

Accompanying LGBTQ+ Victims of Sexual Violence



éducaloi



About Éducaloi

Éducaloi is a non-profit organization with a mission to inform citizens about their rights and responsibilities in clear, accessible language.

Important!

The legal information in this guide is up to date to November 2020. The law is constantly evolving. Visit Éducaloi's website to see if an updated version is available online.

The information in this guide only applies to Quebec and should not be taken as legal advice. To know how the law applies to your situation, talk to a lawyer or notary.

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Acknowledgments

This guide would not have been possible without the collaboration of various LGBTQ+ community organizations. Thank you for taking the time to support us throughout this project, and for your essential feedback.

This project was funded by the Bureau de lutte contre l'homophobie et la transphobie du Ministère de la Justice du Québec (Justice Quebec's office on the fight against homophobia and transphobia).

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CONSENT AND SEXUAL ASSAULT

In criminal law, sexual touching without consent is sexual assault. Sexual touching can include kisses, fondling and intercourse.

Sexual assault can happen to anyone. It can happen between people of the same gender, people of different genders, between intimate partners, and between couples.

Consent must be



Clear

The person expresses their agreement through words or actions.



Conscious

The person is not

- unconscious or asleep, or
- severely intoxicated by alcohol or drugs.



Freely given

The person is not

- forced or threatened into agreeing, or
- compelled to agree because the other person is taking advantage of a position of trust, power or authority.



Informed

Consent is invalid if one partner lies and exposes the other to a significant risk of harm or serious bodily injury.



Given by someone who is old enough to consent

This means that the person is

- age 16 or older, or
- between 12 and 16 years old, if the partners are around the same age.

People under 18 cannot give valid consent if their partner is in a position of authority or trust. They also can't consent if they are in a relationship of dependency or exploitation with their partner.

Age of Consent

Before age 16, an adolescent can consent to sexual activity if their partner is about the same age.

Age of Younger Partner	Age Difference Allowed
12-13 years old	Less than 2 years
14-15 years old	Less than 5 years

The older partner is committing a crime if these age limits are not respected. It is a crime even if the younger partner says yes and their parents approve of the relationship.

Regardless of age difference, people under 18 cannot give valid consent if

- they are in a relationship of dependency or exploitation with their sexual partner, or
- the partner is in a position of authority or trust.

The imbalance in the relationship is the deciding factor, not the role or occupation of the partner. When deciding whether consent is valid, a judge will consider each situation on a case-by-case basis.

When a teenager does not give consent

Regardless of age, when a person does not agree to sexual contact, like kissing, fondling or intercourse, it is sexual assault.

Consent and HIV

People living with HIV must tell their sexual partners if there is a realistic possibility of transmission. The law does not define any specific sex acts that represent a realistic possibility of transmitting HIV.

But HIV transmission is not a realistic possibility if the person



- uses a condom, and
 - has a low viral load (less than 1500 copies per millilitre of blood)
- or
- doesn't use a condom,
 - maintains a very low viral load (less than 200 copies per millilitre of blood), measured by a lab every 4 to 6 months, and

The realistic possibility of transmission can also be determined on a case-by-case basis in other situations.

If there is a realistic possibility of HIV transmission, the person with HIV must tell their sexual partner. If not, their sexual partner's consent is not valid.

