

Lesson Plan 7: It's Never Your Fault, Without a "YES", It's a "NO": Sexual Assault

Introduction

Sexual activity does not just refer to sex, it includes kissing, hugging, making out, cuddling, and touching someone's body in a sexual manner. On the topic (matter), (issue) of sexual activity and sexual intercourse/ sexual intimacy, you have the right to decide when, where and how the act takes place. Before any sexual activity or sexual intimacy takes place (occurs)/ (is entered into), individual consent or voluntary verbal expression of "yes" is not only necessary but also of prime importance. Everyone needs to consent, or another way to think about consent is that only yes means yes.

So, how do you know if someone wants to make out or have sex? Simple! You have got to ask! You will have to ask. If the other party/ individual fails to verbally respond, or say nothing indicates that the answer is No. In other words, anything other than, Yes, means No.

For animators: Although the teenagers refer to intimacy as "sex", the use of the word without qualifying is problematic as the word sex can also refer to gender.

Topic 1: Consent

As discussed in the previous workshop, prior to engaging in any sexual activity each partner must clearly consent to that activity¹. That involves touching, kissing or any other type of sexual act. The consent must be clear, informed and freely given. It is important to know that consent can be a lot more complicated than just saying "yes." People do not always talk about touching and/or sex before it happens. Many people communicate non-verbally, through eye contact and body language. Unfortunately, non-verbal communication can sometimes lead to misunderstandings. If you are unsure, stop or ask directly.

Important Things about Consents:

1) If an individual thinks he/she has received non-verbal consent for sex but the other party was not really interested, then it could lead to rape or assault if they act on their mistaken belief². Charges could be laid in situations where someone did not give their consent to sex or sexual activity³.

¹ *Code criminel*, LRC, (1985) ch C-46, art 265(1)a et 265(2).

² *Code criminel*, LRC, (1985) ch C-46, art 265(1)a et 271.

³ *Code criminel*, LRC, (1985) ch C-46, art 265(1)a, 265(2) et 271, 272 et 273.

2) You have the right to change your mind at any point and the sexual activity or sex should cease. Refusal to stop when the other party wants to stop is called sexual assault⁴. There is no excuse for not stopping, and part of consent means listening to and respecting your partner.

3) Trying to turn someone's "No" into an "Ok, I guess so" is called sexual coercion. Coercion is when someone keeps asking even after hearing no, or tries to threaten or bribe the other person by saying things like, "if you loved me you would" or "my ex would do this with me, why won't you?" Sexual coercion is disrespectful and is a form of sexual assault⁵.

Consent must be clear

When giving **consent**, a person can say they are in agreement with their partner's actions. They can express their **consent** through words, an attitude or actions, like a smile⁶. However, verbal consent is always better to avoid misunderstanding. A person who says or does nothing is not consenting to sexual touching⁷.

4) Nobody has the right to ask you to consent to sex when you are drunk or about to black-out. It is wiser and safer to avoid having sex when you are under influence. People sometimes make different choices after using drugs or alcohol than they would under normal circumstances. This is the reason why individuals are unable to give informed consent if they are using drugs or alcohol. Getting someone drunk or high in order to have sex with them is considered assault⁸.

The responsibility for ensuring there is consent is on the person who is initiating or pursuing the sexual activity⁹. When someone has said no to sexual contact, the other person cannot rely on the fact that time has passed or the fact that the individual has not said no again to assume that consent now exists¹⁰.

Topic 2: Sexual offence

The definition of a sex crime differs from jurisdiction to jurisdiction. However, there are core offenses that are common to most jurisdictions, Canadian law forbids certain sexual actions and behaviours, and they can be reported as crimes. The common sex offenses fall into the following categories:

- Crimes against individuals (Youth are included) : rape, sexual assault and marital rape¹¹

⁴ *Code criminel*, LRC, (1985) ch C-46, art 265(1)a), 265(2) et 271.

⁵ *Code criminel*, LRC, (1985) ch C-46, art 265(1)a), 265(2), 271, 273.1(2), 273.1(2)c), 273.1(3), 273.2 a) ii), 273.2a)ii).

⁶ Julie Desrosiers et Geneviève Beausoleil-Allard, *L'agression sexuelle en droit canadien*, 2e édition, Yvon Blais, 2017 à la p 72.

⁷ *R c Ewanchuk*, [1999] 1 RCS 330 (CSC) aux paras 51-52.

