

## **SEXUAL MISCONDUCT**

### Clarifying the boundaries of sexual acts

During their teenage years many people begin experimenting with personal, romantic and often sexual relationships. It is important to be aware of the legality of certain sexual acts. Most importantly, romantic and sexual relationships must be consensual and mutually nourishing.

#### **What is rape?**

Rape is a type of sexual assault, which usually involves sexual contact or penetration, without the consent of the other party or with the use of physical force, coercion, deception, threat and/or when the victim is mentally incapacitated or impaired. We could also conclude rape if the victim is physically impaired due to voluntary or involuntary alcohol or drug consumption or if the victim is asleep or unconscious.

In Canada, rape has legally been reclassified as sexual assault so as to cement the fact that a person can be charged for any forced sexual contact, not just forced sexual intercourse. It is important to know that even if a person has consented to sexual relations in the past, this does mean that they automatically consent to sexual relations every other time. Also, even if you have been in a relationship with someone for years, you must respect his or her wishes.

Forcing your partner to engage in sexual relations is still considered as sexual assault. Sexual activity should not take place unless both parties have freely given consent. Silence does not constitute consent and "No" does not mean "Yes".

If an adult touches a minor on any part of their body for a sexual purpose, either directly or indirectly, they have committed the offence of sexual interference.

#### **What is sexual harassment?**

Sexual harassment is a term used to refer to unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment.

Every employee has a right to work in an environment free of sexual harassment. Every employer is responsible for ensuring that the workplace is free of sexual harassment. If you are a victim of unwanted sexual advances at work, you could sue the perpetrator for sexual assault.

#### **What does 'consent' mean?**

Consent, in regards to sexual activity, refers to permission or agreement to participate in sexual activities. If you accept and agree to have sexual relations with someone then you consent. Consent doesn't have to be expressed verbally, it could be implied from the context of the relationship. However, you should be careful, silence does not always equate to consent. Also, consent could be withdrawn at any time.

It is important to know that not everyone can consent to sexual relations:

- a person may be too young to consent;
- some mental disabilities take away one's ability to consent
- a minor cannot legally consent to sexual relations with a person in a position of authority

Furthermore, consent cannot be validly given if a person is fearful, threatened, defrauded or is in the presence of someone who occupies a position of authority over them. Also, if someone consents to a particular sexual activity, they do not necessarily consent to all sexual activity. This means that if you agree to oral sex, you are not also agreeing to intercourse.

### **What is public lewdness?**

Public lewdness or indecent acts refers to conduct undertaken in a non-private or publicly viewable location, which is deemed indecent in nature according to the attitudes of a certain community.

Having sexual relations or exposing your private parts in public such as a park or a movie theater is an indecent act and you could be charged for public lewdness if you are caught.

It is also an offence to deliberately expose your private parts in a place where you could be seen by the public. This means that if you are in front of a window in your home and people walking on the street can see you, you will be committing the same crime as someone who is nude in a park.

### **What is 'obscenity'?**

Any act, utterance, or item that tends to corrupt public morals is considered as obscene. Something is considered as obscene if offends a society's idea of morality or decency.

Obscenity generally refers to disorderly conduct that is related to a violent and/or sexual nature, and can include written material such as books, comics or papers, pictures, or records. The Code defines obscene acts as those with "a dominant characteristic of the publication that is the undue exploitation of sex, or the combination of sex and at least one crime, horror, cruelty or violence".

You can be arrested for shouting obscene (i.e. violent or sexual) words in public if you cause anyone emotional disturbance.

### **What is child pornography?**

Child pornography refers to images, films, and writings depicting sexually explicit activities involving a child under the age of 18. The person involved in the pornographic material doesn't necessarily have to be a child; it is illegal to try to pass someone, even an adult, off as a child in any type of pornography.

The only cases where minors, or people being represented as minors are legal are instances when depictions are for artistic, educational, scientific, medical, or public good purposes.

### **Can I send the racy pictures of my girlfriend/boyfriend to someone else?**

No, you should not send racy pictures of your girlfriend or boyfriend to anyone.

If you are a minor and you send nude pictures of your girlfriend or boyfriend to someone else you will be breaking laws against the possession and distribution of child pornography. The *Criminal Code* prohibits the creation and distribution of images showing sexual activity or the sexual organs of a minor.