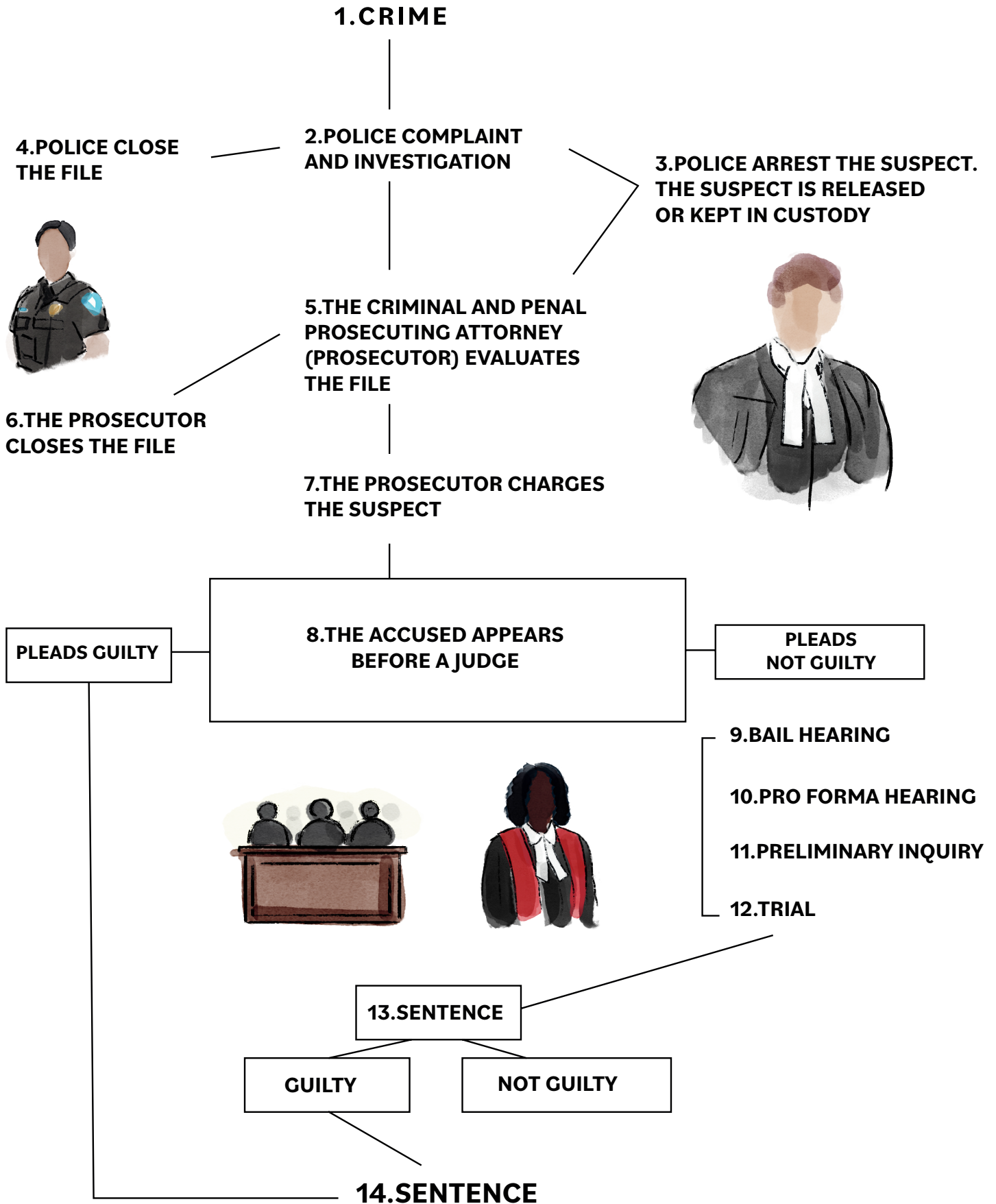
Preventing HIV transmission is everyone's responsibility, whether we have the virus or not. Inform yourself!

Learn more:

Obligation to Disclose HIV Status to a Sexual Partner: <https://educaloi.qc.ca/en/capsules/obligation-to-disclose-hiv-status-to-a-sexual-partner/>

Quebec HIV and AIDS portal (French only): <https://pvsq.org/prevenir-le-vih/#>

The Criminal Legal Process



1. Crime

Violation of the Criminal Code, like sexual assault, or another federal law dealing with crimes.

2. Police complaint and investigation

Police officers meet the victim, take their statement, and investigate. After that, officers can close the file, or arrest the suspect and transfer the file to the prosecutor.

3. Police arrest the suspect

Usually, the suspect is released after being stopped by police. Sometimes, the suspect will have conditions to follow, like not communicating with the victim. In some cases, the suspect remains in custody until they appear before a judge.

