

# Legal Rights and Procedures after Sexual Assault: Frequently Asked Questions

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*Note: This information package uses “you” to refer to a survivor/victim of sexual assault.*

## REPORTING DIRECTLY TO POLICE: AN OVERVIEW

### **Q. What can you expect if you report a sexual assault to the police?**

**A.** The police will take a report from you and start an investigation.

The police will share the information from the investigation with Crown Counsel. Crown Counsel is a lawyer working for the government who is in charge of prosecuting the case. In BC, Crown Counsel decides whether criminal charges will be laid, and if so, which charges. This means that **after you have reported your assault to police, you do not directly control whether charges are laid or whether the case goes to trial.**

If the case goes to court, you will be called as a witness.

You can get support to deal with the justice system process from a victim services worker. A victim services worker can also help you understand your options and decide whether or not to report your assault to police. Even if you decide not to report your assault, you can get practical and emotional support from a victim services worker. Some victim services are provided through the police and others are provided by community groups.

To find a victim services worker anywhere in BC, contact VictimLINK by phone toll-free at 1-800-563-0808, by text message at 604-836-6381, or by email at [VictimLinkBC@bc211.ca](mailto:VictimLinkBC@bc211.ca).

**Q. Is there a time limit for reporting sexual assault to the police?**

**A.** No, there is no time limit for reporting sexual assault to the police. But if you want to have a forensic exam to collect evidence (a rape kit), you will get the best evidence if you do the exam as soon as possible after an assault.

**Q. What is a forensic exam? If I choose to have a forensic exam, does it mean I must report my assault to police?**

**A.** A forensic exam is a medical exam to collect DNA evidence and other physical evidence that may be left on your body after an assault. Examples of physical evidence are hairs, fibres from clothing, saliva, semen, or blood.

The Sexual Assault Service run by BC Women’s Hospital offers health care services, including a forensic exam if you choose, up to 7 days after an assault. Many other hospitals in BC also have specially trained nurses who can help you decide what steps you want to take after sexual assault, including preserving forensic evidence. Other health care providers in BC can refer you to specialized services for health care after sexual assault.

If you choose to get a forensic exam, you can still decide not to report your assault to police. Some hospitals can store forensic samples for up to one year. This could give you some time to decide whether you want to report your assault to the police. If you have had forensic samples taken, the police would need these for their investigation.

**Q. What happens when the police take a report of sexual assault?**

**A.** Police officers will meet with you to get your statement (details about the assault). The first meeting might happen at your home or the place where the assault happened, but the police will eventually want you to come to the police station. The police need you to come to the police station so that your statement can be recorded (audio and video) and, if a charge is laid, disclosed to the person charged.

The police will ask for details about the assault, including:

- What happened
- Where it happened
- When it happened
- Whether you know the person who assaulted you
- A physical description of the person who assaulted you
- Whether a weapon was used
- What you said and did

- What the person who assaulted you said or did
- The names of people who were around at the time and may even have witnessed the assault
- Any other details that the police consider important

**Q. Are you allowed to have someone with you when you make your report to the police?**

**A.** Most people want to bring a friend or family member with them if they go to the police to make a report. A friend or family member can go with you to the police station and can sit with you at first while you are waiting and filling out paperwork, but they usually can't be with you in the interview when you tell the police what happened to you. However, if you are under 18 years old, most police officers will allow you to have a parent or guardian sit in the room with you while you give your statement.

Under the BC *Victims of Crime Act*, police must give you information about victim services programs, and they will usually introduce you to a victim services worker. The victim services worker may be able to sit with you through the interview, without getting involved in helping you answer questions.

You have to answer the questions from police by yourself unless you need accommodations because of a disability or a language barrier. If you need accommodations, the police should do everything possible to make sure you can give the best statement you can. Police officers may speak different languages and have interpreters on staff. You can report an assault in any language, and using any means necessary.

**Q. Can you add something to your police report later if you remember something you forgot to include?**

**A.** Yes, you can contact the police about adding information to your report. If it is an important detail, or if you want to correct something you said in your earlier statement, the officer will usually ask you to come to the station to record what you remember.

**Q. Can you decide to withdraw your report to police after you have made it?**

**A.** No. Once the police receive a report, they will investigate and decide whether to send the case to Crown. The person who made the report does not have a direct say in that process. However, the police and Crown prosecutor should listen to your concerns and consider them as the case moves forward.

