

Accompanying Sexual Assault Victims in Vulnerable Situations

Legal Issues and Best Practices



ēducaloi

INFORMATION EMPOWERS



About Éducaloi

Éducaloi is a non-profit organization that explains the law to Quebecers in everyday language.

Important notice

The law is evolving constantly. The legal information in this guide is updated to January 2020. Please visit Éducaloi's website (<https://www.educaloi.qc.ca/en/legal-information-tools-community-workers>) to check for updates.

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- Crime Victims Assistance Centre (CAVAC) of Montreal
- Director of Criminal and Penal Prosecutions
- Quebec City Police Department

Why this guide?

Because victims of sexual offences undergo difficult, complex experiences that can vary considerably from person to person. Some victims are at greater risk of facing obstacles when they turn to the justice system. This is the case particularly for people belonging to the most vulnerable groups of society, who are already facing discrimination.

Because victims in vulnerable groups encounter significant difficulties from the moment of their initial contact with the justice system. These difficulties stem from complicated social dynamics that should not be ignored.

Because community workers and legal professionals must take these challenges into account. It will help them adapt to the needs of victims dealing with the justice system. A single, standardized approach isn't a viable solution because each victim is unique.

A guide for professionals who work with victims

This guide is intended for professionals who work closely with, and who accompany, victims of sexual crimes. It was developed for professionals in the criminal and penal justice system and for community workers.

Objectives of this guide:

1. Explain how the criminal and penal process is experienced by victims
2. Raise professionals' awareness of victims' needs and the issues they face
3. Suggest best practices for overcoming these obstacles and meeting the needs of all victims

Broad consultation process

Éducaloi conducted a broad consultation process from January to December 2018 with professionals in the community and justice sectors.

The objective was to gain a thorough grasp of the main issues affecting sexual assault victims, and particularly those belonging to vulnerable social groups. Éducaloi paid close attention to the interaction of different forms of discrimination and different fields of law.

To gain a better grasp of these issues, Éducaloi consulted

1. **A community consultative committee**, made up of organizations representing
 - sexually abused women
 - disabled women
 - deaf and hard-of-hearing women
 - Indigenous women
 - Immigrant women
 - LGBTQ+ people
2. **Justice system professionals** (especially criminal and penal prosecuting attorneys and police officers)

How to use this guide

This guide is structured in chronological order. It explains the steps a victim must follow when navigating the criminal and penal justice system.

This guide is divided into four sections:

1. Police Complaint
2. Police Investigation and Role of the Criminal and Penal Prosecuting Attorney
3. The Court Process
4. Assistance and Accompaniment Resources

Each section is further divided into two parts:

1. Legal explanations

This part explains some of the legal concepts that directly concern victims. The legal explanations can help community workers better understand the judicial process.

2. Issues and best practices

This part elaborates on the issues victims experience, especially victims belonging to the most vulnerable social groups, and recommends best practices to help victims overcome these issues.

Some expressions used in this guide

Victims: Victims of sexual offences. The guide doesn't distinguish between male and female victims. However, more than 85% of sexual assault victims are women.

Vulnerable people: People belonging to marginalized groups or who face limitations or risks when dealing with the justice system.

Sexual assault: Prohibited sexual behaviours that are legally considered crimes.

Intersectionality: An approach highlighting the interactions of different forms of discrimination a person is subjected to simultaneously. In a legal context, this approach also takes into account the interaction among various fields of law within a given situation.

Criminal and penal justice system: A system whose main objective is to punish prohibited behaviour in society (crimes or penal offences.) It's distinct from the civil justice system, which aims to compensate victims.

LGBTQ+ people: Acronym referring to lesbian, gay, bisexual, transgender and queer people. The "+" sign represents other groups whose gender identity or sexual orientation is different from those of a dominant group.

