



POLICE AND COURT SUPPORT



Civil Action & Sexual Assault

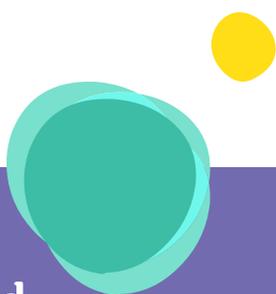
www.calgarycasa.com
Email | info@calgarycasa.com
Business | 403-237-6905

Suite 700, 910 7th Avenue SW Calgary, Alberta T2P 3N8



Table of Contents

The Facts	3
The Impact	4
The Law	5
Civil Action	7
Litigation Process	8
Resources	12



**Reach out if you need
more information or
support - 403-237-5888**



This pamphlet is designed to provide general information about the court process as well as specific challenges for those who are interested in pursuing civil action (litigation). CCASA's Police & Court Support can only provide emotional support in civil action suits, and cannot attend or advise on proceedings

**This is for information only. It is not to be interpreted as the law or as legal advice.*

The Facts

- Sexual assault is never your fault.
- You deserve to be believed and supported.
- Violence is never okay or justifiable.
- You have the right to set your own limits in any relationship.
- You did not cause the abuse and are not to blame for anyone else's behaviour.
- You are not alone.
- You are not crazy.
- Sexual assault has nothing to do with who your friends are, what you are wearing, your sexual past or where you hang out.
- Sexual assault happens to all genders.
- Sexual assault happens in every type of relationship.
- Sexual assault is committed by dates, partners, co-workers, friends, acquaintances or strangers.
- The person who chooses to sexually assault another is 100% responsible.

The Impact

After being sexually assaulted, you will probably look at yourself and others differently. Remember that these feelings and thoughts are very normal reactions to something that happened to you.

You might feel:

- Embarrassment
- Guilt and shame
- Grief and loss
- Confusion
- Disbelief
- Anger
- Dirty
- Powerlessness
- Numb
- Fear and anxiety

You might experience:

- Nightmares or flashbacks (vivid memories or feelings that bring you back to the assault)
- Sleeping problems
- Changes in your eating
- Headaches or muscle tension
- Isolation or withdrawal from friends and family
- Problems trusting people
- Conflicts with friends or family
- Problems with school or work
- Difficulty concentrating
- Thoughts about hurting yourself



The Law

Sexual assault is any sexual activity without consent. It is a crime of power and control. People who commit this crime aren't looking for sex; they are trying to take control of someone else's body, spirit and mind.

Laws have been written into the Criminal Code of Canada in order to protect all people from being hurt. The sections are in accordance with the level of physical injury. These sections are not indicative of the psychological impact or trauma experienced by the person who was assaulted.

- **Sexual assault (271)** – This is when you have been kissed, sexually touched or forced to have intercourse without your consent and minimal or no physical injuries have been caused.
- **Sexual assault with a weapon, threats to a third party or causing bodily harm (272)** – This is when you are sexually assaulted by someone who has a weapon (or pretends to have one), if the offender threatens to harm another person if you do not participate in a sexual act, or if more than one person sexually assaults you.
- **Aggravated sexual assault (273)** – This is when you are wounded, disfigured, beaten, or in danger of losing your life while being sexually assaulted.

Some laws talk about age. These laws were not created to stop teenagers from sexual activity, but to protect them from being taken advantage of by someone older or with more power.

Consent

Consent is when you agree to a sexual activity with someone else. However, there are certain situations when someone cannot legally give consent:

- Anyone who is 12 or 13 cannot agree to sexual activity with someone who is more than 2 years older.
- Anyone who is 14 or 15 cannot agree to sexual activity with someone who is more than 5 years older.
- Anyone who is under 17 cannot consent to someone who is in a position of trust or authority (coach, teacher)
- If any person is pressured into sexual activity with violence, weapons or threats.

- If someone is really drunk or high, they cannot give legal consent. For example, if someone passes out due to drinking, it is illegal to have sex with them, touch them in a sexual way or take sexual pictures of them.