**Q. If you report sexual assault to the police, do you have a right to information about what is going on with your case?**

**A.** Yes, under BC's *Victims of Crime Act*, you have the right to receive some information, such as:

- The reasons for the decision about whether to lay charges
- The name of the accused (the person accused of sexual assault)
- Bail conditions and any changes to bail conditions
- The date, location, and outcome of each court appearance in the case
- The reasons for the court's final decision
- The length and start date of the sentence
- Dates of any review proceedings affecting how long the person who assaulted you stays in prison, and information about how to make a statement as part of these proceedings

Not all of the points listed above will apply in every situation. Often, reports of sexual assault do not lead to trial, conviction, or a prison sentence for the person who committed the assault.

## DEALING WITH POLICE

**Q. How must the police treat you if you make a report?**

**A.** There are different policies and procedures for different police departments. For example, a municipal police department will follow a different policy from the RCMP. Also, different municipal forces will follow different policies from each other. Policies are not as strong as laws. However, it can still be helpful to know about policies so that you can complain if the policies are not being followed.

The **RCMP policy** for handling sexual assaults is described in the RCMP Federal Operational Manual. It includes the following:

- Training requirements for police officers involved in investigating sexual assault
- Prompt, thorough, and sensitive investigations
- Making victims' needs a priority and offering medical and psychological services
- Connecting victims with victim services programs if possible
- Appropriate interview techniques and procedures for recording statements
- Efforts to avoid implying judgment of the victim when asking questions

BC also has several **municipal police** departments, which serve specific cities, towns, or regions. Municipal police should follow the **Violence Against Women in Relationships**

**Policy (VAWIR)** in cases where a woman has been sexually assaulted by her intimate partner (boyfriend, girlfriend, husband, wife, or spouse). This policy is available online at <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/victims-of-crime/vs-info-for-professionals/info-resources/vawir.pdf>.

Municipal police forces may also have specific policies about sexual assault investigations.

### **Q. How do you make a complaint about police conduct?**

**A.** The complaints process is different for RCMP and municipal police forces.

To complain about the **RCMP**, contact the **Civilian Review and Complaints Commission for the RCMP**. The Commission's toll-free phone number is 1-800-665-6878. To make your complaint, you will need to know which RCMP detachment you dealt with. There is an online directory of RCMP detachments in BC that you can search based on the name of your city, town, or community: <http://bc.rcmp-grc.gc.ca/ViewPage.action?siteNodId=2106&languageId=1&contentId=7337>

To complain about **municipal police**, contact the **Office of the Police Complaint Commissioner**. The Office's website is here: <https://opcc.bc.ca/>

## LEGAL OPTIONS FOR PROTECTION FROM SOMEONE YOU FEAR

### **Q. What are some legal options to protect me from a person I think might harm me again?**

**A.** In BC, peace bonds and protection orders are two ways to get protection from a person you fear. Peace bonds and protection orders list requirements a person must follow, like staying away from you or your children; staying away from your school, workplace, or home; or not having weapons. These are just a few examples.

A peace bond is an order made under the *Criminal Code of Canada*. A protection order is an order made under the *BC Family Law Act*. Peace bonds and protection orders are both enforced by the police (municipal police or RCMP). You can get a protection order or peace bond whether or not anyone has been charged with a crime.

There are important differences between the two different types of orders. They are summarized in the table on the next page:

	<b>Peace Bond</b>	<b>Protection Order</b>
<b>How to get it?</b>	Call the police.	Apply to a judge.
<b>What are the criteria?</b>	You must have reason to fear for the physical safety of you or someone else, or to fear that your property will be destroyed or damaged.	There must be a risk of family violence.
<b>Are there fees?</b>	No fee	No fee if you go to BC Provincial Court; if you go to BC Supreme Court, you can apply for the fee to be waived if you have minimal or no income.
<b>Who can it protect you from?</b>	Anyone	A member of your family as defined by the <i>Family Law Act</i> : <ul style="list-style-type: none"> <li>• Your spouse (even if you have divorced or separated)</li> <li>• A person you currently live with or once lived with in a marriage-like relationship</li> <li>• The other parent or guardian of your child</li> <li>• Any person who is related to and lives with any of the people listed above</li> <li>• Any person who is related to you and lives with you</li> </ul>
<b>How is the other person notified of the request for an order?</b>	They will be arrested and asked to appear in court	They will be asked to appear in court. You need to arrange for service (official delivery) of documents. If you think telling the person will increase your danger, you can ask for an "order without notice."
<b>Who can enforce it?</b>	The municipal police or RCMP	The municipal police or RCMP
<b>Do you need a lawyer?</b>	No	Strongly recommended. If you qualify for legal aid (free legal help from the government), you may be able to get a lawyer to help you get a protection order.
<b>Where is it valid?</b>	Across Canada	In BC

