

Exploring Sexual Consent

Consent – when someone freely agrees to engage in a certain act – is a non-negotiable part of sexual activity*.

Unfortunately, people often conflate sex with sexual violence, reframing sexual violence as “non-consensual sex”. This sends the false message that consent is optional.

Examples of this include when: the media covers a high-profile rape as a “sex scandal”; university frosh leaders chant about having sex with “no consent” and with underage girls; and scenes in movies or on TV depict rape, but are labeled “sex scenes”.

If someone has not consented – it is sexual violence.

The myth that certain behaviours mean that someone is “asking for it”, sends the dangerous message that someone can implicitly consent to sexual activity.

It doesn't matter what someone is wearing, if they are drinking or using drugs, if they were flirting, or if they were sexting. Anything but a clear, freely given, ongoing yes, means no.

This handout outlines what does and does not constitute consent, and give some examples of how to negotiate consent amongst individuals.

Sexual violence is, however, a widespread societal problem and consent education must be part of a holistic effort to dismantle rape culture, one that addresses its root causes.

* Sexual activity can include: all sexual touch, “dirty talk”, sexting, cuddling, kissing, making out, groping, fondling, masturbation, oral sex, penetrative sex, and BDSM (bondage, discipline, dominance and submission, and sadomasochism).

Consent and power

While sexual violence is perpetrated by individuals against other individuals, it also exists on a societal level.

Sexual violence is a result of power imbalances that stem from gender inequality and other forms of systemic oppression. If we acknowledge that power imbalances exist in everyday interactions, we must acknowledge that they do not disappear when people engage in sexual activity.

Gender norms, gendered oppression, and other intersecting forms of oppression impact how people approach sex/consent:

- Gender norms encourage men and other masculine people to bond over objectifying and dominating women and femmes.
- Gender norms teach women and femmes to: be passive, polite, and always be ready for sexual activity/to sexually please their partner.
- Women – especially Black, Indigenous, Latina, Bisexual and Transgender women – are often reduced to sex objects, robbing them of their individuality and autonomy.

- Oppression limits the autonomy that marginalized people have over their lives, wellbeing, bodies and health (sexual and otherwise). This lack of autonomy contributes to power imbalances. Autonomy (the freedom to make decisions without outside interference) is central to consent.

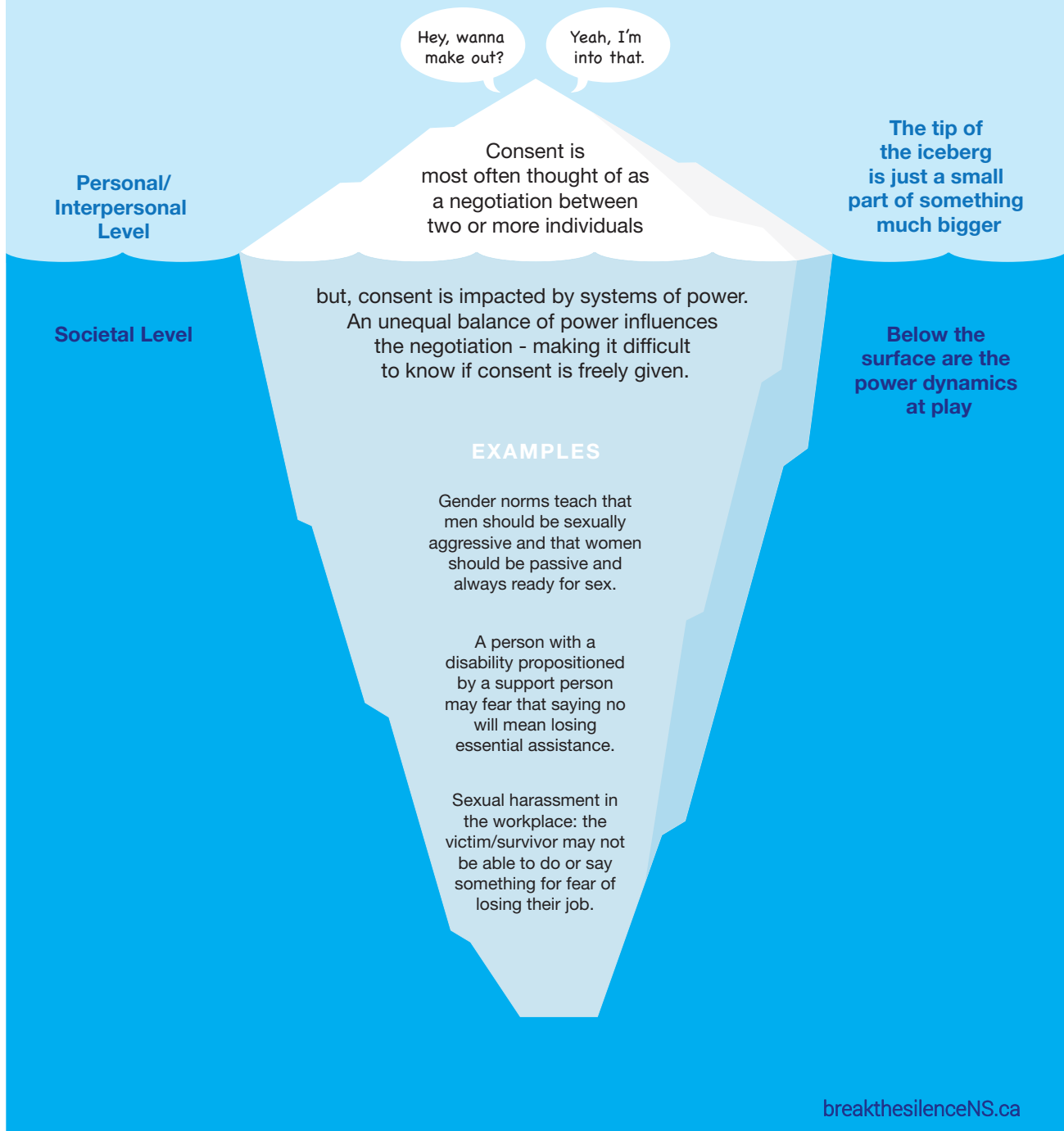
When talking about negotiating consent as an isolated interaction between two or more people, it can be forgotten that power, privilege, and oppression lead to sexual violence.