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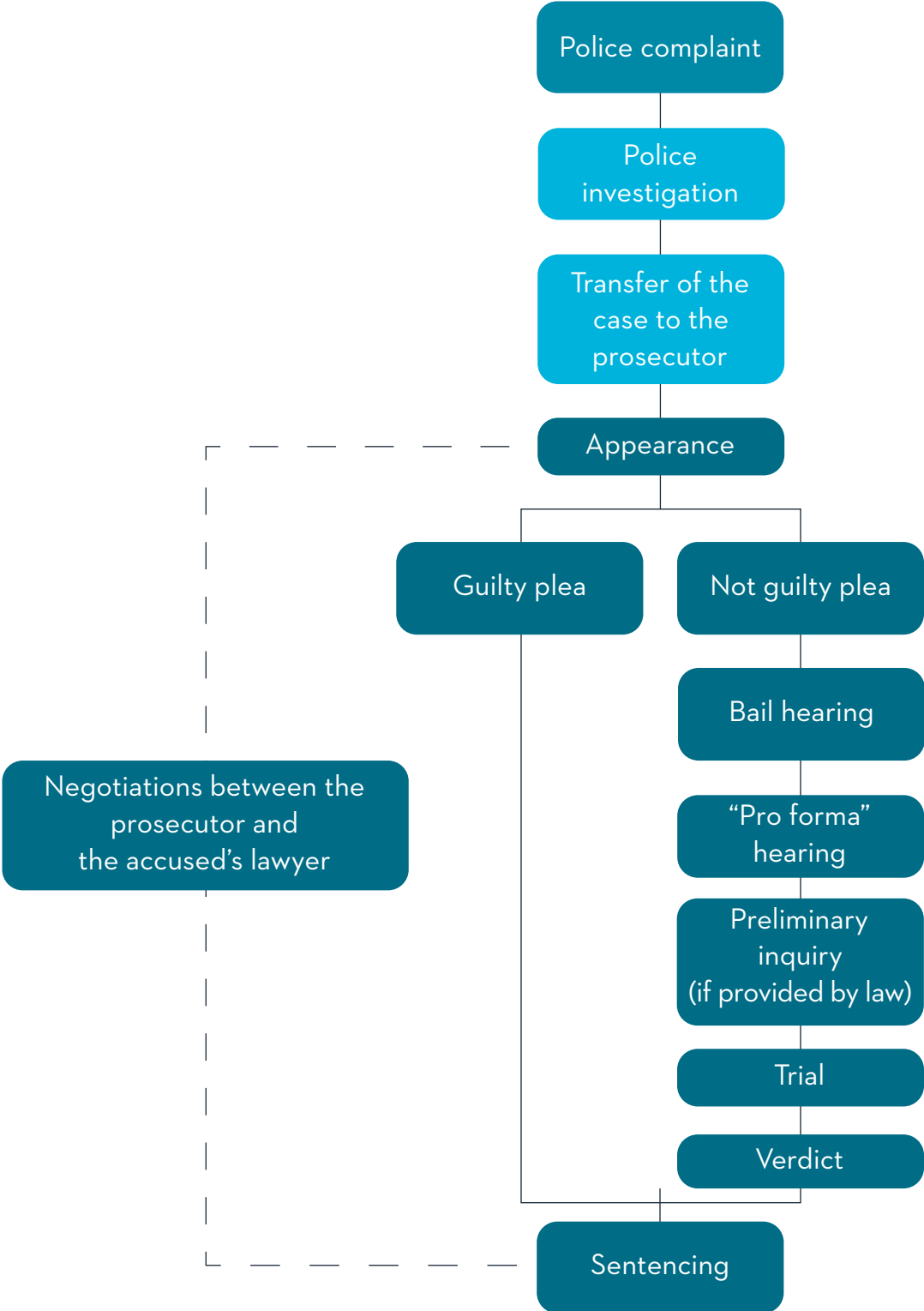
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Steps in the Criminal Justice Process





Victims aren't required to file a complaint

Victims always have a choice about whether to file a complaint. Their personal experiences, the consequences of the trauma and the resulting emotions can have a major impact on their decision.

Victims may choose to file a police complaint for various reasons, for example, to ensure their safety or to regain control over their lives.

However, some victims may decide not to file a complaint, for example, if they've lost confidence in the justice system or they feel it does not meet their needs. In this case they might turn to other recourses and to assistance resources.

Important! There are no deadlines for filing a police complaint. A victim can report a crime at any time, even several years after the event. But the more time passes, the more difficult it becomes to gather evidence.

If the assault occurred in the past five days, the victim can visit to a health centre designated to perform medical-legal examinations (please refer to the specialized Assistance and Accompaniment Resources on page 32). The examination can gather evidence that would be useful at a criminal trial.

Two steps in the complaint process

Step 1: Contacting the police

What to do

The victim has several options:

- Call 911 if it's an emergency or their safety is at risk.
- Go directly to the police station.
- Call a police station to make an appointment.

Procedure

The victim usually meets with a police officer where the assault occurred or at the police station.

The patrol officer completes a **police report** with basic information including the date, location, summary of events, names of people involved, etc.

The patrol officer then gives the victim a case number. The victim can use the case number throughout the judicial process to ask the police questions or to provide additional information.

Step 2: Meeting with an investigator

What happens

An investigator takes charge of the case and asks to meet with the victim.

Procedure

The investigator meets with the victim the same day or soon afterward. The investigator takes the victim's **statement**, which is the victim's version of the events.

A victim usually writes their own statement, but the investigator can help and then ask the victim to sign it.

The statement must be as accurate as possible. It can assist in the police investigation and be used in court, if charges are laid. The statement is also sent to the accused and to the accused's lawyer. The victim can contact the investigator to provide additional information at any time during the process.

Important! The police ask the victim many questions. This is their job. It doesn't mean they don't believe the victim. Their questions might seem repetitive or pointless, but they're necessary to gather as much information as possible about what happened.

Measures to facilitate meetings with the police

A victim can request to meet with a female police officer or investigator, or can ask to meet with a male officer or investigator. The police will do their best to accommodate such requests.

A victim can also ask for someone to accompany them to the meeting (for example, a social worker, friend or family member).

A victim who does not understand French or English can also ask for the assistance of an interpreter. The police will provide one, if possible. This service is provided free of charge.

Important: There might be consequences if someone accompanies the victim.

The person who is present, when a victim gives a statement, could be required to testify if the case goes to trial.

Also, if the person who accompanies the victim says something during the meeting, a judge might believe that this person influenced the victim's statement, and this could damage the victim's credibility.

Therefore, the police might ask the person accompanying the victim to remain silent or to wait outside the room during the meeting.



Issues and best practices

Issue: Fear of the criminal and penal justice system

People in vulnerable situations are often afraid of the justice system because of negative experiences in other aspects of their lives, such as work, housing and health and social services.

They might be afraid that the justice system will treat them as other institutions have in the past. For example, they might fear discrimination or fear not having access to appropriate accommodation measures.

Here are a few examples of victims' experiences:

- Disabled people who use the healthcare system don't have access to resources or equipment adapted to their needs.
- Trans individuals don't have access to certain treatments or examinations, such as the medical-legal kit. They also have trouble getting public institutions to recognize their gender identity.
- Some people have difficulty obtaining care because they lack identification documents.
- Some immigrants have trouble obtaining healthcare because they don't have private insurance or aren't covered by the RAMQ (Quebec health insurance).
- It's difficult for Indigenous people who have been abused by the police to file a complaint with the police, after an assault, because they no longer trust them.

