



Type of law:
CRIMINAL LAW

Assault



A 2023 Alberta Guide to the Law

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GENERAL

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Table of Contents

| | |
|---|---|
| Definition of Assault in the <i>Criminal Code</i> : | 1 |
| Intention | 1 |
| WHAT IS CONSENT? | 1 |
| Has there been consent? | 2 |
| Self-Induced Intoxication | 2 |
| When is consent NOT given? | 2 |
| SELF-DEFENCE | 3 |
| Assault Simpliciter | 4 |
| Aggravated Assault | 4 |
| Assault with a Weapon or Causing Bodily Harm | 4 |
| Sexual Assault | 4 |
| Unlawfully Causing Bodily Harm | 5 |
| Assaulting a Police Officer | 5 |
| LEGAL OPTIONS AVAILABLE TO THE VICTIM | 5 |
| Pressing Charges | 5 |
| Emergency Protection Orders | 7 |
| WHO CAN I CALL FOR MORE HELP OR INFORMATION? | 8 |
| Legal Resources | 8 |
| Other Resources | 9 |

WHAT IS ASSAULT?

Definition of Assault in the *Criminal Code*:

The definition of assault can be found in section 265 of the *Criminal Code of Canada*.

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 a light push. This can be the case for even low-level applications of force.



An assault can also happen when someone threatens or attempts to apply force to another person and causes that person to reasonably believe that the first person has the ability to apply that force. There does not need to be any touching for this type of assault to occur. For example, if someone is shaking their fist in another person's face and that person reasonably believes that they are going to be assaulted, an assault may have happened.

Assault also occurs when a person who is carrying or wearing a visible weapon (or an imitation of a weapon), blocks another person, harasses them or begs them for something. Section 2 of the *Criminal Code* defines a "weapon" as anything a person uses or means to use to threaten or injure any person. This includes any guns, and could also include knives or other objects which could be used or seen as a weapon.



Intention

A person must intend, or mean, to touch or threaten to touch someone else for an assault to happen. When someone accidentally touches someone else, this is not an assault. For example, if someone is waving their finger at someone else, but does not intend to touch or threaten them, then they have not committed an assault.

WHAT IS CONSENT?

For an assault to occur, there needs to be an absence of consent. If consent is found, then no assault has occurred. Consent is an important part in many activities that involve touching. For example, in a hockey game, the players have consented to the regular touching that occurs between them during a game. So, if a hockey player injures someone, the player has not likely committed an assault because the injured player agreed to play the game knowing it involved some danger of being hurt or injured. The injuries must be those that are expected in any hockey game; however, 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 becomes invalid in certain situations. This can include when adults intentionally cause non-trivial bodily harm to each other (e.g. as a result of a serious fist fight or brawl) or if weapons are used. ****

Has there been consent?

Whether 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 or implied. Express consent means the person who was touched actually said that they could be touched. Implied consent means the person who was touched showed, by their actions, that the touching was okay. It may be implied that the touching was consensual if a reasonable person in the same situation would assume that consent had been given. However, for consent to be implied, the facts must support the accused's belief that they had consent. Implied consent does NOT apply in cases of sexual touching.

Determining whether a person has consented or not focuses upon what was actually in their mind. However, even if a person did not consent, in some circumstances, an accused may be able to claim that they had an honest but mistaken belief in consent. Once again, caution must be taken when applying this to cases of sexual touching as there are additional requirements for making a "mistaken belief" claim.

Self-Induced Intoxication

If a person is in a state of self-induced intoxication and assaults someone, they will not escape criminal liability just because they were intoxicated when it happened. As a matter of public policy, people are not generally allowed to use intoxication as a defence to an assault unless they were so intoxicated that they lost all voluntary control over their actions.



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 scared. Just because someone has not said "no" does not mean they have consented.

Generally speaking, a person has NOT given consent in the following situations:

1. If the accused obtained it by assaulting or threatening the person or someone else (this third person can be someone the person being assaulted does or does not know.)
2. If the accused obtained it through deceit or fraud.
3. If the accused uses a position of authority to get the person to consent. Examples of relationships of authority are those between teachers and students, doctors and patients, and lawyers and clients.
4. When non-trivial injuries are intentionally caused by the assault.

