



HISTORIC SEXUAL VIOLENCE

A Resouce For Survivors

February 2024

This guide provides general information and answers some common questions about the law related to historical sexual violence.

*This information is general in nature and **does not** constitute legal advice. We strongly recommend consulting with a lawyer to get legal advice about your specific situation.*

A Note on Language:

Language is important. It holds a lot of power. You may or may not identify with the word “survivor” or “victim”. Police, lawyers, judges, and others involved in the legal system may refer to you as a “victim”, “plaintiff”, “witness”, or “complainant” even though you may not identify with any of these terms. This is the language used by the legal system and in courts and does not mean you or your reaction to the incident is being judged. In this guide, we use the term “survivor.” However, we know that not everyone who has experienced sexual violence will identify this way.

If you would like to speak with a Legal Support Navigator (LSN), you can reach us through email, text, phone, or our social media pages. We are available Monday to Friday, 9:00am - 4:00pm.

TEL: 1-709-722-2805

TOLL-FREE/VRS: 1-833-722-2805

TEXT: 709-986-2801

EMAIL: support@journeyprojectnl.com

www.journeyproject.ca

X: @JOURNEY_NL

Facebook: @THEJOURNEYPROJECTNL

Instagram: @JOURNEYPROJECTNL

WHAT IS HISTORIC SEXUAL VIOLENCE?	4
.....	
WHAT IS SEXUAL VIOLENCE?	4
.....	
WHAT LEGAL OPTIONS ARE AVAILABLE TO ME?	5
.....	
THE CRIMINAL LAW SYSTEM	8
.....	
THE CIVIL LAW SYSTEM	10



WHAT IS HISTORIC SEXUAL VIOLENCE?

Historic sexual violence is any act of sexual violence that happened in the past. You may have experienced sexual violence a couple of years ago, or many decades ago. Both would be examples of historic sexual violence.

WHAT IS SEXUAL VIOLENCE?

A non-legal term that is used to describe any violence, including physical or psychological violence, that is carried out through sexual means or by targeting sexuality. Each survivor will interpret sexual violence differently based on their own personal and unique experience. It includes any act that happens without the consent of a person, including physical or psychological violence, carried out through sexual means, of a sexual nature, or by targeting sexuality.

WHAT LEGAL OPTIONS ARE AVAILABLE TO ME?

Every case is unique, and there are many factors which will determine what options are available to you, some of which include:

- How long ago the assault(s) happened
- Whether the perpetrator(s) is still alive
- Any evidence that may be available
- The circumstances of the assault (i.e., location, severity, etc.)

There are two main legal avenues that may be options: the criminal justice system and civil litigation.

The **criminal justice system** involves going to the police and reporting the assault.

You will give a statement and the police will investigate your report. If there is enough evidence to lay a charge, and the perpetrator is still alive, the police have the authority to lay a charge. The criminal law that was in place at the time of the sexual assault is the law that is applied. For example, if you experienced a crime in 1975, the criminal law as it was in 1975 will be applied. This means that even if the Criminal Code or other laws have been amended since your experience of sexual violence, the law as it was at the time of the offence is what the court will follow. It is recommended that you consult with a lawyer to understand if this has any bearing on your case.

More information on the criminal justice process can be found on page 8.

Civil litigation (commonly known as “suing”) involves filing a claim at court seeking “damages” (compensation) for the harm you have suffered as a result of the sexual violence. You may sue individuals or institutions (or both). More information on this process can be found on page 10.



MY ABUSER HAS DIED. DO I HAVE ANY OPTIONS?

If your abuser has died, the courts cannot proceed with any criminal charges. However, there may be other options available to you. You may be able to file a civil suit against the deceased person's estate, or against the institution that they worked for/were connected with. This will depend on a number of factors, and you are strongly encouraged to connect with a Journey Project lawyer for advice specific to your experience.

WHAT ARE LIMITATION PERIODS?