Best practices

Be aware that many victims fear the justice system because they've had negative experiences with public or parapublic institutions.

Be compassionate from the outset. The first contact with professionals in the justice system often sets the tone for the victim. This is especially true when the victim first meets with the police. This initial contact will greatly impact the victim's perception of the justice system.

Encourage the creation of police teams specialized in handling gender-based violence. These teams can help victims feel more comfortable when meeting with police. Frontline groups have this expertise and can provide additional training to police officers.

Issue: Risks of filing a complaint

Vulnerable people sometimes wait a long time before filing a complaint because of the potential negative consequences.

These consequences could involve their jobs, housing, education, health, safety, relationships with other people, immigration status, etc. There's also a risk that no one will believe them and that they'll feel isolated.

These consequences are even more common among vulnerable individuals. Here are some examples:

- Disabled people who report a caregiver might fear retaliation. They might also fear losing care or services.
- People who file a police complaint are usually required to disclose their sexual orientation or gender identity, but some aren't prepared to do so. They might fear this information will get out, especially since some aggressors use it to blackmail victims and coerce them into not filing a complaint.

- In filing a complaint, persons without legal immigration status run the risk of revealing their situation to the authorities and eventually being deported. Filing a complaint could also affect their aggressor's immigration status, and victims might not want this to happen.
- In filing a complaint, certain victims might be excluded from their community (for example, LGBTQ+, Indigenous, deaf or hard-of-hearing, immigrant or cultural communities, etc.). This situation is especially problematic when the community is their main social network.

There's also a risk of drawing attention to their community, which is often the target of discrimination. Victims may feel torn between their personal interests and their community's interests.

Best practices

Be aware of the risks victims face when filing a complaint. These risks are the reason many victims hesitate to file complaints.

Avoid making victims feel guilty for hesitating to file a complaint. Their past experiences and the issues they encounter often explain why so much time has passed between the assault and the complaint.

Issue: Obstacles to reporting sexual assault

Vulnerable people who want to file complaints sometimes face major obstacles.

Best practices

Adapt to the victim's circumstances. There are many different types of traumatic experiences, and each victim is unique. It's important to be aware of the obstacles they face and do whatever is necessary to minimize these obstacles.

Examples of language-related obstacles:

- People with language difficulties sometimes deal with isolation. This is also the case for people whose first language isn't English or French. It's more difficult for them to get help and communicate with the police.
- A person might need the services of an interpreter even if they speak some English or French. Communicating in their first language might make the process much easier, but interpreters aren't always available.

Best practice

Facilitate communication. Accept requests for interpreters, insofar as possible, for victims whose first language isn't English or French.

Example of health-related obstacles:

- Elderly or disabled victims might have trouble leaving home to meet with the police or with assistance resources. It's even more difficult if they live outside major urban centres or if their aggressor is the person who usually accompanies them.

Best practice

Identify assistance resources to help seniors or disabled people travel to their appointments.

Examples of obstacles concerning sexuality:

- The topic of sexuality is taboo for some people, and different people talk about it in different ways. Victims might feel very uneasy answering certain questions and might hesitate to discuss their sexuality in detail.
- Because of certain myths, some victims believe that no sexual assault has occurred if there has been no penetration. For example, a lesbian might feel that her situation won't be taken seriously, and that the actions of another woman won't be considered sexual assault.

Best practices

Be sensitive to discomfort. Victims might feel uneasy discussing their sexuality. A victim who doesn't answer all questions in detail isn't lying.

Accommodate victims who prefer speaking to a woman or prefer speaking to a man.

Be aware of myths. It's important to ask questions and avoid assuming the victim understands all aspects of the situation. Don't hesitate to act proactively to prevent misunderstandings and dispel myths.

Issue: Emotional factor

Filing a police complaint is an emotional process that can be extremely difficult.

Victims often know their aggressor and are hesitant to talk about what happened. They might also suffer from physical and psychological trauma, even years after the events took place.

A victim sometimes relives the assault when telling the police what happened and answering very personal questions. This in turn might influence how a victim describes the events (for example, partial memory).

Best practice

Recognize psychological trauma and adapt to it. Victims might relive the assault when they file a complaint.

The emotional factor can be even greater for certain victims in vulnerable situations. For example:

- Victims often need to be accompanied by a person they trust when filing a complaint, yet they're told that this can damage their credibility and that the person accompanying them can't say anything.

Best practice

Recognize the victim's need to be accompanied. It is important to explain the risks involved, but don't discourage the victim from having a trusted person accompany them. Accompaniment is often essential.

- Many victims feel the police don't believe their story. They sometimes close up when asked the same questions repeatedly. Some questions may seem pointless to them.

Best practice

Provide the victim with context for the questions. They shouldn't feel that the police don't believe them. Explain that the questions are essential to the police investigation, even if they seem repetitive or pointless. The questions will help the police gather all the necessary evidence.

- Victims sometimes perceive prejudice in the police's questions. These can be questions about sexuality or disability, or questions that involve assumptions about the sexual orientation or gender identity of the victim or the aggressor.

Best practice

Avoid prejudices. For example, don't assume that the aggressor is a man or that the victim is heterosexual.

- Victims might become discouraged when the police explain that the process is long and difficult.

Best practice

Avoid discouraging victims. Sometimes it's necessary to explain the difficulties and the length of legal proceedings. However, it's important not to discourage victims by presenting only the negative aspects or focusing too much on them.



Police Investigation and Role of the Criminal and Penal Prosecuting Attorney

The police conduct an investigation

After taking the victim's statement, the police carry out an investigation. The aim of the investigation is to identify the suspect and gather as much evidence as possible to establish that a crime was committed.

The length of the investigation depends on the specific circumstances and complexity of the situation.