It is important to know that saying 'no' or fighting back is not the only way to resist unwanted sexual advances. Some people stay quiet during the abuse because they are scared that the offender might hurt them even more if they yell, or some people 'zone out' and pretend that they are somewhere else or not in their body in order to make the assault less scary.

Sexual assaults can be committed by many different types of people in your life:

- A family member or friend
- A date or someone you just met
- Your partner/significant other
- Your co-worker or supervisor
- A teacher, a doctor or someone else in authority

Sexual assaults can occur in many different settings:

- Your home or the offender's home
- A family member's or friend's home
- At work or school
- In an institutional setting such as a doctor's office, a church or a prison

What is most important is that you take care of yourself. You deserve to get what you need to heal from this experience. This can look a lot of different ways, but here are some examples:

- Talk to someone you trust about your feelings. You don't have to share details about what happened, but talk about what you need to help you minimize the impact of the assault on your life.
- Seek medical attention to treat any possible Sexually Transmitted Infections or other issues related to the sexual assault. In Calgary you can access confidential services at the Sexual and Reproductive Health Centre (403- 955-6515) or at the STI Clinic (403-955-6700). Within 96 hours of the assault you can also go to the Sheldon Chumir Urgent Care Centre for immediate support by a team specifically trained to people who have experienced a sexual assault.
- Allow yourself to feel whatever emotions come up. There is no right or wrong way to feel, and sometimes it's ok to not feel anything.
- Give yourself time to take a break and only get back into your regular routine when you're ready. For some people that is right away, and for others it can take longer.

Civil Action

As a victim of sexual assault or sexual abuse, you may choose to use the Justice system to help hold the offender (the defendant) accountable. You may report the offence to the Police or RCMP, or you may choose to take Civil Action and sue the perpetrator. If you choose to report to the Police, they will decide whether there is enough evidence to lay charges on the accused. In a Civil Suit, you (the plaintiff) decide whether to sue the offender. You may choose to access Justice both criminally and civilly, and even if the defendant is not found guilty in a Criminal trial, you may choose to sue.

Things to consider before taking civil action:

Advantages of the Civil Action

- Filing a civil law suit might help you to feel more empowered, as you are holding the offender responsible for the violation committed against you.
- You, as the plaintiff, play a more central role in the civil process than in the criminal process and will be consulted by your lawyer in regard to the direction of the case
- You are able to listen to what the accused has to say about the sexual assault or sexual abuse.
- There is a lower burden of proof in civil actions when compared to criminal trials
- The civil process provides an opportunity for the plaintiff to confront the defendant in person and allows a venue to hold the defendant accountable
- The civil process provides the possibility of a monetary award

Disadvantages of the Civil Action

- Civil actions are very complex and time consuming processes with very precise rules that must be followed. The process may take years before it is complete.
- The civil process could end up costing you a lot of money, and there is no guarantee that you will receive money at the end.
- Your personal medical and counselling records may be accessed by yourself or the accused. You may feel as though this is an invasion of your privacy.

- You will have to talk about your experience of sexual violence in detail, and this may help the process of healing, or trigger painful memories and emotions. Ensure you have a support system in place to help cope.
- There is the possibility of having to spend time with the defendant
- If you are successful at the end of the process, the offender may not have the resources to pay you the Judgement (compensation owed to you).

Litigation Process

Before You Sue

It is a good idea to contact a lawyer before you sue. Even if you choose to pursue the action on your own, a lawyer can give you an idea of what your case will require and what you will need to do in an initial meeting. Legal Aid is available if your income is within a certain bracket.

Time Limits

In general, the time limit to bring a civil action is two years from:

- When you turn 18, if the sexual abuse or sexual assault occurred while you were a minor.
- When you understand that what happened to you was wrong and connect these acts to the impact you have experienced (i.e., symptoms of Post Traumatic Stress Disorder).
- If you wish to pursue a civil suit but the time limitation has passed, you must have a valid reason for not starting the action earlier.

Call us if you need more information
403-237-5888



Who to Sue

The Offender: This is the person who sexually assaulted or sexually abused you.