In Newfoundland and Labrador, the Limitations Act sets out time limits for starting a claim. Limitation periods, also called 'statutes of limitations' are time limits that apply to certain legal situations. Generally speaking, there is no time limit when reporting a crime of sexual violence and/or intimate partner violence to the police. However, there is a time limit to sue another person. A limitation period sets out the maximum amount of time that can pass since the incident or incidents occurred and when a person can file a lawsuit. In Newfoundland and Labrador, that time limit is generally two years for matters related to harm or injury.

There are some situations where there can be a longer time limit, or none at all. This can include instances where a person is under the care of another person, organization or agency and either financially, emotionally, physically, or in some other way dependent on them. Another situation where a longer time limit might apply is if the person who has been harmed is a beneficiary or in a fiduciary relationship (legal or ethical guidance/protection over another person). Some examples include teacher and student, priest and lay person, coach and athlete, guardian and guarded.

The *Limitations Act* also explains the concept of 'ultimate limitation': generally, after 30 years, claims are not able to be brought forward to court.

Understanding the rules around limitation periods can be complicated. Because there are situations where the two-year limitation period may not apply, and because there are some caveats to ultimate limitation, we suggest speaking with a lawyer for legal advice.



MY EXPERIENCE HAPPENED DECADES AGO AND AT THE TIME NOTHING COULD BE DONE. HAS ANYTHING CHANGED?

Laws are ever-evolving, and the law that was current at the time of your experience may be different than the law now. For example, there have been several changes made to the Criminal Code of Canada. Some significant changes include:

- In 1983, the Criminal Code was amended to clarify that spouses could be charged with sexual assault (previously, spouses could not be charged with rape/sexual assault).
- In 2015, the Criminal Code was amended to add section 162.1 'publication, etc., of an intimate image without consent (this made it illegal to share intimate images without consent).
- In 2019, the Criminal Code section 267 (assault with a weapon or causing bodily harm) was amended to include an additional offence that factors in choking, suffocation or strangulation during an assault.

While the law that was current at the time of your experience may not have provided any options for you, there may be options for people who experience similar crimes today. It can be incredibly difficult to know that you did not have those options for your experience. The Journey Project is always available to provide support in determining if other options are available to you, and offering emotional support through any difficult feelings you may be having.

THE CRIMINAL LAW SYSTEM

What to expect when you report sexual violence to the police

In Canada, there is no limitation period, or time limit, on when a person can report an incident of sexual violence to the police, or when the police can charge someone with an indictable offence (for more information on limitation periods, see page 4). You can report an assault(s) to the police no matter how long ago it happened.

When you first contact the police, there may be an initial interview. The initial interview is when a police officer asks for basic information about what happened. Police will ask for more information when you give a statement. A statement is a formal account of what happened. A statement can occur at the police station, or a mutually agreed upon location.

Before making your statement, mention any accessibility or accommodation requests you may have. This may include interpretation or translation services, transportation, having a support person with you, or a service animal. A Legal Support Navigator with The Journey Project can also assist you with arranging accommodations.

The process may vary depending on location, but giving a statement to police typically looks similar to the following:

If you report in person:

- You will likely walk up to a window at the police station and state what type of incident you are reporting. Depending on the layout of the police station and if other people are present, this conversation may not be private. You may be asked to show ID.
- If you are reporting in person at the RNC in St. John's, you can request to speak with someone in the Child Abuse and Sexual Assault (CASA) Unit. A CASA officer may or may not be available immediately.
- Be prepared to wait in the main lobby. How long you wait will depend on whether there is a police officer available to take your statement.
- We suggest that you bring a support person with you or something to occupy your mind (e.g., your phone and

charger, a book to read, a fidget object). You may be waiting for some time, up to several hours. Having water and tissues on hand is also a good idea.

- When possible, we suggest calling the police station ahead of time to schedule an appointment.
- The Journey Project can accompany you to the police station if requested. However, this may not be possible in every part of the province.