The victim is entitled to updates about the status of the investigation. The victim should contact the police station where the complaint was filed. However, the police can refuse to provide certain information, to avoid impeding the investigation.

The suspect isn't always taken into custody

Sometimes the police arrest and detain the suspect, but this isn't always the case.

When a suspect is being detained by the police it means they aren't allowed to go free. The suspect might be detained temporarily at the police station or in a prison and isn't free to leave.

The police have several options, depending on the situation:

- **The police don't arrest the suspect.** They give the suspect an official document indicating when the suspect must show up in court.

- **The police carry out the arrest but release the suspect shortly afterward.** They give the suspect an official document indicating when the suspect must show up in court.

Given that the suspect was arrested, the police can also impose conditions the suspect must respect after being released. A victim who fears for their safety must let the police know because the police can modify the conditions to better protect the victim.

- **The police carry out the arrest and detain the suspect until the suspect is brought before a judge.** The judge then decides whether the suspect must be detained until the end of the trial or can be released.

If the suspect is released, the judge can impose conditions on the suspect. A victim who fears for their safety should inform the police, who will advise the prosecutor. The prosecutor can then ask the judge to modify the suspect's conditions to better protect the victim.

The police can close the investigation

The police may close their investigation if they can't identify a suspect or if they can't gather enough evidence that a crime was committed.

The prosecutor takes charge of the case

If their investigation is successful, the police transfer the case to the criminal and penal prosecuting attorney, who takes charge of the case and the remainder of the legal process. However, the police can continue their investigation and gather more evidence.

The criminal and penal prosecuting attorney is also called the "prosecutor" or the "Crown prosecutor."

Who is the criminal and penal prosecuting attorney?

When the police transfer the case to the prosecutor, the prosecutor decides whether to lay charges against the suspect.

The prosecutor represents the government and acts in the general interests of society. The prosecutor takes the victim's interests into account but isn't the victim's lawyer.

The prosecutor meets with the victim before deciding whether to lay charges. The purpose of the meeting is to explain what a prosecutor does and what will happen during the court process. The prosecutor can also ask questions about the events, to complete the evidence and obtain additional information.

Some of the prosecutor's questions might sound like the ones the police asked, and this may seem repetitive or even offensive to the victim. However, the prosecutor's role is very different from that of the police, and the questions are necessary. The police gather evidence, whereas the prosecutor analyzes the evidence to determine whether it is sufficient to lay charges against the suspect.

The prosecutor evaluates the evidence and decides whether to lay charges

The prosecutor determines whether there is sufficient evidence to lay charges, in other words, whether a judge or jury could reasonably find the accused guilty of the alleged crime. The prosecutor can't lay charges if there's insufficient evidence.

The actions the victim has reported must constitute a crime under Canada's *Criminal Code*. The *Criminal Code* covers a number of crimes of a sexual nature. For example, the crime of sexual assault, as defined in the *Criminal Code*, occurs when sexual touching has occurred without the victim's consent.

Prosecutor decides to lay charges	Prosecutor decides not to lay charges
<p>The prosecutor officially lays charges against the suspect. In legal terms, this is called an “information.”</p> <p>The victim will receive a letter with the name of the accused and the charges. The victim will also receive a form called “Victim Impact Statement.” (See “The judge must take the victim’s circumstances into account” on p. 25).</p> <p>Assistance and accompaniment services</p> <p>The Centre d’aide aux victimes d’actes criminels (CAVAC or crime victims assistance centre) contacts the victim and informs them of their rights and recourses, explains the judicial process and suggests available resources.</p>	<p>The prosecutor informs the police investigator that no charges will be laid. Then the investigator advises the victim.</p> <p>The prosecutor must also meet with the victim to explain why no charges were laid.</p> <p>Protecting the victim</p> <p>Even if no charges are laid, the prosecutor can ask the judge to order the suspect to obey certain conditions to protect the victim.</p> <p>This is called a “section 810 peace bond.”</p> <p>Assistance and accompaniment services</p> <p>Even if the prosecutor doesn’t lay charges, the victim can still contact the Centre d’aide aux victimes d’actes criminels (CAVAC or crime victims assistance centre) or the Centre d’aide et de lutte contre les agressions sexuelles (CALACS or Quebec coalition of sexual assault centres) in their region for assistance or psychosocial support.</p>

The time between the filing of the complaint and the prosecutor's decision whether to lay charges (or not) can be days, weeks or even months.

Important! If the prosecutor decides not to lay charges against the suspect, this doesn't mean the prosecutor thinks the victim lied about what happened. There could be many reasons, for example, there was doubt concerning the identity of the person who committed the assault.



Issues and best practices

Issue: Feelings of powerlessness and vulnerability

The police conduct the investigation, and the prosecutor analyzes the case. This process might seem very long for victims. They often have difficulty understanding what the next steps will be and the roles of the different people they'll encounter.

Many victims feel swept to the sidelines after they've filed the complaint. They may feel powerless and vulnerable.

Best practices

Inform victims of progress in the case on a regular basis. Avoid waiting until the victim contacts the police or the prosecutor.

Quickly direct victims to assistance and accompaniment resources. These resources must be adapted to the specific needs of individuals in vulnerable situations.

Explain victims' rights without judgment or pressure.

Issue: Misunderstanding the prosecutor's role or having false expectations

Victims sometimes experience difficulties when dealing with the prosecutor.

Misunderstanding the prosecutor's role can lead to frustration among victims:

- They may believe the prosecutor is asking the same questions the police already asked because the prosecutor doesn't believe they're being honest.
- They don't always understand why it's important to answer each question fully and accurately, if the question was already asked and answered. They might get discouraged and omit important details, which damages their credibility.
- If the prosecutor doesn't lay charges, victims may feel that the violence they suffered is being trivialized and that the system was not meant to help them. People in vulnerable situations might also interpret a refusal to lay charges as discrimination, even if this isn't so.