Employers: In addition to the offender, there may be other parties involved. If the perpetrator assaulted you while working, or in a position of trust or authority (such as a doctor, lawyer, psychiatrist, teacher, psychologist, social worker, religious official, daycare worker, coach, or other professional), it may be possible to sue their employer, firm or sponsoring agency.

Third Party Negligence: It is also possible to sue a third party for neglecting to protect you from sexual assault if this is a breach of their legal duty (i.e. landlord, Child Welfare Agency, School Board, Police, Municipal, Provincial and Federal Governments, Religious boards and agencies or hospitals).

Adding more parties with unlimited resources to litigation can help in recovering judgment after trial in the case of a defendant who is unable to pay. This is discussed further in the Judgment section of the pamphlet.

Who can Sue

- The person who was assaulted
- The parent or guardian of a person under the age of 18 who has been assaulted

Steps in Litigation

Contact a lawyer: The lawyer will ask you a lot of questions about what happened and how the sexual violation has impacted you. You may be asked to provide your own medical and counselling information to support the report of sexual assault.

Statement of Claim: The first step in a civil action is to file a Statement of Claim. This document briefly explains the events (the sexual assault) that lead to the civil action, the amount of damages (money) you are claiming, and where you propose the trial to take place. The Statement of Claim must be filed within the time limitation period and there is a \$200.00 filing fee.

Service: After you file the Statement of Claim at the courthouse, the defendant(s) must be served with the papers personally within one year. There are agencies that will serve these papers to the defendant so you do not have to confront the offender personally. There is a cost (ranging from approximately \$30.00-\$100.00 dollars) associated with hiring a person to serve this document)

Statement of Defence: After the defendant(s) has been served with the Statement of Claim, they must file a Statement of Defence within 15 days, but you can also agree to extend this. If the defendant(s) fails to provide a Statement of Defence, you can apply for default judgment. This makes the litigation easier to prosecute as the action will not be defended. This often occurs when the defendant has already been criminally convicted and is serving jail time. In this situation, you will still have to testify in court and providing expert/medical evidence.

Discovery

After the statement of defence has been filed, there are two stages of discovery in a civil action:

- 1. Document Discovery:** An affidavit of records must be filed by each party in a civil action and provided to the other parties involved. In the affidavit of records, each party must include all the relevant documents to the proceedings which have not yet been filed and do not include communications between the lawyer and the client. These might include medical reports, hospital charts, police reports, and other documents that relate to the assault. The affidavits of records must be filed at the courthouse within 90 days of the defendant filing the statement of defence.
- 2. Examination for Discovery:** After the affidavits of records have been exchanged, the parties will schedule examinations for discovery. This process involves each party sitting down with the other side, their lawyer, and the other side's lawyer and answering questions from the other side's lawyer that relate to the assault. Before you enter into examinations for discovery, your lawyer will likely prepare you for the questions that the other side may ask. The examination is recorded by a court reporter and the defendant and the plaintiff are entitled to sit in on all discoveries.

The purpose of both document discovery and examination for discovery is to show the facts of the case, to commit each party to a version of the facts, and to understand the other side's case.

Trial

You and your lawyer must convince the judge that your version of events is more likely than not what actually happened. To prove that your version of events is true, you and your counsel will need to provide evidence that will persuade the court. This evidence could come from the criminal trial verdict, your testimony, medical records, other documents and witnesses.

If it is simply your word against the defendant's, which is often the case in sexual assault cases, there is no legal requirement for you to give evidence other than your testimony. While additional evidence may be helpful if you can get it, it is not necessary.

Judgment and Awards

If your claim is successful in settlement or at trial, the judge will order the defendant to pay a certain amount to compensate you for your experience and the impact of sexual violation.

