

## COPYRIGHT AND DISCLAIMER

---

---

# **A GUIDE TO THE LAW IN ALBERTA REGARDING**



## **ASSAULT**

**version: 2011**

---

---

### **GENERAL**

All information is provided for general knowledge purposes only and is not meant as a replacement for professional legal advice. If you have a personal legal question that requires legal advice, please consult a lawyer.

### **COPYRIGHT**

Copyright 2011, Student Legal Services of Edmonton. All rights reserved. Copying any material, in whole or in part, is prohibited unless prior consent has been obtained. Some material may be subject to copyright from an outside source and thus there may be different restrictions on the reproduction of this material.

### **LIMITATION OF LIABILITY**

Student Legal Services of Edmonton is not liable for any loss or damage caused by an individual's reliance on information or material obtained from Student Legal Services of Edmonton. By accessing the information, individual's agree that any usage is at their own risk.

### **INFORMATIONS AND OPINIONS**

In some instances, information obtained by Student Legal Services of Edmonton may have been provided by outside sources. Even with the high standards set by Student Legal Services of Edmonton, we accept no responsibility for the accuracy and reliability of the material. Opinions and Informations provided by third parties does not represent that of Student Legal Services of Edmonton.

**Assault**

WHAT IS ASSAULT? . . . . . 2  
    Definition of Assault in the Criminal Code. . . . . 2

INTENTION. . . . . 2

CONSENT. . . . . 3  
    Introduction . . . . . 3  
    Has there been consent. . . . . 3  
    Drunkenness. . . . . 3  
    When is consent NOT given. . . . . 4

SELF-DEFENCE. . . . . 4

TYPES OF ASSAULT. . . . . 5  
    Assault Simpliciter. . . . . 5  
    Aggravated Assault. . . . . 6  
    Assault with a Weapon or Causing Bodily Harm  
    . . . . . 6  
    Sexual Assault. . . . . 6

LEGAL OPTIONS AVAILABLE TO THE VICTIM. . . . . 6  
    Pressing Charges. . . . . 6  
    Peace Bonds. . . . . 7  
    Restraining Order. . . . . 7

REFERRAL NUMBERS. . . . . 9

WHAT IS ASSAULT?

**1. Definition of Assault in the Criminal Code:**

The definition of assault can be found in s. 265 of the Canadian Criminal Code.

An assault can happen whenever someone touches another person and that person does not want to be touched. An assault can be anything from a punch in the face to touching someone on the shoulder, as long as the contact happened without the consent (permission) of the person being touched. The important thing is not the amount of force used, but whether the touching was allowed and whether it was intended.

An assault can also happen when someone makes any gesture or action which makes another person feel a reasonable apprehension of harm. There does not need to be any touching for this type of assault to occur. For example, if someone is pointing their finger in another person’s face and they feel that they are going to be assaulted, an assault may have occurred.

Assault also occurs when a person who is carrying or wearing a visible weapon, stops another person, harasses them or begs them for something. Section 2 of the Criminal Code defines “weapon” as anything a person uses or means to use to cause someone fear, to harm or to kill. This includes any guns, knives or other object which could be used as a weapon.

INTENTION

A person has to mean to touch or alarm someone else for an assault to happen. Accidentally bumping into someone, if they do not mean to bump into that other person, is not an assault. Also, if someone is waving their finger at someone else, but do not mean to alarm them, then they have not committed an assault.

**CONSENT**

**1. Introduction**

For an assault to occur, the person who has been touched must not have agreed to the contact. If consent is found, then no assault has occurred. Consent is an important part in many activities which involve touching. For example, in a hockey game, the players have consented to the touching that occurs between them during a game. So, if a hockey player injures someone, the player has not committed an assault because the injured player agreed to play the game which involved some danger of being hurt or injured. The injuries must be those that are expected in any hockey game; if they are more serious, then it might be assault since a hockey player does not consent to anything outside of the normal rules and risks of the game.

**\*\* NOTE:** Consent is invalid when adults cause non-trivial bodily harm (fist fight or brawl), and intended to cause the harm. **\*\***

**2. Has there been consent?**

Whether or not there is consent depends on the facts of the situation. In a trial, the Crown (the prosecution) must prove that the person who was assaulted did not consent to being touched. Consent can be either express, which means the person who was touched actually said they could be touched, or implied, which means the person who was touched showed by their actions that the touching was OK. It must be reasonable that there was actually consent. It may be implied that the touching was consensual if, in the facts of the situation, the reasonable person would assume that consent had been given. However, for consent to be implied the facts must give some support to the accused's belief that they had consent.