If you report over the phone/call 911:

- A uniformed officer may be sent to your location. If you require medical assistance, the officer may offer to take you to the hospital. This is only done with your consent. The officer will take your information and details surrounding the assault for their report.
- In most cases, you will be asked to make your formal statement at the police station. This may be on the same day or at another time. The statement will likely be taken by a different police officer.

If you have experienced sexual violence in Newfoundland and Labrador but are now living in a different province or country, you can still report to the police in your area. They will likely be able to take your recorded statement and communicate this to the police detachment in Newfoundland and Labrador where the assault(s) occurred.

This process may look different depending on where you are located, so it is recommended to contact your local police detachment for further information and guidance.

More information on the reporting and investigation processes can be found in our 'Reporting Sexual Violence to Police' guide, which you can access here: <https://journeyproject.ca/reporting-police/>



THE CIVIL LAW SYSTEM

Civil litigation, commonly referred to as suing someone, or filing a lawsuit, can sometimes be a legal option for survivors of sexual violence and/or intimate partner violence, including historical cases. If you have more questions or would like some support during this process, you are welcome and encouraged to contact a Legal Support Navigator at The Journey Project.

If you are thinking of starting a claim, sometimes called suing someone, it is important to note that a settlement can happen anytime. This includes before a lawsuit has even started, or before court proceedings begin. A settlement is an agreement between the parties involved (plaintiff(s) and defendant(s)). We suggest speaking with a lawyer if you are thinking about your legal options.

A civil action or lawsuit happens when one person, group of people, or business sues another person, group of people, or business. It is an area of private law that seeks a remedy for people who have been injured physically, mentally, or financially, or whose property has been damaged. In most cases, that remedy is money.

Sexual violence and/or intimate partner violence in civil law can fall under several branches of what legal professionals call tort law. Tort law refers to a set of laws that are designed to provide remedies for people who have been harmed. Unlike criminal law, tort law is not intended to punish people.

If someone sues a person or business, they are called the plaintiff in civil proceedings. The person or business being sued is called the defendant. If the plaintiff believes they are entitled to damages based on something that has been said or done to them by the defendant, they can file documents with the appropriate court to sue them.

Generally, there is a time limit to sue another person. A limitation period sets out the maximum amount of time that can pass since the incident or incidents occurred and when a person can file a lawsuit. In Newfoundland and Labrador, that time limit is generally two years for matters related to harm or injury.

There are some situations where there can be a longer time limit, or none at all. This can include instances where a person is under the care of another person, organization or agency and either financially, emotionally, physically, or in some other way dependent on them. Another situation where a longer time limit might apply is if the person who has been harmed is a beneficiary or in a fiduciary relationship (legal or ethical guidance/protection over another person). Some examples include teacher and student, priest and lay person, coach and athlete, guardian and guarded. Understanding the rules around limitation periods can be complicated. Because there are situations where the 2-year limitation period may not apply, we suggest speaking with a lawyer for legal advice.

A class action lawsuit is when more than one person files as a group. This type of lawsuit is used when multiple people have been harmed by the defendant in a similar manner. Class action lawsuits are becoming increasingly common, especially in matters related to sexual abuse. The Canadian Bar Association maintains a Class Action Database; however, the list is voluntary and only shows the result of lawsuits that have been submitted by lawyers. You can access this database here: <https://www.cba.org/Publications-Resources/Class-Action-Database>

More information on this process, including information on damages, the standard of proof, and civil trials, can be found in our 'Civil Litigation' guide, which you can access here: <https://journeyproject.ca/civil-litigation/>



The Journey Project exists to strengthen justice supports for survivors of sexual violence and intimate partner violence.

The Journey Project was founded in 2017 as a collaborative initiative of Public Legal Information Association of NL and End Sexual Violence NL.

Journey supports survivors of any age and any gender and is provincial in scope. This means people living anywhere in Newfoundland and Labrador can access our services. It also means that anyone who has experienced sexual violence and/or intimate partner violence in Newfoundland and Labrador can access our services – even if they are living in another province, or another country.

The Journey Project team is grateful to every survivor who has informed this project and our work.

www.journeyproject.ca