⁸ *Code criminel*, LRC, (1985) ch C-46, art 265(1)a) et 273.1(1)a.1)b).

⁹ *Code criminel*, LRC, (1985) ch C-46, art 273.2b).

¹⁰ *Code criminel*, LRC, (1985) ch C-46, art 273.1(1.1).

¹¹ *Code criminel*, LRC, (1985) ch C-46, art 265(1)(2), 271 et ss.

- Crimes against relatives: incest¹²
- Crimes against children: pornography¹³, exploitation¹⁴, molestation, abduction
- Crimes against nature: indecent exposure¹⁵, bestiality¹⁶
- Crimes against sex for sale: prostitution

The Criminal Code protects all Canadians from sexual abuse and exploitation. For example, it protects everyone, including children, against:

- sexual assault¹⁷
- sexual interference¹⁸
- invitation to sexual touching¹⁹
- sexual exploitation²⁰
- Voyeurism²¹: the practice of gaining sexual pleasure from watching others when they are naked or engaged in sexual activity
- trafficking in persons²²
- non-consensual distribution of intimate images²³

This section gives some examples of common sexual offence:

Sexual Harassment

Sexual harassment is a form of discrimination based on sex. It happens everywhere: at work, at school, in housing and in public places (streets, public transit, swimming pools, parks). It also occurs online (e-mail, social media, etc.). Unlike sexual assault, sexual harassment is not a criminal offense. Cases are handled in civil court, not criminal court. Sexual harassment is defined as “Behavior characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation”. Sexual harassment can be²⁴:

- Non-verbal : Looks, whistles, posting pornographic material, e-mails, text messages
- Verbal: Sexist jokes, comments on physical appearance, questions about someone’s private life, threats, unwelcome advances, requests for sexual favours
- Physical: Rubbing, touching, sexual gesture

¹² *Code criminel*, LRC, (1985) ch C-46, art 155.

¹³ *Code criminel*, LRC, (1985) ch C-46, art 163.1.

¹⁴ *Code criminel*, LRC, (1985) ch C-46, art 153.

¹⁵ *Code criminel*, LRC, (1985) ch C-46, art 173.

¹⁶ *Code criminel*, LRC, (1985) ch C-46, art 160.

¹⁷ *Code criminel*, LRC, (1985) ch C-46 à la p 265(1)(2), 271-273.

¹⁸ *Code criminel*, LRC, (1985) ch C-46, art 151.

¹⁹ *Code criminel*, LRC, (1985) ch C-46, art 152.

²⁰ *Code criminel*, LRC, (1985) ch C-46, art 153.

²¹ *Code criminel*, LRC, (1985) ch C-46, art 162.

²² *Code criminel*, LRC, (1985) ch C-46, art 279.01.

²³ *Code criminel*, LRC, (1985) ch C-46, art 162.1.

²⁴ Par exemple : *Loi sur les normes du travail*, RLRQ c N-11, art 81.18.

Sexual Assault

In Canada, sexual assault is a criminal offence²⁵ and it is treated as such when reported to the police. Judicial proceedings in the case of sexual assault are the same as those for any other crime against the person and they are conducted either at the Criminal and Penal Division of the Court of Québec or at the Youth Division²⁶. Sexual assault is a crime, and those convicted of it go to jail²⁷. Sexual assault is an assault, within any one of the definitions of that concept in which is committed in circumstances of a sexual nature²⁸ such that the sexual integrity of the victim is violated. A range of terms are used to refer to sexual assault, including “sexual abuse” and “sexual violence.

Sexual assault can take many forms²⁹, with or without contact.

- Kissing of a sexual nature
- Contact between the mouth or the tongue and private parts
- Sexual touching (even over clothing)

Some forms of assault are often trivialized, but they constitute sexual assault in the same way as other forms. This includes:

- Sending unsolicited digital images of sexual content, such as videos of a sexual nature (sex tapes), etc.
- Harassment (inappropriate comments, forceful advances, vulgar jokes, etc.)
- Frottage (the practice of rubbing one’s genitals or breasts against someone, even when wearing clothing)
- Exhibitionism (exposing one’s genitals, buttocks or breasts or masturbating in front of someone or in public)
- Voyeurism (watching someone during a private moment or attempting to view a person’s private parts, buttocks or breasts)

A sexual act constitutes a sexual assault when the victim does not consent to the act or is unable or refuses to consent to it³⁰. There are several types of sexual assault depending not only on the nature of the acts committed, but also on the relationship between the victim and the person who commits the sexual assault. In Canada, the Criminal Code determines the situations that constitute sexual offences. From a legal standpoint in Canada, sexual assault is defined as a form of assault that is sexual in nature³¹. Sexual assault is a sexual act, with or without physical contact, committed by an individual without the consent of the victim³² or, in

²⁵ *Code criminel*, LRC, (1985) ch C-46, art 265(1)(2) et 271-173.