Best practice

Explain the role of prosecutors, what they must do and what they can't do. Prevent the perception among vulnerable people that the prosecutor's decisions are discriminatory.

Issue: Misunderstanding of criminal law

Victims often have difficulty understanding the theory and logic of criminal law.

The legal definitions of offences have nuances that can lead to confusion. Community workers who accompany victims can feel lost in the system as well. What they learned in training sessions or on paper is often very different from reality.

Victims and community workers sometimes don't understand how sexual assault cases are handled, and this leads to frustration, especially for vulnerable individuals.

Examples of misunderstandings and frustration include:

- The definition of “sexual assault” in the *Criminal Code* is different from its meaning in everyday language. The legal definition is narrower and doesn't cover some sexual behaviour that a victim might interpret as sexual assault. For example, an act of a sexual nature that doesn't involve touching might be considered sexual assault in everyday language, but not within the meaning of the *Criminal Code*.
- Victims generally feel that the justice system ignores the fact that sexual assault takes place in an intimate setting and that an unequal power relationship may exist between the victim and the aggressor. This is very often the case for vulnerable individuals.
- Sexual assault occurs in situations where there's no sexual consent. The analysis of whether consent existed can put a great deal of pressure on victims, who must repeat and explain in great detail something that is obvious to them.
- The concept of sexual consent is complicated. The accused had a responsibility to ensure the victim expressed consent. This actually favours the victim, in legal terms, but the notion of consent is often difficult to understand.

- Deaf and hard-of-hearing people have a lower literacy rate than the rest of the population. For francophones, *langue des signes québécoise* (LSQ) is their first language, and French is their second. For anglophones, American sign language (ASL) is their first language and English is their second. It's more difficult for deaf and hard-of-hearing people to understand abstract legal terms that aren't part of everyday vocabulary. This abstract language isn't adapted to sign language, which could lead to confusion and errors in interpretation. Some expressions simply can't be translated literally into sign language.

Best practices

Explain the particular characteristics of the criminal and penal justice system. It's essential to clarify certain concepts for the victim to prevent frustration and lack of understanding.

Make sure the victim understands your explanations. Use plain language, give examples, and ask questions to make sure the victim has understood.



The Court Process

The court process begins when the criminal and penal prosecuting attorney lays criminal charges. There are many steps between laying the charges and the verdict.

Throughout the process, the victim has a responsibility to cooperate as much as possible to help move the case forward. The victim might also have to testify.

Important! The victim is often the only witness in a sexual assault case. This can cause a lot of stress and put a great deal of pressure on the victim. There are resources to assist and accompany the victim throughout the court process. (Please refer to the Assistance and Accompaniment Resources on page 32.)

Appearance

At the appearance the accused goes before a judge for the first time. The prosecutor formally accuses them of having committed one or more crimes. The accused must decide whether to plead guilty, or not guilty, to each one.

- **If the accused pleads guilty:** The accused admits to having committed the crime or crimes. There will not be a trial, and the judge will determine an appropriate sentence at a later date.
- **If the accused pleads not guilty:** The process continues and will usually result in a trial.

An accused who pleads not guilty at the appearance can change their mind and plead guilty at any time during the court process.

The victim doesn't have to go to court for the appearance.

Plea bargaining

At any point before the trial the prosecutor and the accused's lawyer can negotiate aspects of the case such as charges, certain procedures to be followed or the sentence.

For example, a prosecutor may try to negotiate if the evidence against the accused seems weak, to the prosecutor, and the chances of obtaining a conviction seem greater by negotiating, than by going to trial. The accused might plead guilty to lesser charges or to certain charges only.

If the accused pleads guilty, the parties usually propose a sentence to the judge. However, the judge isn't required to accept the proposed sentence if the judge views it as unreasonable.

The victim can't take part in the negotiations or prevent the prosecutor and the accused's lawyer from reaching an agreement. The prosecutor must, however, inform the victim that negotiations are taking place and whether an agreement has been reached.

Bail hearing

The police sometime detain a person who is under arrest. If the prosecutor lays charges, the person under arrest officially becomes the "accused." The accused then goes to the appearance while in custody, and the prosecutor can object to the accused's release. In this situation, the accused must wait until the bail hearing to learn whether they'll be released. The bail hearing is usually held a few days after the appearance.

The judge doesn't make any decisions about the accused's guilt or innocence at the bail hearing. The judge must decide whether there's sufficient reason to keep the accused in detention until the trial or to release the accused.

A victim who's afraid of the accused, or who feels unsafe, must tell the investigator or the prosecutor. The prosecutor can then explain the victim's fears to the judge in arguing against releasing the accused.

The victim doesn't usually have to go to court for the bail hearing. However, the prosecutor might ask the victim to testify in certain situations to explain their fears to the judge. The prosecutor might also ask the investigator to testify.

Conditional release

If the accused is released, the judge can impose release conditions. For example, the judge can order the accused to stay away from, or avoid contacting, the victim. If the accused violates an imposed condition, the victim must notify the investigator or prosecutor as soon as possible. The accused can be arrested and taken into custody.

“Pro forma” hearing

The “pro forma” hearing is a meeting between the judge, the prosecutor and the accused’s lawyer. Its purpose is to move the case forward and give the parties enough time to prepare for the subsequent steps in the process.

The victim doesn't have to go to court for the “pro forma” hearing.

Preliminary inquiry

The preliminary inquiry helps the judge determine whether there’s sufficient evidence to go to trial.

