

Notice of Motion

Moved by Charles Ferris (Fredericton)

Seconded by Alan T Perry (Montreal)

That section 3.2 of the Sexual Misconduct Policy be replaced by the following:

3.2 Sexual Assault

3.2.1 For the purposes of this policy, a “sexual assault” is an assault which happens in circumstances of a sexual nature and violates the sexual integrity of the person who is assaulted.

3.2.2 These definitions and principles shall be considered when applying this definition and this policy:

3.2.2.1 An "assault" happens when:

- a) one person applies force to another person or threatens to apply force
- b) intentionally, and
- c) without consent.

3.2.2.2 The assault will be "aggravated" if the person who is assaulted is wounded, maimed or disfigured or his or her life is endangered.

3.2.2.3 In deciding if an assault is sexual, many factors may be considered including the part of the body touched or threatened to be touched, the situation in which it occurred, the words and gestures of the person alleged to have committed the assault and any words and gestures of the person alleged to have been assaulted.

3.2.2.4 Gender is not relevant to a determination of whether a sexual assault has occurred.

3.2.2.5 Sexual Offences are described in Part V and Part VIII of the Criminal Code of Canada and some of those offences are:

- aggravated sexual assault;
- bestiality;
- incest;
- inviting a person under the age of fourteen to touch for a sexual purpose;
- sexual assault;
- sexual assault with a weapon or sexual assault causing bodily harm;
- sexual exploitation which is sexual interference of invitation by a person in a position of trust or authority;
 - a. towards a young person,
 - b. towards a person in a relationship of dependency or
 - c. towards a person with a mental or physical disability; and
- sexual interference which is sexual touching of a person under the age of fourteen

3.2.3 NOTE: Consent is understood as non-coercive. If a victim agrees to any assault under threat, or if consent is obtained by fraud or by the influence of a person in authority over the victim (e.g. counsellor, pastor, guardian), it will be deemed to be no consent. An accused may show "honest belief" of consent and may not be convicted. However, it is always no consent for children under age 12; under specific circumstances with peers for children age 12 - 14, and with young persons age 14 - 18, consent is not valid if the accused was in a position of authority over them. Also there are further provisions for mentally or otherwise incapacitated or vulnerable children, adolescents and adults.
(Criminal Code of Canada, Bill C - 127, 1983 and Bill C - 15, 1988)

Background to motion:

This wording is intended to clarify the definition of sexual assault in the policy and does not materially change the policy or its application.