**3. Drunkenness**

If someone is drunk and assaults someone on purpose, they are not excused just because they were drunk when it happened. As

a matter of public policy people will generally not be allowed to use drunkenness as a defence to an intentional assault.

**4. When is consent NOT given?**

A person has not given consent to being touched if they merely went along with what someone was doing because they were threatened or otherwise scared. Just because someone has not said "no" does not mean they have consented.

A person also has not given consent in these specific examples.

- a. If the accused has hurt, or says they will hurt, someone else. This third person can be someone the person being assaulted does or does not know.
- b. If the accused lies to the person they assault about what the real activity is that the person is consenting to.
- c. If the accused lies to a person about who they really are so they can get that person's consent.
- d. If the accused uses a position of authority to coerce someone into consenting. Examples of relationships of authority are those between teachers and students, doctors and patients and lawyers and clients.
- e. When injuries caused by the assault are non-trivial.

In these situations, no consent will be found no matter what the accused believed to be true.

**SELF-DEFENCE**

Self-defence is a defence to a charge of assault and it is defined in the Criminal Code (ss.34-37).

Self defence allows a person to use force only when it is necessary and to the level that is reasonably necessary to stop an assault.

If someone is threatening to punch a second person, that second person can use as much force as is reasonably necessary to stop

## A GUIDE TO THE LAW IN ALBERTA REGARDING ASSAULT

it. Punching or holding the person might be reasonable. Shooting the person would not be reasonable. Extra, unnecessary, punches also would not be justified.

The defence of self defence is a shield. It does not justify unnecessary or extreme force.

### TYPES OF ASSAULT

If a person is charged with assault, there are two different levels of procedure a prosecutor can choose, summary or indictable. The penalties are found in s.266 of the Criminal Code.

#### **1. Assault Simpliciter**

Assault simpliciter is basic assault, touching without consent, where no bodily harm is caused, no weapon is used, and it is not of a sexual nature.

If a prosecutor decides to proceed summarily and the person is found guilty of assault, the maximum penalty is \$5000 and/or 6 months in prison. A person who is found guilty can be ordered by a judge to pay a fine and spend some time in prison. A provincial court judge sitting alone will hear your case if it is a summary matter.

A preliminary inquiry is held to determine whether there is enough evidence with which to go to trial. There will only be an inquiry if the accused chooses to have a trial in the Court of Queen's Bench and the Crown proceeds by indictment. The defence must request a preliminary inquiry. This can also be a chance for the defence to hear Crown Prosecutor's evidence.

Before a prosecutor decides if they will proceed by indictment, they will see if the accused person has a previous record with other assault convictions. They will also consider how serious the assault was and how seriously it should be punished. The maximum penalty for indictable assault is 5 years in jail.

## A GUIDE TO THE LAW IN ALBERTA REGARDING ASSAULT

#### **2. Aggravated Assault**

Aggravated assault is described as an assault that wounds, maims, disfigures or endangers the life of the victim. Basically an assault becomes "aggravated" when the harm caused goes beyond something minor and becomes more serious. Everyone who commits an aggravated assault is guilty of an indictable offence and could face up to 14 years in prison.

#### **3. Assault with a Weapon or Causing Bodily Harm**

If in committing an assault the person carries, uses, or threatens to use, a weapon or something that could be thought of as a weapon, or if they cause harm to their victim, she is guilty of assault with a weapon or causing bodily harm. Assault with a weapon or causing bodily harm could be either an indictable or summary offence, depending what the Crown chooses. If found guilty under a summary conviction, the accused faces a maximum imprisonment of 18 months. If found guilty by indictment, the accused faces imprisonment for a maximum of 10 years.

#### **4. Sexual Assault**

Sexual assault consists of unwanted touching in a sexual way. Sexual assault can be aggravated by the use of a weapon or if it causes physical harm to the victim, but physical harm is not required.

Persons under a certain age cannot consent to sexual acts as a matter of law. The age depends on the circumstances, but, generally anyone under the age of 16 cannot consent to sexual activity with anyone, except with other young people.