Not every case will have a preliminary inquiry. The prosecutor or the accused’s lawyer can request one in situations where it’s allowed by law and it’s necessary for the case to run smoothly.

The victim is usually required to testify at a preliminary inquiry. The victim will be questioned by the prosecutor and then cross-examined by the accused’s lawyer.

Trial

In criminal law the accused is presumed innocent until found guilty by a judge or jury. The accused therefore doesn't have to prove their innocence. Instead, the prosecutor must prove that the accused is guilty.

The prosecutor presents the evidence against the accused to the judge or jury. The prosecutor can question witnesses and present any other relevant evidence, such as written documents, videos, objects used to commit the crime, etc. Once the prosecutor has finished presenting evidence against the accused, the accused's lawyer can respond and present evidence in defense of the accused.

Next, the prosecutor and the accused's lawyer present their arguments to the judge or jury.

The victim will probably have to testify at the trial. The victim's testimony is an important element of evidence because the victim is often the only witness to the assault.

Important! The law states that the accused in a sexual assault case can usually choose a trial with a judge only or a trial with both a judge and jury.

A jury is composed of 12 people chosen at random from the electoral list. If the trial is with a judge and jury, the jury has the important task of deciding whether the accused is guilty or innocent.

Beyond a reasonable doubt

For a judge or jury to find the accused guilty, they must be convinced "beyond a reasonable doubt" that the accused committed the crime. If they have a reasonable doubt, they must find the accused not guilty.

The judge or jury doesn't have to be absolutely certain that the accused is guilty, but the evidence must be stronger than a simple probability that the accused committed the crime.

Victim's testimony

Usually, the prosecutor calls the victim to testify, but the accused's lawyer can do this as well.

The victim will receive a document called a "summons to testify" or "subpoena," which requires the victim to go to court on the day of the trial.

The prosecutor meets with the victim a reasonable amount of time before the trial date to explain how the trial works, to help the victim prepare to testify and to answer the victim's questions.

What happens during testimony

- **Examination:** The prosecutor asks the victim to answer questions and explain what happened.

The victim must answer all questions in detail, even if it's the same information they gave the police and the prosecutor before the trial.

- **Cross-examination:** The accused's lawyer then asks the victim questions. The lawyer's main goal is to test whether the witness is credible and telling the truth.

Their job is to defend the accused person to the best of their ability, not to attack the victim personally.

Making it easier for the victim to testify

It can be very difficult for the victim to testify in court, for example, because the accused is at the trial and the courtroom is open to the public.

The law provides protection and assistance to victims who need to testify. Here are a few examples:

- Specific areas are set aside in most courthouses, so the victim doesn't bump into the accused while waiting to testify.

- Victims can testify in a language other than English or French. They must let the prosecutor know their preference as soon as they learn they will have to testify. The services of an interpreter are provided free of charge.

There are other ways to accommodate the victim, but the prosecutor must request the judge's authorization first:

- Testifying with a person they trust beside them
- Testifying behind a screen or outside the courtroom to avoid seeing the accused
- Keeping members of the public out of the courtroom
- Prohibiting publication of information that could identify the victim

Sentencing

If found guilty, the accused will face consequences and the judge will impose a sentence.

A sentence can have different objectives:

- Condemn the crime and the harm done to the victim
- Discourage people from committing crimes
- Help the accused re-enter society
- Isolate the accused from the rest of society
- Compensate the victim for the harm suffered

The judge must impose the sentence as soon as possible after a guilty verdict and will sometimes do so immediately after the verdict is pronounced. The judge can also wait weeks or even months after the trial and impose the sentence at a “sentencing hearing.”

The judge can combine different types of sentences

There are several types of sentences, and the judge can impose more than one. For example, the judge can order prison time as well as payment of compensation to the victim.

The judge can impose other conditions

In addition to the above-mentioned sentences, the judge can issue a “probation order.” This means the accused must respect certain conditions for a specified length of time. For example, the judge can order the accused not to:

- contact or approach the victim,
- consume drugs or alcohol, or
- carry a weapon.

The accused must follow the conditions during the entire probation period. If the accused violates the conditions, this could lead to new charges. Therefore, it’s important for the victim to notify the police if this happens.

The judge must take the victim’s circumstances into account

The judge must take several things into account when determining the sentence. For example, the judge must consider the effects of the crime on the victim. This could result in a harsher sentence.

Victims who want the judge to take their circumstances into consideration must complete the form “Victim Impact Statement.” It’s not mandatory, but this is an opportunity for the victim to be heard and to explain the harm they suffered. Victims can suffer various types of harm:

- material (e.g., broken window or furniture)
- bodily injury (e.g., physical pain, scars)
- financial (e.g., stopping work and loss of salary because of the crime, cost of therapy)

- moral (e.g., impact of the crime on the victim’s relationships with other people)

Before deciding on a sentence, the judge must ensure that reasonable steps were taken to allow the victim to complete the form. The form is usually mailed to the victim before the court proceedings. It’s also available from the Crime Victims Assistance Centres (CAVAC) and online at <https://www.justice.gouv.qc.ca/en/documentation-center/forms-and-models/victims/sj-753b>.

It can be difficult for victims to explain how the crime has affected them, but they can ask for assistance to complete the form (please refer to the Assistance and Accompaniment Resources on page 32). The victim must then mail the completed form to the court.

The judge takes note of the victim’s statement at the sentence hearing.

The victim can ask to speak and read the statement out loud at the hearing. If the victim doesn’t ask to speak, the judge can ask the victim to testify. In both cases, the victim is entitled to the same accommodations as were provided during the trial (please see “Making It Easier for the Victim to Testify” on page 23).

Other factors that influence the sentence

The judge must take several other factors into account when determining the sentence. These factors are as important as the Victim Impact Statement.

