

Defining Sexual Assault



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SEXUAL ASSAULT CENTRE

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Sexual Assault

Sexual Assault is the legal term under the Criminal Code of Canada to refer to any form of sexual contact without voluntary consent. This can include forced

or unwanted kissing, fondling, vaginal and/or anal penetration, and/or oral sexual contact.

Consent

Consent is defined in Section 273.1 of the Code 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.¹ In addition, the Code outlines **five specific situations where consent is not obtained:**²

- 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 behaviours.
- Consent is not obtained if the person is not capable of giving consent. (e.g., if they are drunk and/or high, unconscious or sleeping).
- Consent is not obtained if the person changes their mind.

The legal age of consent in Canada is 16, however, the Code further outlines that until the age of 18, 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.³ And, although children under the age of 12 cannot consent to any kind of sexual activity under the Code, youth aged 12 and 13 can consent if the other person is less than two years older, and youth aged 14 and 15 can consent if the other person is less than five years older.

Believing a person consented is not a valid defense.⁴

As outlined under Section 273.1 of the Code, it is not a defense for a person being charged to claim that they believed the other person consented to the sexual activity in question if their belief arose from self-induced intoxication, recklessness, or willful blindness. Moreover, 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.

^{1 2 3 4} <https://www.justice.gc.ca/eng/cj-jp/victims-victimes/def.html>