4. Police close the file

Police officers can close the file, for example, if they don't think a crime was committed or if there isn't enough evidence.

5. The criminal and penal prosecuting attorney (prosecutor) evaluates the file

The prosecutor examines the file given to them by the police. The prosecutor also meets with the victim. The prosecutor will decide to press charges or not. Sometimes, the police will then arrest the suspect.

6. The prosecutor closes the file

The prosecutor can close the file, for example, if they are not convinced there is enough evidence to find the person guilty. The prosecutor will explain their decision to the victim.

7. The prosecutor charges the suspect

The prosecutor will charge the suspect if they are convinced that a judge or jury could find the person guilty. The victim is usually informed in writing about the charges.

8. The accused appears before a judge and pleads guilty or not guilty

The accused appears before a judge for the first time. The accused pleads guilty or not guilty.

9. Bail hearing

If the accused remains in custody following their arrest, a judge can decide if the accused will stay in jail or if they will be released before the trial.

10. Pro forma hearing

A pro forma is a court date that allows the prosecutor and the defense lawyer to talk about the file and negotiate. There can be several pro forma hearings.

11. Preliminary inquiry

Hearing where the evidence is evaluated, and the judge can make sure there is enough evidence for a trial. Preliminary inquiries are only used in some cases. Often, the victim must testify at this hearing.

12. Trial

The judge or the jury hear evidence and listen to witnesses. Often, the victim must testify at the trial.

13. Verdict

The judge or the jury can declare the accused guilty or not guilty. The judge or jury must be convinced beyond a reasonable doubt that the accused is guilty of the crime in question.

14. Sentence

The judge sentences the accused who pleads guilty, or who is found guilty after a trial.

The Legal Process: Information for Trans and Non-Binary People

Reporting sexual violence and revealing our gender identity to the authorities can be extremely difficult. Victims of sexual assault don't have to file a police complaint. It's always up to them.

If someone does choose to file a police complaint, their rights must be respected throughout the legal process. Legal remedies are available if this does not happen.

Preferred name and pronouns

~~Justine Lebeau~~ Julia Labelle

When I file a police complaint for sexual assault, can I use my preferred name and pronouns?

Generally, yes. However, the police officers who initially process your complaint will ask for ID to confirm your identity, and may use the name that appears on your ID when writing official documents related to your complaint.

After showing your ID, you can tell the officer what your preferred name and pronouns are. Then, the police and prosecutors must respect your wishes. If they do not, you can take action against them. For example, you can file a complaint with the Police Ethics Commissioner, the Director of Criminal and Penal Prosecutions, or the Commission des droits de la personne et des droits de la jeunesse (Quebec's human rights commission).

If your complaint goes to court, the prosecutor will explain the situation to the judge to make sure that you are not discriminated against during the hearing.



Transition, change of name or change of physical appearance

Do I have to wait until my transition, name change or change of physical appearance is complete before I file a police complaint for sexual assault?

No. Generally, the sooner you file a complaint, the better. This is because it is easier for the police to gather evidence early on, and because your memory will be fresh. However, there is no time limit for filing sexual assault complaints, so you can report it whenever you want. Deciding to wait until you are ready can't be held against you in court.

What if a person transitions, changes their name or their physical appearance during the legal process?

You can inform the investigator or prosecutor handling the case of any changes to your situation (change of name, address, etc.). This person will tell the judge to make sure that you are not discriminated against because of it. It does not affect the legal process.



Confidentiality

Will my doctor or therapist be informed when I file a police complaint?

No. It is unlikely that the police will need to contact your doctor or therapist for the investigation. If they do, they will ask for your permission first.



Victim's Name in the Media

Will the media publish or broadcast my name during the legal process?