5. When a weapon is used, in most fights.
6. When a person is unconscious, all consent ends, including to things that they may have consented to while they were conscious.
7. Sometimes people cannot legally consent, such as if they are too young, too intoxicated, or sometimes if they are affected by certain disabilities.

This list is not exhaustive; as such, there may be other situations where consent is not found. It is also important to note that the requirements of consent in cases of sexual contact are generally greater than for regular applications of force.

SELF-DEFENCE

Self-defence is a defence to a charge of assault and it is defined in the *Criminal Code*. Self-defence allows people to use force *when reasonable* to defend themselves or another person. The action taken in self-defence must have been reasonable in the circumstances.



One factor a court will look at when determining if the action taken in self-defence was reasonable is the nature and proportionality of the person's response. If someone is threatening to punch a second person, that second person can use as much force as is reasonably necessary to stop it. Punching or holding the person might be reasonable. Shooting the person would likely not be reasonable. Extra or unnecessary punches would also not likely be justified.

SUMMARY & INDICTABLE CONVICTIONS

If a person is charged with assault, a prosecutor may choose to proceed with it as a summary conviction or indictable charge depending on the circumstances of the case. A summary conviction charge would generally be considered less serious than an indictable one.

If a prosecutor decides to proceed summarily and the person is found guilty of simple assault, the maximum penalty is \$5000 and/or 2 years less a day in prison. A Provincial Court judge sitting alone will hear your case if it is a summary matter. You may be able to have someone appear on your behalf if you are charged with a summary conviction, although a judge will very likely eventually require you to appear (such as for trial or sentencing).

If a prosecutor decides to proceed by indictment, you must appear in court or have a lawyer with a "designation of counsel" form appear on your behalf. Indictable offences begin in Provincial Court, but if the charge proceeds to trial you have the right to have your trial heard by a Provincial Court judge OR by a Court of King's Bench justice with or without a jury. The maximum penalty for indictable simple assault is 5 years in jail.

COMMON TYPES OF ASSAULT

Assault Simpliciter

Assault Simpliciter (often referred to as simple assault) is the basic form of assault. Its most common form is the basic application of force without consent, where no bodily harm is caused, no weapon is used, and the touching is not of a sexual nature.



Aggravated Assault

Aggravated assault is an assault that wounds, maims, disfigures or endangers the life of the victim. An assault becomes “aggravated” when the harm caused goes beyond something minor and becomes particularly serious, or where there is a very high potential for harm. Everyone who commits an aggravated assault is guilty of an indictable offence and could face up to 14 years’ imprisonment.

Assault with a Weapon, Causing Bodily Harm, or by Choking



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 bodily harm to their victim, or if they choke, suffocate, or strangle the victim, they will be guilty of a higher form of assault than simple assault.



Assault with a weapon, causing bodily harm, or by choking could be either a summary conviction or indictable offence. If indictable, a person could face up to ten years’ imprisonment.

Sexual Assault

Sexual assault consists of unwanted touching that is of a sexual nature. Like regular assault, sexual assault can occur in higher forms, such as sexual assault with a weapon, sexual assault causing bodily harm, aggravated sexual assault, and more. Additionally, there are certain forms of sexual assault that are specific to the age of the victim, such as sexual interference or invitation to sexual touching.

The age of consent in Canada for sexual activity is 16 years. Therefore, persons under the age of 16 cannot consent to sexual acts (subject to certain, very specific exceptions where the people engaged in the sexual activity are close enough in age. Consent must be communicated for it to be valid in cases of sexual contact.

Other Forms of Assault

There are various other forms of assault, or offences that overlap with assault, in the Criminal Code, such as assaulting a peace officer, unlawfully causing bodily harm, and even murder.