“Instead of being acknowledged as a tool of patriarchy, as a form of social control, as men enacting dominance over women and femmes’ bodies, rape is simplified to any sexual activity gone bad, by anyone.”

Paniz Khosroshahy

The Consent Iceberg

Personal & Social Impacts of Power



What is consent?

“When it comes to sexual activity and sex, you have the right to decide when you do it, where you do it, and how you do it.”

teentalk.ca

Consent is:

- Clear
- Freely Given
- Current
- Ongoing
- Changeable

Clear: Everyone involved must be clear on what they are consenting to.

Freely given: Consent is **not** present if they were coerced (i.e. pressured) into engaging in the sexual activity.

Coercion is when someone tries to change a “no”, “maybe”, “I don’t know” or “I don’t feel like it” (for example) into a “yes”. Coercion can also involve threats or bribery.

Examples of coercion include:

“If you loved me you’d...”

“I thought you were cool...”

“If you won’t, I’ll find someone else who will.”

Current: Consenting to sexual activity on one occasion doesn’t mean that the person is consenting to sexual activity in the future. Consent must be present every time.

Being in a long-term romantic and/or sexual relationship does not mean that consent is automatically present. Having previously had sex with someone, regardless of the number of times, does not equal consent. No one owes anyone sex regardless of the type of relationship they have.

Ongoing: Consent must be given for each sexual act. Just because consent is present for one sexual act doesn’t mean it is present for another. People’s desires and feelings of comfort and safety can shift throughout a sexual encounter.

Changeable: All parties must be able to stop the sexual activity at any point. This means checking in with the person(s) throughout, getting a clear answer and then respecting that answer.

It is always the responsibility of the person who initiates sexual activity to ask for and establish consent. This includes when switching from one sex act to another.

Only yes means yes

Only a clear, freely given, ongoing “yes” means yes.

At its most basic level, consent is about caring if the other person(s) want(s) to engage in sexual activity and respecting their decisions regarding their boundaries, needs, and wants.

Once they express their boundaries, needs, wants, and desires the most important thing is to respect them, and not to pressure them to do anything they are not comfortable with.

Consent means asking what someone wants and needs, and doesn’t want or need, and listening carefully to the answer. It means paying attention to how the other person(s) is/are doing throughout, and asking if you are not sure.

It is also about working to address the power imbalances present in each sexual encounter and creating space for someone to say no, whether verbal or otherwise.



CONSENT IS:



Everyone involved must be clear on what they are consenting to.



Consent is not present if they were pressured into engaging in that sexual activity.



Consenting to sexual activity on one occasion doesn't mean that person is consenting to sexual activity in the future. Consent must be present each and every time someone engages in sexual activity.



Consent must be given for each and every sexual act. Just because consent is present for one sexual act doesn't mean it is present for another. People's desires and feelings of comfort and safety can shift throughout a sexual encounter.



All parties must be able to stop the sexual activity at any point. This means checking in with the person(s) throughout the sexual activity, getting a clear answer and then respecting that answer.