### LEGAL OPTIONS AVAILABLE TO THE VICTIM

#### **1. Pressing Charges**

If someone is assaulted, the police will investigate to find out what happened before they lay charges. A victim will be asked to give the police a statement explaining what has happened. Usually, the police will lay a charge if they believe there is enough

## **A GUIDE TO THE LAW IN ALBERTA REGARDING ASSAULT**

evidence. If the police do not lay a charge and the victim wants to continue the matter, they can contact the Provincial Court House and make an appointment with a Justice of the Peace to swear a “private information”. If the Justice of the Peace finds there is enough evidence to lay a charge, a charge will be laid and a Court date set and the person accused of assault will get an Appearance Notice.

### **2. Peace Bonds**

A Peace Bond is a Court Order which requires a person who has caused another to fear for their safety or property to keep the peace, be of good behaviour and follow other conditions the Court believes are needed for the victim’s safety for up to one year. The most common condition is that the accused stay away from the victim and not have any contact with them.

To get a Peace Bond, a person should:

- a. Report the incident to the police and explain why they feel afraid.
- b. Get the file number from the police and then make an appointment with the judge, Justice of the Peace, or magistrate at the Provincial Court House.

It is up to the judge or the police to decide if the process for a Peace Bond will be started. If the judge decides to begin the process then the complainant will have to swear an “Information” and, eventually, appear in Court to convince a judge that a Peace Bond should be issued. Once it is issued, if the person with the Peace Bond breaks the conditions, then she can be arrested and charged with a criminal offence.

### **3. Restraining Order**

A Restraining Order is a Court Order that orders a person who assaulted someone else, or who may assault someone else, to stay away. Asking for a Restraining Order often goes with a civil action, such as divorce. A lawyer may be needed to apply for a Restraining Order. People who cannot afford a lawyer can

## **A GUIDE TO THE LAW IN ALBERTA REGARDING ASSAULT**

contact The Legal Aid Society of Alberta or the Protection and Restraining Order Project (PROP).

A Restraining Order lasts for 3 to 6 months but it can be renewed at the Court of Queen’s Bench. It can even be made permanent. It is up to the person asking for the restraining order to make sure that the person she is afraid of follows it. If he breaks the Restraining Order, he will be arrested by the police once they are called.

The main differences between a Peace Bond and a Restraining Order are the amount of time it takes to get one and what happens to the person who breaks it. A Restraining Order may be gotten much more quickly, however it costs more than a Peace Bond. If a Restraining Order is broken, the person can be found in “contempt” which does not give a criminal record but the person can be jailed. If a peace bond is broken, it is a criminal offence which results in both a sentence like a fine or jail, and a criminal record.

It is important to note that if an assault is reported, the complainant (victim) cannot decide to drop the charges. Any decision to continue with the charges is up to the Crown Prosecutor.

**A GUIDE TO THE LAW IN ALBERTA REGARDING ASSAULT**

**REFERRAL NUMBERS**

The Legal Aid Society of Alberta . . . . . [780] 427-7575  
[www.legalaid.ab.ca](http://www.legalaid.ab.ca)

Lawyer Referral Services. . . . . 1-800-661-1095 (toll free)  
[http://www.lawsociety.ab.ca/public/lawyer\\_referral.aspx](http://www.lawsociety.ab.ca/public/lawyer_referral.aspx)

Student Legal Services  
Civil Law Project . . . . . [780] 492-8244  
Criminal Law Project . . . . . [780] 492-2226/425-3356  
[www.slsedmonton.com](http://www.slsedmonton.com)

Edmonton John Howard Society  
Victim Assistance Program . . . . . [780] 422-0721  
[www.johnhoward.org](http://www.johnhoward.org)

Native Counselling Services . . . . . [780] 451-4002  
[www.ncsa.ca](http://www.ncsa.ca)

Women's Emergency Accommodation . . . . . [780] 423-5302  
[www.e4calberta.org/weac.html](http://www.e4calberta.org/weac.html)

YMCA . . . . . [780] 421-9622  
[www.edmonton.ymca.ca](http://www.edmonton.ymca.ca)

YWCA . . . . . [780] 423-9922  
[www.ywcaofedmonton.org](http://www.ywcaofedmonton.org)

Distress Line . . . . . [780] 482-4357  
[www.thesupportnetwork.com](http://www.thesupportnetwork.com)

Legal Resource Centre website for battered women  
[www.violetnet.org](http://www.violetnet.org)

Elizabeth Fry Society Court Worker Program . . . . [780] 422-4775  
Located on fourth floor of courthouse

**A GUIDE TO THE LAW IN ALBERTA REGARDING ASSAULT**

Women's support number . . . . . [780]-421-1175  
<http://www.efryedmonton.ab.ca/>