LEGAL OPTIONS AVAILABLE TO THE VICTIM

Pressing Charges



If someone is assaulted and it is reported to the police, the police will investigate to find out what happened before they lay charges. A victim (sometimes referred to as a complainant, before the charges have been decided by the Court) will be asked to give the police a statement explaining what happened to them. Usually, the police will lay a charge if they believe there is enough 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 is satisfied that the requirements to swear the information containing certain charges have been met, they will usually refer the matter to a Provincial Court judge for a “process hearing”. At that appearance, the judge will hear from the victim or witness, and if they are satisfied that a case for the charge exists, they will then issue a summons or a warrant for the accused individual.

Peace Bonds



A peace bond is a protection order made by a court. One of the most common types is used in situations where a person has caused another to fear for their own safety or the safety of their intimate partner, child or property. If granted, a peace bond will require the individual to keep the peace, be of good behaviour and follow other conditions for the period of time the Court believes is necessary to ensure that they are of good conduct (up to a maximum of one year). The most common condition is that the person bound by the peace bond stay away from the applicant and not have any contact with them.

A person can get a peace bond in much the same way that they lay a private information. A peace bond is free of charge and does not require hiring a lawyer. To get a peace bond in Edmonton, follow these steps:

1. Start by calling the Provincial Court - Criminal Division Clerk’s Office and telling them that you need to make an appointment with a Justice of the Peace to request a peace bond.
2. The Justice of the Peace will take down the details of your complaint and will forward the information to the Crown Prosecutor’s Office to be dealt with if there are grounds for a peace bond.
3. The justice of the peace will set a court date and the other party will be served with a summons to appear in court. If the other party does not show up in court on the set date after being served with a summons, the peace bond might be issued *ex parte*, which means in the defendant’s absence. At this court date, you will have to explain why the peace bond should be issued.

4. If the peace bond is issued, the person will be required to follow certain conditions for the duration of the peace bond (up to one year). If they break any of the conditions, they can be arrested and charged with a criminal offence.

Please note that if you live in Alberta, but outside of Edmonton, you will need to go to the police station first where they will give you a file number to take to the Justice of the Peace.

Restraining Orders

A restraining order is issued from civil court, rather than criminal court, and you may need a lawyer to help you get a restraining order. A restraining order can be attached to another action like a divorce or a civil action for assault or can be ordered on its own. It is highly recommended that you consult a lawyer, since your restraining order must be very carefully worded to make sure that you get the protection that you need.

Restraining orders may be granted without notice of the hearing to the person you are seeking to get a restraining order against. However, they must be served with a copy of the order and there is an automatic review of the order within two weeks at the Court of Queen's Bench. The person you are seeking a restraining order against (called the Respondent) and you (called the Applicant) will have to be present at this hearing. At this hearing, the Judge will decide if the order will remain in effect.

Some important things to remember include:

- You can ask that the order include a 'police enforcement clause' to ensure that the police have the authority to make an arrest if the order is being violated. A police enforcement clause is a section of the order that says the police shall make an arrest if the Respondent does not follow the conditions of the restraining order.
- Make sure that the restraining order mentions all of the places that the person could try to contact or follow you. You will want to have them prohibited from coming near you at your home, your place of work, and anywhere else you spend time on a consistent basis. If your order also prohibits them from seeing your children, make sure that their schools and/or daycares are listed as well. You may also want your order to prohibit them from contacting you by telephone, mail or email.
- If the person you are seeking a restraining order against is going to have visitation rights with your children, the times that he or she is able to see the children should be clearly laid out in a separate parenting order. As well, you may want the order to say that if they are intoxicated when he or she comes to see the kids, you have the right to deny the visit.

A restraining order does not have a specified time limit, you may ask for however long you believe

will be necessary (1 month – 1 year is common) and it may be extended, if necessary. You should keep a copy of your order with you at all times so that you can show it to the police if the order is violated. In addition, the restraining order should be registered with the police and given a case number. This will enable the police to have immediate access to the order's provisions. Sanctions for breaching a restraining order may include arrest and criminal charges or a finding of civil contempt.