²⁶ *Loi sur les tribunaux judiciaires*, RLRQ c T-16, art 79, 82 et 83.;

<https://www.justice.gouv.qc.ca/systeme-judiciaire/tribunaux-du-quebec/cour-du-quebec/chambre-criminelle-et-penale/> ;

<https://www.justice.gouv.qc.ca/systeme-judiciaire/tribunaux-du-quebec/cour-du-quebec/chambre-de-la-jeunesse/>

²⁷ *Code criminel*, LRC, (1985) ch C-46, art 271-273.

²⁸ *Code criminel*, LRC, (1985) ch C-46, art 265(1)(2).

²⁹ *R c Cuerrier*, [1998] 2 RCS 371 (CSC) au para 11.

³⁰ *Code criminel*, LRC, (1985) ch C-46, art 273.1(1) et 273.1(2)a.1)b)d).

³¹ *Code criminel*, LRC, (1985) ch C-46, art 265(1)(2).

³² *Code criminel*, LRC, (1985) ch C-46, art 265(1)a) et 271-273.

some cases, and especially when children are involved, through emotional manipulation or blackmail³³. It is an act that subjects another person to the perpetrator's desires through an abuse of power, the use of force or coercion, or implicit or explicit threats³⁴. Sexual assault violates the victim's fundamental rights, including the right to physical and psychological integrity and security of the person³⁵. This definition applies regardless of the age, sex, culture, religion or sexual orientation³⁶ of the victim or of the perpetrator of the assault, regardless of the type of sexual act committed or the place or life setting in which it is committed, and regardless of the relationship between the victim and the perpetrator. Certain other terms are also used to refer to sexual assault, including "rape," sexual abuse," "sexual offence," "sexual contact," "incest," "prostitution" and "child pornography."

In order for there to be sexual assault within the meaning of the law, three conditions must be Present:

1. The use of "force" against a person³⁷
2. A sexual context³⁸
3. Lack of consent³⁹

Let's talk about some examples:

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 impaired⁴⁰. 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 unconscious⁴¹. In Canada, rape has legally been reclassified as sexual assault⁴² so as to cement the fact that a person can be charged for any forced sexual contact, not just forced sexual intercourse.

Voyeurism

Voyeurism is viewing some form of nudity⁴³ or sexual activity, accompanied by sexual arousal⁴⁴. A voyeur is "a person who derives sexual gratification from the covert observation of others as

³³ *Code criminel*, LRC, (1985) ch C-46, art 273.1(2)c).

³⁴ *Code criminel*, LRC, (1985) ch C-46, art 265(1)a)b) (2).

³⁵ *Charte canadienne des droits et libertés*, Loi de 1982 sur le Canada, Annexe B, 1982 (R-U), ch11, art 7.

³⁶ *Charte canadienne des droits et libertés*, Loi de 1982 sur le Canada, Annexe B, 1982 (R-U), ch11, art 15.

³⁷ *Code criminel*, LRC, (1985) ch C-46, art 265(1).

³⁸ *Code criminel*, LRC, (1985) ch C-46, art 265(2).

³⁹ *Code criminel*, LRC, (1985) ch C-46, art 265(1)a).

⁴⁰ *Code criminel*, LRC, (1985) ch C-46, art 265(1)(2) et 271-273.

⁴¹ *Code criminel*, LRC, (1985) ch C-46, art 273.1(2)a.1)b).

⁴² *Code criminel*, LRC, (1985) ch C-46, art 265(1)(2) et 271-273.

⁴³ *Code criminel*, LRC, (1985) ch C-46, art 162(1)b).

⁴⁴ *Code criminel*, LRC, (1985) ch C-46, art 162(1)c).

they undress or engage in sexual activities. In this context, the behavior is concerned with three things: the surreptitious nature of the observations; the private and intimate nature of what is observed; and sexual gratification. Because of the surreptitious nature of voyeurism, victims usually do not know that they have been viewed or recorded which, in turn, leads to under-reporting of voyeuristic behavior.