## BARRIERS IN THE JUSTICE SYSTEM

### **Q. If I report a sexual assault, what is the chance that my report will lead to a conviction?**

**A.** Many sexual assault cases drop off at every stage of the criminal justice system in Canada. Here are the numbers from 2009-2014, according to Statistics Canada:

- 43% of sexual assaults reported to police result in a charge
- 49% of cases where an arrest is made go to court
- 55% of cases that go to court lead to a conviction (that's 12% of all sexual assaults reported to police)
- 56% of people who are convicted of sexual assault receive a prison sentence (that's 7% of all sexual assaults reported to police)

Also, only a small minority of sexual assaults are reported to the police in the first place.

### **Q. Why don't more people report sexual assault to the police?**

**A.** People have many reasons for choosing not to report sexual assault to the police. Some examples are:

- Fear of being judged, blamed, or not believed
- Feelings of shame and embarrassment
- Not knowing that what happened is against the law
- Discrimination in the police force and criminal justice system, which can be based on gender, Indigenous identity, race, class, gender expression and identity, sexuality, occupation (for example, being a sex worker), mental health status, and many other factors
- Fears of mistreatment, harassment, or violence by police, which may be based on past experiences
- Fear of going to court

If you are an adult who has experienced sexual assault, there are pros and cons of reporting sexual assault to the police that you might want to consider. The choice is yours.

If an adult you know has disclosed an experience of sexual assault to you, remember that the decision of whether or not to report to police is very personal. Respect what that person wants to do.

## TRIAL AND SENTENCING

### **Q. If the case goes to trial, can your personal information be used against you in court?**

**A.** The accused cannot get your personal records without a court order. To get this type of court order, the accused needs to show that your personal records are directly relevant to the specific sexual assault you are in court for. If the person who assaulted you tries to get a court order to get your personal records, you have the right to a free lawyer to help you challenge this.

There are also some restrictions on how your personal information can be used in court. Under the *Criminal Code*, information about your sexual history cannot be used in court to suggest that you probably consented to the sexual activity in question or that you are not a credible (believable) witness. If the defense wants to use information about your sexual history in court, they must go through a strict legal procedure and show why this information is directly relevant to the sexual assault. A judge must privately review this information before it can be given to the person who assaulted you and that person's lawyer.

Here is just one example of a situation where information about your sexual history might be considered relevant to a sexual assault trial. If you had consensual sex around the same time as the assault, this information might be considered relevant if it is used to establish that marks on your body such as vaginal or anal tearing might have been caused by something other than a sexual assault.

### **Q. If the person who assaulted you is convicted of a criminal offense, can you give input on the sentence?**

**A.** The *Victims of Crime Act* gives you the right to make a victim impact statement before sentencing. A victim impact statement is an explanation of how the sexual assault or other crime has affected you.

You do not have the right to suggest a specific sentence or decide what the sentence will be.

## FINANCIAL SUPPORTS

### **Q. Are there financial supports for people in BC who have experienced sexual assault?**

**A.** In some cases, you may be able to apply for the Crime Victim Assistance Program (CVAP). This program may cover some costs related to the assault, like counselling, medical expenses,

or income lost because of the assault. To learn more, contact VictimLINK at 1-800-563-0808, by text message at 604-836-6381, or by email at [VictimLinkBC@bc211.ca](mailto:VictimLinkBC@bc211.ca).

## CIVIL LAW OPTIONS AND LEGAL HELP

### **Q. How would it work to pursue justice through civil law as opposed to criminal law after experiencing sexual assault?**

**A.** In a criminal case, Crown decides whether to lay criminal charges.

In a civil lawsuit, the person who has experienced sexual assault decides to start the lawsuit and also decides if and when to settle or withdraw the lawsuit. Civil law is a way to seek compensation for harms done. An example of compensation is an award of financial damages (money). In Canada, damages awards are generally a lot lower than in the US.

Civil law has a lower standard of proof than criminal law. Civil law requires proof on a balance of probabilities (meaning “more likely than not”). In contrast, for a criminal conviction, proof beyond a reasonable doubt is required.

