

HelpForMe



sexual assault

H A N D B O O K

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I've been sexually assaulted. What are my legal options?

If you have been the victim of a sexual assault and you want to take legal action against the assailant, you can choose to proceed through the criminal legal system, the civil legal system, or both.

Criminal Proceedings

The criminal system in Canada recognizes that a person who has been sexually assaulted is a victim of a crime. Your first step is to report the crime to the police and provide them with details about what happened. It is up to the police to investigate and gather evidence of the crime. After concluding the investigation, the police will decide if they have enough evidence to recommend criminal charges against the accused assailant. If so, then the police recommend charges and provide their investigation file to the Crown Prosecutor to review.

Crown Prosecutors are lawyers employed by the Ministry of the Attorney General. As such, they are public servants and represent the interest of the general public in criminal proceedings. They do not represent or take instructions from the police or the victims of crime. If you are the victim of a sexual assault, you likely will have little communication with the Crown Prosecutor. You may choose to retain your own lawyer to represent your interests but because your primary role in the criminal proceeding is that you are a witness to the crime, your lawyer's role in the criminal proceedings is very limited. The accused assailant will also typically hire their own lawyer to defend them in the criminal proceeding.

When the Crown Prosecutor receives a police file that recommends criminal charges, it is their job to review all of the evidence in the file and decide whether the accused assailant should be charged with a crime or not. Their decision is usually based on two factors: 1) based on the evidence, is there a substantial likelihood that the accused assailant will be convicted of the crime; and 2) is it in the public interest to proceed with the criminal charges?

If the Crown Prosecutor charges the accused assailant with a crime, then they will start preparing for a criminal trial. They may also speak with the accused assailant or their lawyer to try to strike a plea deal. Typically, a plea deal means that the accused assailant pleads guilty to a lesser crime or receives a lesser criminal sentence. If no plea deal is made, the case could be dropped by the Prosecutor or it could proceed to a criminal trial.

At trial, after hearing all of the evidence, the judge or jury will decide if they think the accused is guilty of the crime or not. Because an accused in Canada is assumed to be innocent of a crime unless proven guilty, it is up to the Crown Prosecutor to convince the judge and jury that the accused assailant committed the sexual assault against you. The criminal standard for proving the guilt of an accused assailant is very high: the judge or jury must be convinced of the assailant's guilt "beyond a reasonable doubt". This means that they must be almost 100% sure that the accused assailant committed the sexual assault.

One important thing to keep in mind is that your primary role in the criminal proceedings is as a witness to the crime. Once you report the crime and provide your statement, you have very little say over what happens in the proceedings. You do not get to decide if the criminal charges are recommended or made, whether a plea deal is offered or accepted, or whether the case proceeds to trial.

Civil Proceedings

Another legal option for victims of sexual assault is to proceed through the civil legal system. In the civil legal context, sexual assault is recognized to be a kind of "tort". The word "tort" used in a legal context is derived from the French word meaning "wrong". It refers to a wrongful act committed by one person that directly causes harm, injury, and/or loss to another person. In civil proceedings, the person harmed by the tort sues the person who committed the wrongful act for financial compensation for the harm, injury, and loss they suffered due to the wrongful act. This compensation is referred to as "damages".

What this means is that if you decide to proceed against the assailant in civil court, you would be starting a lawsuit against them seeking financial compensation from them for the harm, injury, and loss that you suffered due to the sexual assault. You would be named in the lawsuit as the “plaintiff” (the person suing) and they would be the “defendant” (the person being sued). The defendant has the right to hire their own lawyer to defend the lawsuit, or may decide to defend the claim without a lawyer.

It is important to note that in a civil lawsuit, the remedy that you are seeking is monetary. It is not about punishing the assailant with measures such as jail time that are only found in the criminal context.

One of the biggest differences between criminal and civil court is the difference in the standard of proof required to prove your case. In criminal court, the judge or jury must be convinced “beyond a reasonable doubt” that the accused is guilty of the sexual assault. This is a very high standard requiring nearly 100% certainty. In civil court, the judge or jury must believe on a “balance of probabilities” that the accused committed the sexual assault. To put it another way, the civil judge or jury only need to find that it is “more likely than not” (ie. they need to be 51% or more sure) that the assailant committed the sexual assault. This means that sexual assault cases that fail to be proven in criminal court can and often are proven in civil court.

In Canada, there are no time limits for bringing civil lawsuits for physical and psychological injuries arising out of sexual assault. This means that it does not matter when the assault occurred, you still have legal options.

Should I Pursue a Civil Sexual Assault Claim?

Many survivors live with their trauma while wondering whether they should take steps to pursue some form of criminal or civil suit. They privately wonder whether entering into the complicated legal world is worth re-living a trauma. They have questions about what the process would look like and the degree to which a law suit would impact their lives.

Our one piece of advice is that if you or a loved one has questions is to contact a lawyer with civil sexual assault experience and request a consultation. A good lawyer should run you through a highly confidential consultation and advise you of your rights.

Some of the considerations that are important are as follows;

- To what extent has the assault impacted upon you physically, mentally and emotionally. If in the unlikely event that you have survived an assault with little or no physical and/or psychological trauma you may not feel the need to re-open the issue.
- Who is the assailant? Does they remain at large with a high likelihood of further offences?
- Does the assailant have assets that would allow them to pay a judgement?
- Is the assailant associated with an organization that provides them with an opportunity to commit assaults?
- Are you emotionally ready to open the assault to scrutiny and do you have a strong support network in place to help you cope?
- There is no “statute of limitations” on sexual assault. That means that you can commence a civil claim at any time after an assault. If you are not in a place now to manage additional stress do not worry. Perhaps you will be better able to manage the situation at a later date.

Additional things to consider when considering a civil claim are as follows;

- The damages in a civil claim are assessed based on the impact that the claim has had on the survivor's life. Because of this it is very important to seek medical and psychological assistance if you survive an assault. The contemporaneous records taken by a professional will not only help you manage your trauma, they may assist in proving your claim for damages.
- The standards of proof in a criminal vs. a civil claim are vastly different. Even if you reported your claim to the authorities and no criminal charges were laid does not mean that you do not have a viable civil claim. The two systems are completely different. Though a successful criminal charge is highly persuasive in a civil claim, the lack of criminal charges or even a finding of not-guilty in a criminal case do not have much of a bearing on a civil claim.
- If you are a survivor be cautious of writing about or describing an assault publically or on social media. Before "going public" with your story it is better to seek medical, psychological and legal advice. Though public statements may be important in time, before they are made thought should be given to how and when to make them.

How can we help?

Civil and criminal proceedings are not mutually exclusive. You may choose to pursue one, the other, or both. You can also choose to commence those proceedings at the same time or one after another. There are many considerations in deciding how to proceed and when.

The lawyers at Hammerco are civil litigation lawyers. We provide legal services for sexual assault victims who want to commence a civil lawsuit against the assailant. If you have questions about your legal options, please reach out to us. We offer a free, confidential consultation with one of our team of dedicated lawyers.

HelpForMe

HelpForMe was created by Hammerco Lawyers
to help you understand your legal options.

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