims, some say most victims, don't report the crime to the police; many victims, some say most victims, never tell anyone about their abuse or assault. However, it is commonly accepted that the significant majority of sexual offenders are male; consequently, assailants and perpetrators are referred to as "he" throughout this Protocol. While research continues to confirm that the majority of victims and survivors of sexual offences are female, there is a growing awareness of and sensitivity to the vulnerability of male children to sexual abuse and to the particular needs of male victims of sexual assault; consequently, victims and survivors of sexual assault are referred to as "s/he" in this Protocol.

Defining the Issue

Sexual violence is a general term used to describe a wide variety of sexually intrusive, abusive and violent behaviours including: child sexual abuse; date or acquaintance rape; sexual assault; sexual abuse between intimate partners; sexual harassment in the workplace; and the trafficking of human beings in the sex trade industry.

Sexual assault is commonly defined as any unwanted act of sexual nature imposed by one person on another person against their will, and is generally used to describe sexual assaults committed by one adult against another adult, regardless of the circumstances of the assault or the nature of the relationship between the victim and the assailant.

This Protocol describes the network of supports and services available to adult victims of sexual assault.

It is a criminal offence in Canada to touch anyone anywhere on their body, in a manner that is sexual in nature, without their direct, conscious and freely given consent. Touching is considered to be sexual in nature when it violates the sexual integrity of a person. Generally speaking, if a person feels sexually violated by the touching of another person, then it is likely that s/he has experienced sexual assault in accordance with the Criminal Code of Canada.

The Criminal Code of Canada currently identifies three distinct categories of sexual assault, based on the degree of physical violence that occurs during the assault, not the type of sexual activity: sexual assault; sexual assault with a weapon; and aggravated sexual assault. Sexual assault is recognized as a violent crime of a sexual nature; it is not "sex that becomes violent".

Refer to Appendix 5 for detailed definitions of sexual assault, sexual assault with a weapon, and aggravated sexual assault.

The issue of **consent** is integral to any discussion of the legal definitions of sexual assault in Canada today. In the absence of direct, conscious and freely given consent, sexual contact between two individuals becomes sexual assault; because of the nature of sexual assault, a crime most often committed without witnesses, exploration of the issue of consent may deteriorate into an argument of “he said vs. she said”, particularly in those instances when an individual is sexually assaulted in a dating situation and/or is sexually assaulted by someone with whom s/he has had sexual relations in the past.

Currently, in Canada, consent:

- Can NOT be given by someone else on behalf of victim - eg. a father can not give consent for someone else to “have sex” with his daughter;
- can NOT be given by anyone under 16 years of age¹⁶;
- is NOT valid if the assailant/offender abuses power, authority or trust to secure consent;
- is NOT given if the victim expresses lack of agreement to sexual activity with words or behaviour; and
- is NOT given if the victim indicates at any time s/he does not want to continue to participate in sexual activities beyond certain point.

Patterns and Dynamics of Sexual Assault

As noted above, it is difficult to develop an accurate “picture” of sexual assault in Canada today, primarily because of the low rates of reporting and disclosure. Research suggests that only 6% of sexual assaults are reported to the policeⁱ, while only 1% of women who are sexually assaulted by an acquaintance report the incident to the police.ⁱⁱ This is of particular concern since it is estimated that at least one out of every three sexual assault occurs in a dating or acquaintance relationship (31%).ⁱⁱⁱ

Victims of sexual assault cite many reasons for not reporting the assaults they experience, including fear, embarrassment and shame, concern about being negatively judged or blamed by the police or court system, and a belief that the police can or will do nothing in response to their disclosure.^{iv} Many steps have been taken to address these concerns over the past two decades, particularly since the positive finding in 1998 on behalf of Jane Doe, a sexual assault victim. Jane Doe sued the Toronto Police Department, claiming that she and other women in her neighbourhood had been used as “bait” to catch a serial rapist. Following the judge’s ruling that the Toronto Police Service was guilty of systemic sexism in probing a crime that is perpetrated mainly against women, the Police

¹⁶The age of consent was increased from 14 years to 16 years in spring 2008; the implications of these changes for individual youths involved in dating relationship and in relation to application of the law are currently unknown (Fall 2008).

Service in Toronto and others around the province have made efforts to implement a series of recommendations designed to improve their response to victims of sexual assault. Regular reviews and audits (1999; 2004; 2009 pending) have helped to ensure that the Toronto Police Service continues to demonstrate a concrete commitment to the successful implementation of these recommendations. **It is our firm belief that the collaborative response promoted and supported by this Protocol can do much to reaffirm victims' faith in the law enforcement and justice systems.**

Statistics of incidence, prevalence and patterns of sexual assault vary somewhat in accordance with the specific parameters applied during any given research initiative, such as sex, age range and location of respondents, method of data collection, etc. However, the following represents an overview of commonly accepted facts and information about the patterns and dynamics of sexual assault in Canada today:

- At least one in every four women living in Canada today will be sexually assaulted;^v some studies suggest that as many as 50% of women, or one in every two women, will be sexually assaulted during their lifetime with young women, aged 16 to 24 years being particularly vulnerable.^{vi}
- At least one in every seven men living in Canada today will be sexually assaulted at some point in their lives.^{vii}
- Persons with disabilities are, on average, 1½ times more likely to experience violence than nondisabled persons of their same age and sex.^{viii} Women with disabilities are particularly vulnerable to sexual assault. At least eight in every ten women with disabilities will be sexually assaulted at some point in their lives (83%).^{ix}
- Women are most likely to be sexually assaulted by someone they know and trust to some degree, not strangers; and they are most likely to be assaulted in a private home, often their own. Nearly 70% of sexual assault victims are assaulted by dates, boyfriends, marital partners, friends, family members or neighbours^x, and 60% to 80% are assaulted in a private home.^{xi}
- Men who commit sexual assault come from every economic, ethnic, racial, age and social group. Profiles of rapists reveal that they are “ordinary” and “normal” men motivated by a desire to assert power and control over their victims, they are not mentally ill or sex-starved individuals. In most instances, sexual offenders have ready access to a legitimate sexual outlet, such as a girlfriend or partner.^{xii}