Starting a civil case generally also requires paying for a lawyer to represent you. There is no legal aid (free legal help provided by the government) for this type of case.

### **Q. Can I get legal help if I want to start a civil lawsuit?**

**A.** There are no public financial supports available to help you get a lawyer for a civil lawsuit. This can be very expensive.

However, there are some pro bono (free) groups that may be able to help you if you decide to file a lawsuit on your own. In BC, all of the law schools have legal clinics where a law student can help you with paperwork or preparation for a hearing. Also, an organization called **Access Pro Bono** may give you a chance to consult with a lawyer for free before going to court. Learn more here: <http://www.accessprobono.ca/>

If you can pay \$25 plus tax for a 30-minute initial consultation with a lawyer, you can use the **Lawyer Referral Service** to find a lawyer to meet with you. Call 1-800-663-1919 on weekdays between 8:30 am and 5 pm.

Finally, some personal injury firms do sexual assault civil claims on contingency. “On contingency” means that they take a percentage of a settlement if you win your case, and you do not pay anything if you do not win.

## SEXUAL HARASSMENT AND HUMAN RIGHTS LAW

### **Q. What is sexual harassment?**

**A.** Sexual harassment is when someone does or says something to you that is:

- Unwanted
- Sexual in nature, and
- Persistent and/or severe.

Sexual harassment is a term used in human rights law, not criminal law. There is no criminal offense called sexual harassment, although some types of sexual harassment might also be criminal offenses.

Some examples of sexual harassment are:

- Unwanted sexual touching, like slapping your butt or groping you (this is also sexual assault, a criminal offense)
- Displaying sexual pictures in the workplace
- Making sexual jokes that make you feel uncomfortable or offended
- Asking you out on dates multiple times even after you have said no
- Asking you out on dates that you feel you must accept in order to get a good mark in school, keep your job or get promoted, or avoid getting evicted from your apartment
- Making unwanted sexual comments about you

Under BC's *Human Rights Code*, sexual harassment is considered a form of sex discrimination. The *Human Rights Code* applies to only some areas of our lives. Read the next question for details about this.

### **Q. What areas of life does the BC *Human Rights Code* apply to?**

**A.** The *Human Rights Code* applies to the following in BC:

- Any service available to the public (such as a school, a hotel, a community centre, a store, etc.)
- Tenancy (such as renting an apartment)
- Employment (including employment advertisements and wages)
- Membership in a union or an occupational association
- The purchase of property, and
- Publications.

If the service or employer is federally regulated (as opposed to provincially), then the *Canadian Human Rights Act* applies.

Neither the *BC Human Rights Code* nor the *Canadian Human Rights Act* protects you in your interactions with individuals who are not connected to any public service or employer, such as a stranger who catcalls you on the street.

**Q. What can I do if I am experiencing sexual harassment at work, in school, or in another area of life covered by the *BC Human Rights Code* or *Canadian Human Rights Act*?**

**A.** Here are some steps and options that you can consider as you decide what to do.

If you feel safe to do so, tell the person harassing you that you are not comfortable with what they are doing and ask them to stop. If there is someone in charge (like an employer or landlord), ask them to do something about the harassment, if possible. It is the responsibility of the person in charge to provide you with an environment that is free from harassment, which could include changing work schedules or duties or providing training.

Keep a detailed record of exactly what happened and when, and what you did about it; record everything as soon as possible after it happens. Also keep records of any communications you have had about the harassment. Save anything that could be evidence, like harassing emails or text messages.

If you cannot resolve the issue internally, contact the **BC Human Rights Clinic** to help you understand your legal options and whether you can make a complaint at the BC Human Rights Tribunal or the Canadian Human Rights Commission. You can call the BC Human Rights Clinic toll-free at **1-855-685-6222** or visit their website at [www.bchrc.net](http://www.bchrc.net). Making a complaint at the BC Human Rights Tribunal or Canadian Human Rights Commission would start a process similar to a court proceeding.

There is a time limit of one year after the most recent incident of sexual harassment to file a complaint at the BC Human Rights Tribunal or Canadian Human Rights Commission. There can be special situations where this time limit is extended, so you should talk to the BC Human Rights Clinic to find out your options even if more time has passed.

If your case goes to a hearing at the Human Rights Tribunal, the Tribunal will make a decision. If you win, the Tribunal will order a remedy (a way to resolve the issue or compensate you). The Tribunal's goal is to put you back in the situation you would have been in if the sexual harassment had not happened, not to punish the person who harassed you.