Emergency Protection Orders

An Emergency Protection Order (EPO) is a court order for a person who assaulted someone else, or who may assault someone else, to stay away. The difference between an EPO and a restraining order is that an EPO requires that there is an immediate need for protection for the applicant(s) from a family member. Often, the police can assist with obtaining an EPO, but an individual can apply on their own as well. In some cases, a lawyer may be needed to apply for a RO. You may also complete a Statement of Claim requesting a RO on your own. People who need assistance and cannot afford a lawyer can contact The Legal Aid Society of Alberta.

An EPO must be reviewed within 9 working days of being granted by a Court of Queen's Bench Justice. If it is not reviewed, it may expire. At the time of the review, the person requesting the EPO can file an affidavit as to why they need protection. The person the EPO is against may be able to argue against the EPO. If the review is successful, the EPO will become a Queen's Bench Protection Order, which is similar to an EPO but the immediate need for protection is less.

The main differences between a Peace Bond and an EPO or a RO are the amount of time it takes to get one and what happens to the person who breaks it. An EPO or a RO may be ordered quickly and, if broken, the person can be found in “contempt”, which means they do not get a criminal record, but they can be fined or 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.

WHO CAN I CALL FOR MORE HELP OR INFORMATION?

Legal Resources

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|---|---------------------------|
| Legal Aid Society of Alberta Suite 300, Revillon Building 10320 - 102 Avenue; Edmonton, AB | Ph: 1-866-845-3425 |
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Provides legal advice, assistance, and representations to those who qualify for their services at a reduced rate.

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| Student Legal Services – Criminal Law Project #100, 9924 106 Street; Edmonton, AB | Ph: 780-425-3356 |
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Law students from the University of Alberta can provide legal information and referrals, as well as act as agent in Provincial Court for certain criminal matters if you meet our income guidelines.

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| Lawyer Referral Service | Ph: 1-800-661-1095 |
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This service provides the contact information for up to three lawyers that may be able to assist you with your legal matter. When you phone, explain the nature of your legal matter to the operator. You will then be provided with the contact information of lawyers who may be able to assist you. When you contact the lawyers, be sure to tell them that you received their contact from Lawyer Referral Service. You will be able to speak to them for free for 30-minutes and they can provide you some summary legal advice. This 30-minutes is not intended to be a time for a lawyer to provide you with free work.

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| Emergency Protection Order Program | Ph: 780-422-9222 |
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A program operated through Legal Aid Alberta. Lawyers (free of charge, & with no eligibility requirements) to help obtain protection orders that can prevent a family member from contacting you.

Other Resources

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| Edmonton John Howard Society #401 - 10010 – 105 Street; Edmonton, AB | Ph: 780-428-7590 Web: https://johnhoward.org/ |
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Workers can help understand the consequences of crime, available sentences, and the court process. Can also help with housing and employment.

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| Elizabeth Fry Society of Northern Alberta #400, 10242 – 105 Street; Edmonton, AB | Ph: 780-421-1175 Web: https://www.efrynorthernalberta.com/ |
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This service is specifically for women and girls. Court workers explain court procedure and

terminology, provide legal referrals, and offer practical assistance and support to those appearing in court.

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| Native Counselling Services of Alberta 14904 – 121A Avenue NW; Edmonton, AB | Ph: 780-451-4002 Email: info@ncsa.ca |
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NCSA provides numerous programs working to support and strengthen Aboriginal individuals and families. These programs include court support for certain types of matters, assistance with Child and Family Services matters, housing and support for at-risk youth, and Aboriginal healing lodges for offenders. They do not provide therapy or counselling.

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| Sexual Assault Centre of Edmonton #205 - 14964 121A Avenue; Edmonton, AB | Ph: 780-423-4102 Email: info@sace.ca |
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Provides specialized, trauma-informed services at no fee. This includes: counselling, court support, and public education.

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| Inner City Victim Services - Bissell Centre Bissell Centre Downtown West 10530 96 Street; Edmonton, AB | Ph: 780-232-7840 Email: rsipes@bissellcentre.org |
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Victim Support Services offers one-on-one case management for victims of crime, including help with court, preparing documentation, accessing financial benefits, as well as emotional support.