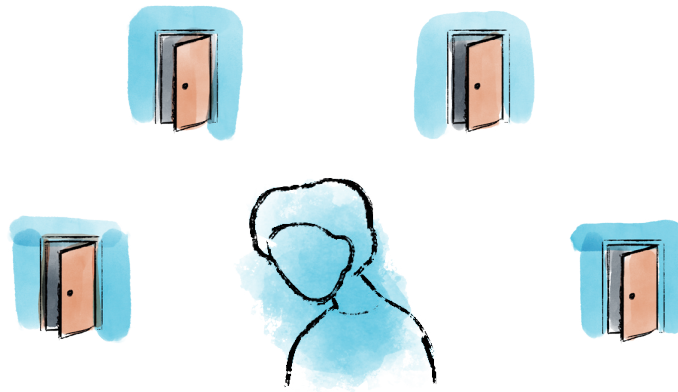
No. Victims of sexual assault can ask for their identity be kept confidential throughout the legal process. In practise, the prosecutor will ask the judge to do this. Then, no information that could identify the person can be made public, whether in the media or on social networks.

But court hearings are open to the public, so other people may be in the courtroom. These people have a legal duty to keep the victim's identity confidential. This means that they cannot share or publish any information that could identify the victim.

Avenues for Victims of Sexual Assault

Victims of sexual assault can decide whether to file a police complaint. Even if they choose not to report the assault to the police, they can still get help and compensation.

Groups that work with LGBTQ+ people can sometimes intervene to give legal professionals and crime victims organizations the knowledge and skills to better support LGBTQ+ sexual assault survivors. If your organization does not offer this service, another LGBTQ+ organization in your area might.



Getting Help

You can support victims of sexual violence who come to you for help. There are also organizations specialized in accompanying victims of crimes.

Victims have access to psychological, medical, and social support. To find help or resources in your area, visit the Sexual Violence Helpline website, or call **1 888-933-9007**. The Helpline offers confidential, bilingual services **24 hours a day, 7 days a week**.

For more resources, visit the Éducaloi website: <https://educaloi.qc.ca/en/capsules/resources-for-victims-of-crime-assistance-and-accompaniment/>



Police Complaint

Reporting sexual violence and revealing our gender identity or sexual orientation to the authorities can be extremely difficult. Victims of sexual assault never have to file a police complaint. It's always up to them.

If a person wants to file a police complaint, they can contact their local police station or call 9-1-1.

This will start the legal process. Victims do not need a lawyer to file a complaint because the prosecutor will handle the legal procedures. But the prosecutor is not the victim's lawyer. The prosecutor is a government representative



Compensation

Victims of sexual assault can receive financial compensation and, in some cases, take part in mediation with the person who assaulted them.



Compensation for Victims of Crimes Program (IVAC)

Victims of sexual assault can apply for compensation from IVAC (Indemnisation des victimes d'actes criminels) for physical and psychological harm caused by the assault. This could include compensation for lost wages, medical expenses, and therapy.

There is not usually a deadline for applying. Victims can apply for IVAC compensation even if they have not filed a police complaint.

Learn more:

How to Apply for Compensation from IVAC (Compensation for Victims of Crimes): <https://educaloi.qc.ca/en/capsules/compensation-for-crime-victims-ivac/>

Important: If the assault happened at work, the victim must seek compensation through the Commission des normes, de l'équité, de la santé et de la sécurité au travail (CNESST or labour standards, pay equity, and workplace health and safety board).

Learn more: cnesst.gouv.qc.ca/en



Civil lawsuits

Victims of sexual assault can also file a civil lawsuit to seek financial compensation from the person who assaulted them for the harm they experienced. Victims can be represented by a lawyer. But they must make the necessary arrangements and pay for the lawyer themselves. During the court hearing, the victim must prove that the other person committed the assault and that it caused the victim harm.

The judge could order the aggressor to reimburse the victim's therapy costs or even pay financial compensation for the physical or psychological pain they caused.

There is no time limit for filing a civil suit. Victims can file a civil lawsuit even if they have not filed a police complaint.