### **Is “sexting” legal?**

There are no clear laws on sexting in Canada. However, it can be reasoned that sexting is illegal as the creation and the sending of nude photos of minors’ breaks child pornography laws. You should know that child pornography laws are not intended to prosecute minors who share nude photos as long as the photos are kept private between the original partners. The purpose of Child Pornography laws is to protect minors from being exploited and harmed by adults.

Your rights depend on your circumstance. You should consult a lawyer if you have any specific questions.

### **Is homosexuality illegal in Canada?**

Homosexuality is not illegal in Canada. Homosexual relations are however regulated by law. Lesbians can engage in sexual activities as early as 14. However, the age of consent for anal sex, regardless of sexual orientation, is 18, unless it occurs in marriage.

### **Is it illegal to have unprotected sex with someone without telling them that I am HIV positive?**

Yes, it is illegal to have unprotected sex with someone without informing him or her that you have a sexually transmitted disease. By refusing to transmit this information, your partner would not be able to validly consent to having sex. You could be charged for sexual assault if you do not inform your sexual partner of your condition. Your partner does not have to contract HIV to be able to file charges against you. The fact they were not informed is enough for him or her to press charges.

### **If my parents want me to get a female circumcision, do I have to obey them?**

In Canada, your parents cannot force you to get circumcised. Female circumcision is prohibited for minors unless health reasons warrant the procedure. However, the procedure must be carried out by a medical professional. If at any time, a youth or an adult decides to mutilate any part of their genitalia, in part or in whole, by anyone other than a medical doctor, they have committed an offense.

### **Can I have sexual relations with my cousin?**

Yes, you can have sexual intercourse with your cousin. The law only prohibits incest.

Incest is when a person has sexual intercourse with their biological child, brother, sister, mother, father, grandmother, grandfather, granddaughter or grandson. You are also

committing incest if you have sexual intercourse with a half-sibling because you share one biological parent.

Any sexual act other than sexual intercourse with one of the above listed members of a family would not be considered incest but could still be illegal if one of the participants were a minor.

### **Can someone record me or watch me while I'm naked without my consent?**

No, it is illegal for someone to watch or record you without your consent. This is called voyeurism and it is prohibited by section 162 of the *Criminal Code*. The law states that it is illegal to observe or record someone in a situation where he or she expects a certain level of privacy (ex. in your own home, bathroom or locker room).

To be charged for voyeurism, a person has to watch or record you with the intent of catching you in the nude. If you are being watched for a reason other than to see you in the nude, he or she can only be charged with invasion of privacy.

### **What if an adult doesn't touch me but wants to watch me do things of a sexual nature?**

It is illegal for an adult who is in a position of trust or authority to ask you or watch you do things of a sexual nature. It is also an offence for an adult to ask you to touch yourself or another person in a sexual manner.

### **Do I have to be a certain age to have sex with someone I like?**

Yes, depending on the circumstance, you have to be of a certain age to have sex with someone you like. The law regulates the consent of minors to sexual activities. The age for consenting to a sexual activity in Canada is 16 years of age. There are however some exceptions.

Minors under the age of 16 are allowed to engage in sexual relations with each other if the older partner is less than 2 years older than the younger partner. Also, the older partner must not be in a position of trust or authority in relationship to the younger partner. Examples of people in a position of authority are: older family members, family friends, adult neighbours, teachers, camp counsellors, etc.

If you are 14 or 15 years old, you may not have sex with someone who is more than 5 years older than you. As mentioned above, your older partner should not be in a position of power. Any violation of these age requirements is illegal and can constitute statutory rape if there is sexual intercourse.

### **Guidelines to follow when engaging in sexual activities:**

1. Both parties are fully aware of what is going on
2. Neither party feels pressured or threatened
3. Both parties are willing participants

Tips to understanding whether or not someone has consented:

1. Speak to one another about sex in order to clarify any doubts you may have
2. Consent is an ongoing process; agreeing to a sexual act once does not give someone a pass to do anything anytime
3. Silence does not mean yes; if you're guessing as to whether your partner consents then you run the risk of guessing wrong.
4. Check-in occasionally to see if both parties are enjoying what is going on
5. Trust your intuition. If you have a gut feeling that the situation doesn't feel right, leave.
6. If you're in a situation where you feel things are getting out of hand, don't be afraid to draw attention to yourself. Don't be afraid of overreacting.
7. Know your limits before you engage in sexual activities and communicate your expectation and limits to your partner early on.