Lewdness

Public indecency generally refers to acts involving nudity or sexual activity in view of the public⁴⁵, often with the intent to shock, offend, or arouse⁴⁶. Being nude in a public place without a valid reason is forbidden⁴⁷. It is also forbidden to be naked on private property (such as a house) where other people can see you⁴⁸..

Luring

The offence of child luring in Canada can be found in section 172.1 of the Criminal Code. Luring a minor is a criminal offense committed by an adult, 18 or older, who tries to lure a minor, under 18, away from their home. Since luring a minor by an adult is usually for the purpose of sexual activities this is considered a sex crime. When we are talking about a luring offense, this means that you must have intended to commit a sexual assault, criminal restraining, criminal sexual contact or some other criminal offense against the child once you lured him/her into the isolated area⁴⁹. It is a criminal offence in Canada to communicate using the internet with a person under the age of 18 for the purpose of committing an offence⁵⁰.

Sexual exploitation

Sexual exploitation involves a person profiting from the use of another person's body in a **sexual** manner in order to benefit (financially or otherwise). In general, the perpetrator of **sexual exploitation** takes advantage of their victim's vulnerable or dependent state⁵¹, including addictions to drugs or alcohol. Victims can be of any age, gender, ethnicity, sexual orientation, socio-economic background or religion. Exploiters target and prey on the vulnerability of young people and groom them by gaining their trust and promising a better and more glamorous life.

Sharing Intimate Image

In Canada, publishing, texting or sharing intimate images of someone without their consent is a crime⁵².

⁴⁵ *Code criminel*, LRC, (1985) ch C-46, art 174(1)a).

⁴⁶ *Code criminel*, LRC, (1985) ch C-46, art 174(2).

⁴⁷ *Code criminel*, LRC, (1985) ch C-46, art 174(1)a).

⁴⁸ *Code criminel*, LRC, (1985) ch C-46, art 174(1)b).

⁴⁹ *Code criminel*, LRC, (1985) ch C-46, art 172.1(1).

⁵⁰ *Code criminel*, LRC, (1985) ch C-46, art 172.1(1).

⁵¹ *Code criminel*, LRC, (1985) ch C-46, art 153(1) et 153.1(1).

⁵² *Code criminel*, LRC, (1985) ch C-46, art 162.1(1).

What is an intimate image?

Intimate image means a visual recording of a person made by any means including a photographic, film or video recording, in which the person is naked, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity⁵³. At the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy⁵⁴; and in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed⁵⁵. Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty of an indictable offence and liable to imprisonment for a term of not more than five years⁵⁶.

Child Pornography

Pornography refers to material dealing with sex designed to arouse its readers or viewers. According to Section 163.1 of the criminal Code of Canada child pornography is broadly defined and includes:

- any representation of a person who is, or is depicted as being, under the age of 18 years, engaged in explicit sexual activity⁵⁷
- any representation whose dominant characteristic is the depiction of the sexual organs or anal region of a person under the age of 18 years for a sexual purpose⁵⁸
- written, visual and audio material that advocates or counsels unlawful sexual activity with a person under the age of 18⁵⁹
- written, visual and audio material whose dominant characteristic is the description of unlawful sexual activity with a person under the age of 18 for a sexual purpose⁶⁰

It is against the law for child pornography to be:

- made⁶¹
- distributed⁶²
- made available⁶³

⁵³ *Code criminel*, LRC, (1985) ch C-46, art 162.1(2)a).

⁵⁴ *Code criminel*, LRC, (1985) ch C-46, art 162.1(2)b).

⁵⁵ *Code criminel*, LRC, (1985) ch C-46, art 162.1(2)c).

⁵⁶ *Code criminel*, LRC, (1985) ch C-46, art 162.1(1).

⁵⁷ *Code criminel*, LRC, (1985) ch C-46, art 163.1(1)a)i).

⁵⁸ *Code criminel*, LRC, (1985) ch C-46, art 163.1(1)a)ii).

⁵⁹ *Code criminel*, LRC, (1985) ch C-46, art 163.1(1)b).

⁶⁰ *Code criminel*, LRC, (1985) ch C-46, art 163.1(1)c).

⁶¹ *Code criminel*, LRC, (1985) ch C-46, art 163.1(2).