Learn more:

Civil Liability: Receiving Compensation for Damages: <https://educaloi.qc.ca/en/capsules/civil-liability/>

Sexual Assault: Taking Action Years Later: <https://educaloi.qc.ca/en/capsules/sexual-assault-taking-action-years-later/>



Mediation

Mediation is a meeting between an impartial mediator and people involved in a conflict to discuss the problem. Mediation is voluntary, so everyone involved must freely agree to be there.

Mediation often helps participants communicate to find solutions that work for them. For example, the participants might decide that the victim will receive compensation, or that the person who committed the assault will apologize for their actions.

Several organizations provide mediation or citizen mediation services, but these services are not always available for victims of sexual assault. Contact an organization near you to learn more.

The following sites can help you find an organization in your area.

- L'Association des organismes de justice alternative du Québec (ASSOJAQ or association of alternative justice organizations) (website in French only): assojaq.org
- Centre for Services in Restorative Justice: csjr.org/en/
- Equijustice: equijustice.ca/en

Sexual Assault Centres

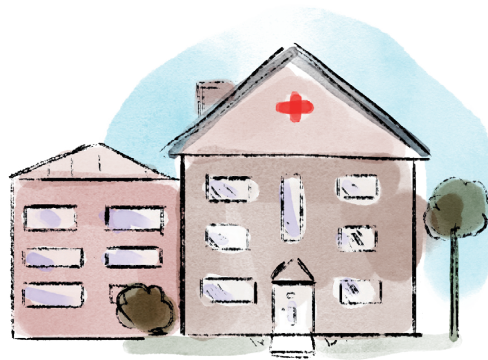
Sexual assault centres are part of the health and social services network. They provide specialized assistance to victims of sexual violence.

Their services include medical and psychological assistance.

Victims can call the Sexual Violence Helpline at **1 888-933-9007** or visit their [website](https://sexualviolencehelpline.ca) to find a centre near them: <https://sexualviolencehelpline.ca>

Forensic Evidence Kit

The forensic evidence kit is a medical examination tool used to collect samples, like the DNA of the person who committed the assault. The samples can be used as evidence in a criminal trial. The kit should be done as fast as possible, usually within five days of the assault. Forensic evidence kits are administered at sexual assault centres. Victims are never forced to get a kit done. It's always up to them. The samples will not be analyzed unless the victim files a police complaint.



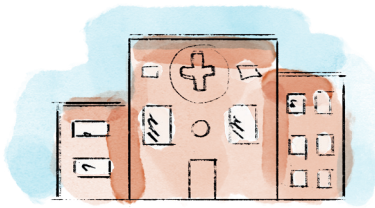
Avenues for victims of sexual violence whose rights are not respected

Victims of sexual violence have rights throughout the legal process and healing process. If professionals or support workers do not respect these rights, a victim can take action.

Examples of violations of a victim's rights include verbal abuse, denying a person services because of their sexual orientation or gender identity, or making homophobic or transphobic remarks.

If a person decides to file a complaint, there are resources that can help them with this process, depending on the context.

Health and Social Services Sector



Victims of sexual assault may require health care. This can include going to the hospital after an assault, consulting a professional at a CLSC, or speaking with a psychologist.

Complaints about health and social services can be made directly against the facility or the professional in question.



Health and Social Services Facilities (Hospitals, CLSCs, etc.)

Complaints about health and social services must be filed with the Service Quality and Complaints Commissioner for the facility.

This type of complaint informs the health care facility about the problems a person experienced so it can take steps to improve the situation. These complaints do not lead to compensation for the person whose rights were violated.

The Centres d'assistance et d'accompagnement aux plaintes (CAAP or complaint assistance and support centres) provide free and confidential help for people filing a complaint.

Website: fcaap.ca/en/

Phone number: 1 877 767-2227

Learn more:

Filing a Complaint About Health or Social Services: <https://educaloi.qc.ca/en/capsules/filing-a-complaint-about-health-or-social-services/>

Members of a Professional Order

For example: nurses, doctors, psychologists, or social workers.

Complaints filed with a professional order

This type of complaint can lead to disciplinary action against the professional who violated a victim's rights. This could include a suspension or a fine. These complaints do not lead to compensation for the person whose rights were violated.