Here are some examples of what the judge must do when determining the sentence:

- Respect minimum and maximum sentences provided in the *Criminal Code*
- Consider the seriousness of the crime
- Impose a sentence similar to ones imposed in the past for similar crimes
- Consider the accused’s situation, such as previous crimes, activities, remorse, mental and physical health, etc.

End of court proceedings

Once the judge has imposed the sentence, the victim will receive a letter explaining the outcome of the court proceedings:

- the verdict (guilty or not guilty)
- the sentence
- available assistance and accompaniment services.



Issues and best practices

Issue: Misunderstanding of criminal law

Victims might have trouble understanding certain criminal law principles, such as the burden of proof and the presumption of innocence.

The judge or jury must respect criminal law principles when determining the accused's guilt or innocence. The victim might feel this unfair, and this could lead to frustration and misunderstandings. Here are a few examples:

- **Presumption of innocence.** Sometimes victims have trouble understanding why it's up to the prosecutor to prove that the accused committed the crime, while the accused doesn't have to prove their innocence.
- **Burden of proof.** When a judge or jury acquits the accused because they have some reasonable doubt, victims sometimes feel that nobody believed them, even if this isn't so. They feel that the judge or jury must choose between their story and the accused's version of events.
- **Victim's testimony.** The victim is often the only witness in sexual assault cases. As a result, some victims feel that they alone shoulder the responsibility of the burden of proof, which might seem unfair.

- **Sentence.** Victims sometimes feel that the judge was too lenient with the accused, even if the judge determined the sentence based on a careful analysis of many factors. Also, some people are under the mistaken impression that the sentence is a means to avenge the victim.

Best practices

Explain the specific characteristics of the criminal and penal justice system. It's important to clarify certain notions for victims to avoid frustration and help them understand the process.

Make sure the victim understands what you're explaining. Use plain language, provide examples and ask questions to make sure the victim understands.

Issue: Testimony and credibility

People in vulnerable situations often encounter significant difficulties when testifying in court, and this can affect their credibility.

In sexual assault cases, there's usually only one witness, and that's the victim. This person's credibility is often at the centre of the debate.

The impact of the trauma isn't generally taken into consideration when determining the victim's credibility. However, many victims have been traumatized by the assault, and this can have a major impact on the quality of their testimony. For example, they often have trouble recalling exactly what happened, and some victims struggle with addictions.

People in vulnerable situations face additional issues when they are testifying and a judge or jury is assessing their credibility:

- People with autism spectrum disorder or mental health issues might be perceived as less credible in their testimony and less able to recall events. Also, the criteria set out in the law to determine a witness's credibility aren't adapted to these individuals and are sometimes applied in a prejudiced manner.

- People with an intellectual disability might have trouble understanding some of the questions asked by the prosecutor or the accused's lawyer. As a result, the questioning must be adapted to meet their needs, and the professionals involved must have a good understanding of their functional limitations.
- People who don't understand the questions very well may be viewed as less credible. This might be the case, for example, for an immigrant who struggles with the language being used, or a deaf or hard-of-hearing person who uses American sign language (ASL) or *langue des signes québécoise* (LSQ).
- People with a visual impairment might have trouble describing a crime scene and may be perceived as less credible.
- People living with an invisible disability have more difficulty getting their needs recognized. For example, individuals with language difficulties might be perceived as having an intellectual disability.

Best Practices

Acknowledge that it's difficult for the victim to testify. These difficulties shouldn't be allowed to diminish their credibility.

Adapt the questions to be asked in court to suit the needs of vulnerable people. It's crucial to be aware of their functional limitations and adapt the questions to their specific needs.

Issue: Presence of an interpreter

Many victims require an interpreter when testifying (for example, deaf or hard-of-hearing people, immigrants, Indigenous people, disabled people, etc.).

The work of interpreters is difficult because they must listen and translate at the same time.

Victims who need an interpreter are sometimes subjected to additional stress and obstacles. Here are some examples:

- Waiting for an interpreter to arrive can be long and stressful.
- In some regions, it's difficult to find an interpreter for the entire process. There's a shortage of interpreters in general, and for victim assistance services in particular.
- Certain words don't exist in all languages. Interpreters must be particularly sensitive to this and understand the context in order to properly translate the questions and answers during testimony.
- Interpreters sometimes live in the same community as the victim. This can raise confidentiality issues.
- It's often difficult for the same interpreter to be present from start to finish due to availability, time and cost. An interpreter who is new to a case might not translate in exactly the same way as a previous interpreter. This might have an impact on the victim's credibility and give the impression the witness is making contradictory statements.

Best practice

Recognize issues involving interpreters and be mindful of the context. Victims who require an interpreter face specific difficulties that might complicate the way they communicate. However, these difficulties must not be allowed to diminish their credibility.

Issue: Little flexibility in accommodations

The justice system can provide accommodations for victims who need them.

However, victims are sometimes made to feel that their requests are regarded as a privilege rather than a right. Some people working in the justice system fear they'll have to provide these types of accommodations for everyone, which would make their work more difficult.

This means that, in reality, accommodations are often difficult to obtain. Here are some examples:

- Although several types of accommodations exist to help disabled people testify, the accommodations aren't always available on the day of the trial. This causes a dilemma: either the victim agrees to testify without the accommodation or the trial will be postponed to a another date, which might be much later.
- There's little flexibility regarding the time at which a victim is scheduled to testify. This makes it difficult for a person who needs adapted transport or special care to leave home.

Best practice

Accommodate victims who need it. Accommodation is a right, not a privilege.



Assistance and Accompaniment Resources

Sexual assault victims often need support to help them through this very difficult experience.