⁶² *Code criminel*, LRC, (1985) ch C-46, art 163.1(3).

⁶³ *Code criminel*, LRC, (1985) ch C-46, art 163.1(3).

- sold⁶⁴
- possessed or accessed⁶⁵
- advertised⁶⁶
- exported or imported⁶⁷

The law says that Internet service providers have to tell the police as soon as possible if they think someone is using their services for child pornography, for example, through Internet connections, hosting services (using Internet servers) or email.⁶⁸ Internet service providers are the companies that sell you your internet service. The maximum penalties for these offences range from 10 to 14 years. Anyone who makes, prints, publishes, makes available, sells, imports, exports or advertises child pornography, or has child pornography in order to make it public, can be sent to prison for up to 14 years⁶⁹. The minimum punishment is 1 year in prison⁷⁰. Anyone who has, looks up or gets (accesses) child pornography can be sent to prison for up to 10 years⁷¹. The minimum punishment is six months in prison⁷².

Can I send nude pictures of my boyfriend and girlfriend 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 pornography⁷³. The Criminal Code prohibits the creation and distribution of images showing sexual activity or the sexual organs of a minor⁷⁴.

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 of Canada. 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)⁷⁵. To be charged for voyeurism, a person has to watch or record you with the intent of catching you naked⁷⁶.

What should I do if I am a victim of sexual assault?

⁶⁴ *Code criminel*, LRC, (1985) ch C-46, art 163.1(3).

⁶⁵ *Code criminel*, LRC, (1985) ch C-46, art 163.1(4).

⁶⁶ *Code criminel*, LRC, (1985) ch C-46, art 163.1(3).

⁶⁷ *Code criminel*, LRC, (1985) ch C-46, art 163.1(3).

⁶⁸ *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, S.C. 2011, c. 4, art 2-3.

⁶⁹ *Code criminel*, LRC, (1985) ch C-46, art 163.1(2).

⁷⁰ *Code criminel*, LRC, (1985) ch C-46, art 163.1(2).

⁷¹ *Code criminel*, LRC, (1985) ch C-46, art 163.1(4)a).

⁷² *Code criminel*, LRC, (1985) ch C-46, art 163.1(4)b).

⁷³ *Code criminel*, LRC, (1985) ch C-46, art 163.1(3)(4).

⁷⁴ *Code criminel*, LRC, (1985) ch C-46, art 163.1(2)(3).

⁷⁵ *Code criminel*, LRC, (1985) ch C-46, art 162(1).

⁷⁶ *Code criminel*, LRC, (1985) ch C-46, art 162(1).

It is never your fault if you have been sexually assaulted. It can be important to talk to someone about what has happened. This could be someone in your life like a family member or a school counsellor.

- If the sexual assault has just occurred, go to a safe place.
- If you are in immediate danger or need urgent medical attention, contact the police or ambulance services by calling 911 or the emergency number for your community.
- If you do not want to call the police, you can always report the situation to your local Director of Youth Protection (DYP) or call DYP at 1 800 361-6477
- Provincial Helpline for Victims of Sexual Assault 1 888 933-9007
- Tell someone you trust what happened. Look to trusted friends and family members for emotional support and practical help.
- Go to a hospital, a walk-in clinic or your doctor for a medical examination and treatment as soon as possible after a sexual assault. Even if the sexual assault is not recent, it may be important to go for a checkup.
- If you have questions about a sexual assault or your rights, do not hesitate to SPEAK OUT and LOOK FOR HELP.

However, some of the more common emotions likely to be experienced after assault include confusion, humiliation, shame, rage, sadness, fear and guilt. In addition, since youth usually know their abuser, they may also experience feelings of betrayal, denial and mistrust.

Victims instinctively tend to want to wash, or take a shower or a bath immediately after the event. However, before taking actions that seem natural, it is recommended that they call the provincial helpline for victims of sexual assault, at 1 888 933-9007. The support person who takes the call will be able to refer victims to regional resources that provide medical and psychosocial support after an assault. Further information is also available, such as details concerning the time limit for taking DNA samples. The important number to keep in mind is:

- After an assault, and for 5 days thereafter, it is possible to take DNA samples.
- Once the 5 days following an assault have elapsed, it is no longer possible to take samples, but a medical exam is still recommended. Certain injuries may be observed, and the exam will help determine the state of the victim's physical and psychological health.