The Office des professions du Québec (professions board) can help people filing a complaint against a member of a professional order.

Website (French only): opq.gouv.qc.ca

Phone number: 1 800-643-6912

Harassment or Discrimination by Professionals or in a Health Care Facility

If a person is harassed or discriminated against because of their gender identity, gender expression or sexual orientation, they can file a complaint with the Commission des droits de la personne et des droits de la jeunesse (CDPDJ, or human rights commission).

This is possible even if the person has already filed a complaint elsewhere.

This type of complaint can help fix the problem, or raise awareness among the people or institutions that violated a person's rights. It can also lead to financial compensation for the victim.

Website: cdpdj.qc.ca/en

Phone number: 1 800 361-6477



Legal Sector

If a victim of sexual violence decides to file a police complaint, they will come across various people in the legal sector, including police officers, prosecutors, and judges. There is a separate complaint process for problems experienced with each of these professionals.



Police Officers

Complaints against a police officer must be filed with the Police Ethics Commissioner.

This type of complaint can lead to disciplinary action against an officer. This can include a suspension or a fine. These complaints do not lead to compensation for the victim.

Website: <https://deontologie-policiere.gouv.qc.ca/en/file-a-complaint/how-to-file-a-complaint>

Phone number: Toll-free: 1 877 237-7897



Prosecutors

Complaints against a prosecutor make the Director of Criminal and Penal Prosecutions (Directeur des poursuites criminelles et pénales or DPCP) aware of the problem so they can take steps to correct the situation. These complaints do not lead to compensation for the victim.

Step 1 File a complaint with the chief prosecutor of the prosecutor's office.

For contact details, visit the DPCP website (French only): <https://www.quebec.ca/gouvernement/ministeres-et-organismes/directeur-poursuites-criminelles-penales/coordonnees-dpcp-procureurs/coordonnees-procureurs-chef>

Step 2 File a complaint with the DPCP Secrétariat général (general secretariat).

If a person is not satisfied with the chief prosecutor's response, they can complete the complaint form available on the DPCP website (French only): http://www.dpcp.gouv.qc.ca/ressources/pdf/Formulaire_plainte.pdf



Judges

Complaints against judges must be filed with the Conseil de la magistrature du Québec, an organization that oversees the conduct of judges.

This type of complaint allows the organization to reprimand the judge or recommend their dismissal. These complaints do not lead to compensation for the person whose rights were violated.

Website: conseildelamagistrature.qc.ca/index.php?langue=en

Phone number: 1 866-463-2824

Harassment and Discrimination in the Legal Process

If someone experiences discrimination or harassment because of their gender identity, gender expression, or sexual orientation, they can file a complaint with the Commission des droits de la personne et des droits de la jeunesse (CDPDJ, or human rights commission).

This is possible even if they have already filed a complaint elsewhere.

This type of complaint can fix the problem, or raise awareness among the people or institutions that violated a person's rights. It can also lead to financial compensation for the victim.

Website: cdpdj.qc.ca/en

Phone number: 1 800 361-6477



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au service des intervenant.e.s!

Plusieurs autres outils d'information juridique pour les intervenant.e.s sont disponibles sur le site Web d'Éducaloi :

- Webinaire sur les crimes à caractère sexuel et le processus judiciaire
- Dossier Web pour mieux comprendre les droits des personnes LGBTQ+
- Formation en ligne Intervenir auprès des personnes *immigrantes victimes d'agression sexuelle : mythes et réalités juridiques*
- Dossier Web pour mieux comprendre la dénonciation, les ressources d'aide et les recours en cas d'agression sexuelle
- Outils pour les intervenant.e.s qui travaillent auprès des jeunes, des personnes en situation d'itinérance, des communautés autochtones et plus encore.

educaloi.qc.ca/intervenants

educaloi.qc.ca/agression-sexuelle

educaloi.qc.ca/lgbtq



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Savoir c'est pouvoir