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Below are examples why someone might not be able to say “no” or may say “yes” when they don’t want to:

- They have been socialized to submit or please or believe it’s their duty.
- They have been coerced.
- They are under the influence of alcohol or drugs.
- Someone may be too shocked to say no when consensual activity turns into sexual violence.
- Traumatic events can trigger the brain’s unconscious freeze response.
- They may fear that they will be punished, shamed, or shunned.
- Someone may be fearful that they will be physically harmed. There are unfortunately many present day examples of a men attacking or killing women who rejected their advances.
- To get out of a dangerous situation.
- A person who is in their first sexual relationship with a more experienced partner may feel additional pressure to give in to their partner’s advances.
- Someone who identifies as lesbian, gay, bisexual or queer may fear that they could be outed if they refuse heterosexual sex.
- There are also power dynamics at play when someone is in their first same sex or queer relationship, specifically when their partner is their entry point into a LGBTQIA2S+ community or scene.
- A person with a disability who is assaulted by a care provider may fear that objecting will mean losing an essential support.
- A person living with a disability who is nonverbal cannot say the word “no”.
- A sex worker may not be able forfeit the income or may fear violence if they say no.
- They are relying on the person who is initiating for a place to stay or a drive home.

Consent laws

Canadian law defines sexual consent as:

“The voluntary agreement of the complainant to engage in the sexual activity in question. Conduct short of a voluntary agreement to engage in sexual activity does not constitute consent as a matter of law.”

The law also states that:

- There is no such thing as implied consent.
- If you express a “lack of agreement” via your words or behaviours, that is just as good as saying no.
- If someone indicates that they don’t want to continue, either verbally or with their actions, there is no longer consent.
- Someone cannot use their position of trust, power or authority to convince another to engage in sexual activity.
- There is no consent if the person is unconscious or asleep, including if they consented to the activity when they were conscious.
- You can only consent for yourself.
- You cannot share intimate images of someone without their consent, regardless of age.
- You cannot consent to “sexual intercourse” with your parent, child, sibling, grandparent or grandchild. This is incest.

Can the person who perpetrated the sexual violence claim that they mistakenly thought they had consent?

If a sexual assault charge makes it to court the person who perpetrated the sexual violence may claim that they *thought* they had consent, and the judge may accept this argument.

According to Canadian law, a person cannot claim that they thought the victim/survivor consented “where the accused’s belief arose from the accused’s self-induced intoxication, or where the accused’s belief arose from the accused’s recklessness or willful blindness or where the accused failed to take reasonable steps to ascertain whether the complainant was consenting.”

They also cannot claim that the act was consensual because they waited a sufficient amount of time after a no and the victim/survivor did not express a no again. If someone communicates no, it is a no until the person freely agrees to the sexual act.

Youth and Consent

16 is the legal age of consent in Canada, however:

1. **16 and 17-year-olds cannot** consent to sexual activity with someone with whom they have a “relationship of trust, authority, or dependency” or where there is “exploitation”. (For example: a coach, doctor, or teacher).
2. **14 or 15 can** consent to sexual activity with someone who is **less than 5 years older** but it cannot be a “relationship of trust, authority, or dependency” or where there is “exploitation”.
3. **12 or 13 can** consent to sexual activity with someone who is **less than 2 years older** but it cannot be a “relationship of trust, authority, or dependency” or where there is “exploitation”.
4. **Under 12:** cannot legally consent under any circumstance.

Someone cannot legally consent to sexual intercourse with their parent, child, sibling, grandparent or grandchild. This is incest.

The age of consent is 18 when it involves:

- Anal sex, which is only permitted between two people, and not in a public place. This higher age has been deemed unconstitutional by three provincial courts of appeal as it unevenly impacts men who have sex with men. It is, however, still law. As of March 2017, the federal Liberal government put forth a bill to amend the age of consent for anal sex to 16.
- Sex work.

Child pornography

Child pornography is any material that shows someone under 18 years of age engaging in sexual activity or “a young person’s sexual organ or anal region for a sexual purpose”, or encourages others to sexually assault a child.

Canadian law states that “no one may make, distribute, transmit, make available, access, sell, advertise, export/import or possess” child pornography.

This includes when youth share photos or videos of themselves.

Consent and alcohol and drugs

We live in a culture where alcohol is central to socializing. There is great deal of pressure to drink and few alcohol-free places for adults to hang out. Many people go to parties, bars or clubs to find a hookup and use substances to feel comfortable doing so.

Victims/survivors are often blamed for “putting themselves in the position” to be violated: by going to a bar, drinking, leaving their drink unattended, accepting drinks from the person who violated them, and so on.

Even some anti-rape campaigns tell women not to get drunk, not to leave their drinks unattended, not to leave their friend(s) alone. Instead, we should be teaching people (primarily men) not to rape.

No matter how drunk or high they are, no one deserves or asks to be sexually violated.

Targeting Vulnerability

People who perpetrate sexual violence target vulnerability. Alcohol is the most common drug used by people who perpetrate sexual violence.

Studies have shown that men who perpetrate sexual violence target women who are intoxicated.