There are several categories of damages:

- **Non-Pecuniary (General):** The damages (the impact of sexual assault) cannot be clearly calculated in monetary terms, but they are used to compensate for the harm caused, so far as money can do. Non-Pecuniary damages are awarded up to a maximum of approximately \$300,000.00 (adjusted for inflation from 1978 numbers). The maximum is only awarded for catastrophic injuries.
- **Aggravated damages:** Aggravated damages are awarded where the offender's behaviour was particularly oppressive, thereby increasing the plaintiff's humiliation and anxiety. Medical Expenses/Cost of future Medical Care: These are damages that can be accurately calculated. They include medical bills in relation to the injury/assault, and the cost of past and/or future counselling that is required as a result of the assault. Past/Future Loss of Income: These damages compensate plaintiffs who, because of the assault, were unable to work or who have been unable to pursue certain career paths. These damages are generally calculated through expert evidence. Punitive Damages: These damages are designed to punish the defendant and deter others. Generally, punitive damages are not awarded in sexual assault cases where the defendant has already received a criminal conviction. If there was no criminal conviction, or the conviction was for only part of the abuse inflicted, it is very likely that punitive damages will be awarded.
- **Costs:** If you are successful at trial, the Justice will generally order the defendant to pay part of the expenses you paid on the way to trial. However, if you are unsuccessful, it is possible that the Justice will order you to pay costs to the defendant.

Enforcing your Judgment (getting what you are owed)

In sexual assault cases, there are often several difficulties facing a successful plaintiff:

- **Defendants unable to pay any judgment** – Often sexual assault defendants have no assets or money to pay the judgment entered against them. In private law, it is up to the individual and their lawyer to seek the judgment from the defendant. If the defendant cannot pay the judgment, it is very difficult to obtain the money.
- **Insurance Coverage** – Even if the defendant has basic insurance coverage (homeowner's, renters, etc.), insurance companies generally put exclusionary clauses in their contracts to avoid payment in these types of cases. This excludes almost all instances of sexual assault. These exclusionary clauses have been sanctioned by the Supreme Court of Canada.

Before you decide to sue, make sure that you and your lawyer have discussed these possibilities thoroughly as it may factor into your decision to proceed with the lawsuit.

Appeals

After the trial, either party can appeal the court's decision to the Alberta Court of Appeal. An appeal is essentially another trial with the notable difference that the court relies on the evidence obtained in the original trial. This means that on appeal you would not have to testify again.

We will always be here to walk this path with you. Get in touch if you need support.

Resources

CALGARY COMMUNITIES AGAINST SEXUAL ABUSE

Police & Court Support Program

The Police and Court Education & Support Program provides specialized information, education and support to past or recent survivors of sexual assault and their families. Trained staff will help you to decide whether or not to report, will provide comprehensive information about the Justice system, ongoing support, accompaniment and advocacy while you navigate the system.

LEGAL AID CALGARY

Legal Aid is available for claimants who fall into the income bracket guidelines (attached at the end of this pamphlet).

- Phone: 403-297-2260
- Email: www.legalaid.ab.ca

Legal Aid Eligibility Guidelines (Effective April 6, 2010)

Based on applicant's net income

Household Size	Monthly Net Income	Annual Net Income Level
1 person	\$ 1, 225.00	\$ 14, 700.00
2 persons	\$ 1, 516.00	\$ 18, 200.00
3 persons	\$ 2, 158.00	\$ 25, 900.00
4 persons	\$ 2, 333.00	\$ 28, 000.00
5 persons	\$ 2, 508.00	\$ 30, 100.00
6+ persons	\$ 2, 683.00	\$ 32, 200.00

LAWYER REFERRAL SERVICES

This program is designed to assist people in finding the right lawyer for the assistance they require. The Lawyer Referral Service provides a 30 minute consultation with a lawyer at no charge.

- Phone: Toll Free 1-800-661-1095, Calgary: 403-228-1722
- Email: <http://www.lawsocietyalberta.com/publicservices/lawyerReferralService.cfm>

CALGARY WOMEN'S CENTRE LEGAL ADVICE CLINIC

Appointments are booked by the Women's Centre staff over the phone. Also, bookings can be made at the Women's Centre located at 646 1st Avenue NE. Appointments are booked to a maximum 2 weeks in advance and a waiting list is maintained in the event of cancellations.

- Phone: 403-264-1155



CCASA Contact Information

CCASA Support & Information Line
9am-9pm – 7 days a week
403-237-5888

Alberta's One Line for Sexual Violence
9am-9pm – 7 days a week
Phone/Text | 1-866-403-8000
Chat | calgarycasa.com
TTY Line 403-508-7888