



Backgrounder

April 13, 2015

About CASE

The Consent Awareness and Sexual Education Club is a feminist anti-racist club at the University of Calgary that seeks to educate young Calgarians about consent as a means of sexual assault prevention. We believe that preventative measures focusing on potential perpetrators are more effective than preventative measures focusing on potential victims. We hope to educate the public as well as University of Calgary students about what consent is – and help foster an environment where consent is requested and respected in sexual relationships.

For more information visit: <http://www.ucalgarycase.ca/>

About Sarah Hogendorp

Sarah Hogendorp is a 25-year-old fourth-year sociology major at the University of Calgary. Once she has completed her degree, Sarah aims to continue sex positive advocacy for either Calgary Sexual Health or Calgary Communities Against Sexual Abuse.

Social justice issues are an underlying motivator for her school and extracurricular endeavors. At the moment, Sarah spends her spare time actively volunteering for the Consent Awareness and Sexual Education Club (CASE), the Q Centre, and she is an executive for the Sociology Students' Association.

Ms. Hogendorp has made the effort to spearhead this petition, saying: "Personally, I believe that an understanding of how consent works is lacking in today's youth. Discussing healthy, ongoing, affirmative, legal consent with youth could potentially prevent a lot of the more common forms of sexual assault such as "acquaintance" and "friend" sexual assault."

About Jennah Martens-Forrester

Jennah Martens-Forrester is a cultural anthropology and development studies major with a minor in indigenous studies at the University of Calgary. Martens-Forrester hopes to one day work full-time for a non-profit/relief organization and eventually earn her PhD to become a research fellow.

Her free time is spent as a Peer Support and Community Outreach Volunteer for the Women's Resource Centre, and she has been a founding member of the Consent Awareness and Sexual Education Club (CASE), currently serving as the club's VP Student Engagement (2013-2014) and VP Academic (2014-2015). Ms. Martens-Forrester also serves as VP Student Engagement for the Calgary chapter of Solidarity for Palestinian Human Rights (SPHR).

Martens-Forrester contributed the main research and writing behind the petition. Her personal thoughts: "Consent isn't just about agreement to participate in sexual activity. As a concept consent extends beyond that and is about ethics. At its foundations consent is about having respect and consideration for others. It should be thought of as a minimum standard in regards to how we treat other people and it should serve as a guiding principle to inform everything we do."

Resources:

Calgary Sexual Health Centre - Consent

<http://www.calgarysexualhealth.ca/sexual-health-info/communication-decision-making/#consent>

Calgary Communities Against Sexual Abuse - Rethinking Prevention

<http://www.calgarycasa.com/resources/rethinking-prevention/>

Government of Canada, Department of Justice:

A Definition of Consent to Sexual Activity

Section 273.1 provides a definition of consent for the purposes of the sexual assault offences and for greater certainty, sets out specific situations that do not constitute consent at law.

Subsection 273.1(1) defines 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.

For greater certainty, subsection 273.1(2) sets out specific situations where there is no consent in law; no consent is obtained:

- where the agreement is expressed by the words or conduct of a person other than the complainant,
- where the complainant is incapable of consenting to the activity
- where the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority,
- where the complainant expresses, by words or conduct, a lack of agreement to engage in the activity, or
- where the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Restricting The Defence Of Honest Belief In Consent

Section 273.2 limits the scope of the defence of honest belief in consent to sexual activity by providing that the defence is not available 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.

Sections 276 to 276.5 of the Criminal Code govern the admission of evidence regarding a sexual assault complainant's other sexual activity. The Code makes it clear that evidence that a complainant has engaged in sexual activity is not admissible to suggest that the victim was more likely to have consented to the sexual activity which is the subject matter of the charge or that he/she is less worthy

of belief. The provisions restrict the admissibility of evidence to specific instances of sexual activity, relevant to an issue at trial and to evidence which has "significant probative value which is not substantially outweighed by the danger of prejudice to the administration of justice". The judge is required to consider a range of factors set out in the Code in making this determination. The Code also sets out the procedure to be followed and includes provisions to safeguard the victim's privacy including provisions for an in camera(closed) hearing, non-compellability of the victim and a publication ban on the proceedings. These provisions are sometimes referred to as the "rape shield" laws.

Protecting the Personal Records of Sexual Offence Victims

Sections 278.1-278.9 of the Code govern the production of personal records about victims and witnesses in sexual offence proceedings. The provisions place the onus on the accused to establish that the records sought are likely relevant to an issue at trial and require the trial judge to carefully scrutinize applications and determine production in accordance with a two-part process involving a consideration of both the accused's rights to full answer and defence and the victim's rights to privacy and equality. The procedure to be followed is also set out in the Code and includes safeguards for the victim's privacy including an in camera (closed) hearing, non-compellability of the victim at the hearing, a publication ban on the proceedings and the contents of the application, editing of the records (where ordered to be produced) to delete irrelevant personal information and the imposition of other appropriate conditions on production.

Source: Government of Canada, Department of Justice.

<http://www.justice.gc.ca/eng/cj-jp/victims-victimes/def.html>