This is drug-facilitated sexual assault.

Double Standards

If a woman was drinking at the time she was raped, she is often blamed, whereas if a man was drinking when he perpetrated sexual violence, his intoxication is often used to excuse his behaviour.

Being drunk or high does not excuse perpetrating sexual violence. Nothing does.

Victims/survivors are also treated differently depending on if they knowingly got drunk or high as opposed to if they were unknowingly drugged. This reinforces the damaging good victim/bad victim narrative.

This leads many victims/survivors to blame themselves for being violated and may dissuade them from talking about or reporting the sexual violence due to the fear that other people will blame them as well.

Consent Law, Alcohol and Drugs

Canadian law states that there cannot be consent where the victim/survivor is “incapable of consenting to the activity”.

There is, however, no definition of how drunk or high someone needs to be to be “incapable of consenting”: that is decided by individual judges/juries if and when a sexual assault charge makes it to court.

The law is clear that all of the parties must be conscious and awake during the sexual activity, even if they consented previously.



Doing the Right Thing

Just because something may or may not be legal does not mean it is moral or right. Ensuring another's safety, well-being, comfort, and enjoyment is just as important as not breaking the law.

Negotiating consent is best done sober. It is better to play it safe than to risk violating someone.

We know however that people engage in sexual activity when they are drinking or doing drugs, and that people who live with addiction also hook up/have sex. Taking a harm reduction approach to substance use and sex means acknowledging this reality, and reminding those who do engage in sexual activity while under the influence about the non-negotiable pillars of consent.

When in doubt, don't initiate or continue, and instead, ask again when all involved are sober.

If one or all parties have been drinking or doing drugs, consent must still be:

- **Freely given** – Using alcohol to lower someone's inhibitions so they engage in sexual activity, or targeting someone who has been drinking or using drugs for the same reason, is coercion and drug-facilitated sexual assault.

- **Current** – Alcohol and drugs can contribute to someone agreeing to something they are not okay with. If a person didn't agree the sex act when they were sober but says yes when they are intoxicated, wait until all involved are sober.
- **Clear** – Does everyone fully understand and agree to what is happening? Are they engaged and giving positive consent to each act? Are they communicating clearly?
- **Changeable** – Consent can be revoked at any time during sexual activity. If a person stops saying yes, then they are saying no.

If someone has been drinking and is slurring their words or having difficulty standing or walking (when they usually don't), are throwing up, moving in and out of consciousness, or anything else that might indicate that they are intoxicated/incapacitated **the priority should be making sure that they are hydrated/fed, are with or get to someone who they trust who can care for them, get home safely, or get medical attention.**

Consent in practice

There is a prevalent assumption that sex (or any sexual activity) "should just happen", and that it "kills the mood" if you plan or talk about it.

Consent is mandatory and talking about needs, wants, and desires can be empowering and sexy. It can greatly enhance sexual activity and strengthen relationships.

Here are a few examples of how to ask for consent:

"Can I kiss you?"

"Would it be okay if I touched you [place]?"

"I really want you to touch me [place]. Is that okay?"

"What do you want to do next?"

"What can I do to make you feel good?"

"Do you want to keep going?"

"Would you like it if I ____?"

"I really want to _____. Are you into that?"

Asking questions like these is important. However, the most important part of consent is waiting for, really listening to, and then respecting the person's answer!

Building a consent culture

"Practicing consent is an important step in creating a culture we want to live in. A culture in which people are respected and have autonomy, choice, agency, to decide for themselves what is best for them."

Anti-Violence Project, University of Victoria


Consent culture is the healthy alternative to rape culture. A culture of consent is one where consent is normalized, both within society at large and our relationships.


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Consent Culture


A culture of consent is one where consent is normalized both within...

... Our relationships






... Society at large



It is one where...


- People can freely choose to engage in sexual activity
- Services for victims/survivors are adequately funded
- Victims/survivors are believed
- Sexual violence is taken seriously
- There is comprehensive and inclusive sex education
- Everyday consent is the norm - autonomy, privacy, needs & wants are respected in all interactions
- Individuals are empowered to express their needs, wants & desires in regards to sexual activity and they are respected

It means that each person has autonomy over their own...




Body.
 Sex life.
 Sexual Health.
 Sexuality.
 Gender.
 Gender Expression.
 And More


As we work towards building a culture of consent we must...



LISTEN



EMPOWER



SUPPORT

CENTRE

...People from marginalized communities.

Acknowledgments

This handout was created as part of Nova Scotia's Sexual Violence Strategy. It is one of the many components of the training course, *Supporting Survivors of Sexual Violence: A Nova Scotia Resource*.

A Provincial Committee made up of community members from across Nova Scotia dedicated nearly two years of time, energy and expertise to develop this important resource. It would not exist without their unwavering dedication and passion.

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