Several assistance and accompaniment resources in Quebec offer specialized psychological, medical and social support to victims of sexual assault and other crimes. Other more general resources also offer assistance and accompaniment services. These services are free of charge and confidential.

There's no requirement for victims to file a police report in order to use these services.

Specialized resources for victims

Specialized resources offer many services for sexual assault victims and for victims of crime in general.

In addition to offering psychological and social support, these resources can explain the process for making a police complaint and the criminal judicial system. They can also accompany victims to the police station or to court.

The main specialized resources are listed below:

- **The toll-free helpline for victims of sexual assault** is a telephone helpline providing listening, information and referral services for victims of sexual violence and their loved ones, as well as for frontline workers. A specially trained team receives the calls, provides information and directs victims to the nearest assistance and protection resources.

Victims and their loved ones can call any time at 1-888-933-9007.

- **Quebec coalition of sexual assault centres (CALACS)** are non-profit organizations that offer assistance, support and accompaniment services to women and girls who are victims of sexual violence. The centres are located in many regions of Quebec.

Services are available in person or over the phone. Victims can consult the list of CALACS to find one near them (<http://rqcalacs.qc.ca/the-calacs.php>).

- **Crime victims assistance centres (CAVACs)** are non-profit organizations that offer frontline services to all crime victims and their loved ones regardless of the type of crime involved. CAVACs are located throughout Quebec, and they also have offices in courthouses.

CAVACs offer various types of services:

- information and accompaniment throughout the legal process
- post-traumatic and psychosocial intervention

Victims can call 1 866 LE CAVAC (532-2822) to find the CAVAC nearest them and to make an appointment.

- **Designated centres** are establishments within the health and social services network selected to offer specialized assistance to victims of sexual violence.

Intervention teams are trained to provide medical and psychological care to victims. Designated centres also have staff who are trained to use a medical-legal kit following a sexual assault. The kit is used to collect samples from the victim, such as the aggressor's DNA. It can be used as evidence in a criminal trial.

Victims can call the provincial helpline at 1-888-933-9007 to find the nearest designated centre.

- **The phone line of the Director of Criminal and Penal Prosecutions** provides information to victims of sexual violence who want to file a police complaint. It's intended for victims and aid organizations who need information about the court process for sexual violence cases.

Victims and their loved ones can call 1-877-547-DPCP (3727) from Monday to Friday, from 8:30 a.m. to 4:30 p.m.

General frontline assistance

Several other frontline resources offer assistance, even if they're not specialized in the needs of victims of sexual assault or other crimes.

Many community organizations offer support to society's most vulnerable individuals. Victims are more likely to consult and confide in frontline workers with whom they can identify because these workers have a deeper understanding of the specific issues vulnerable people face daily. This is the case, for example, for organizations working with disabled people, LGBTQ+ individuals, Indigenous people and immigrants.

Important! Frontline workers have the challenging task of conveying accurate and realistic information to victims without discouraging them or creating false hopes. They must also support victims who want to report what happened but must not pressure them.



Issues and best practices

Issue: Lack of frontline services and specialized resources

Frontline resources are overwhelmed and often lack the means to help victims navigate the justice system. Also, resources specialized in helping crime victims have difficulty reaching and providing information to vulnerable people.

Below are some examples of issues vulnerable people face when seeking assistance and accompaniment:

- Victims in vulnerable situations must often deal with people they don't identify with and who don't understand their needs and concerns. Therefore, they prefer to use resources they're familiar with, which means they seldom take advantage of resources specialized in assisting victims.
- Victims with disabilities don't have universal access to resources. These are some of the problems they encounter:
 - architecture: no access ramps
 - documents: the format is ill-adapted to their needs
 - structure of programs and services: date and time of appointments are sometimes inflexible and not well suited to the schedules of people who require assistance
- Frontline workers require training to work with people who are intellectually disabled or who have mental health issues, but such training isn't always available.
- Sometimes resources can't offer accommodations because they don't have the means to do so or they are reluctant to do so because they're afraid of having to offer them to everyone.
- Few resources are adapted specifically to trans people.

- Indigenous people have limited access to assistance resources that are sensitive to their cultural specificity and consider their history, the impact of colonization and issues of power imbalance. It would be helpful for frontline workers to receive more training on intergenerational trauma and the historic, systemic and discriminatory factors that contribute to criminality and to the victimization of Indigenous people.

Best practices

Be inclusive and adapt assistance services. This would allow all vulnerable people to access specialized assistance resources.

Provide the proper tools to frontline resources. A better understanding of certain legal concepts and the judicial process could enable frontline resources to provide more accurate information to vulnerable people and help them make informed decisions.

Conclusion

Victims who belong to the most vulnerable groups of society face a variety of significant challenges, which begin the moment they decide to seek justice. Each person's experience is unique.

To meet the wide-ranging needs of victims, it is essential for community workers and professionals in the justice system to collaborate and adopt fair and respectful practices.



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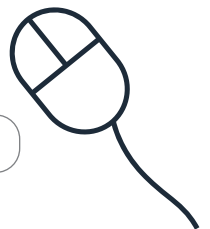
Supporting community workers!

Additional legal information tools for community workers are available on Édcaloi's website:

- Webinar on sexual offences and the judicial process (French only)
- Online training session: Intervenir auprès des personnes immigrantes victimes d'agression sexuelle : mythes et réalités juridiques (French only)
- Web Guide on reporting sexual assault, getting help and remedies
- Tools for community workers involved with youth, the homeless, Indigenous communities and more.

educaloi.qc.ca/en/legal-information-tools-community-workers

educaloi.qc.ca/en/sexual-assault-reporting-getting-help-remedies



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INFORMATION EMPOWERS