

# **Surviving the System Handbook:** **Advice on Using the Legal System if you are a Survivor** **of Sexual Violence**

## **PART 1: Introduction**

### **What is the purpose of this handbook?**

*If you have experienced sexual violence you face a choice: do you take legal action or not? The information that follows discusses:*

Your choices

Making decisions that are good for you

Making decisions that will help you heal from the experience of sexual violence

This handbook is designed as a resource guide for women. It also provides information to individuals and organizations supporting women who are survivors of sexual violence.

We aim to give you a balanced picture of the legal system and alternatives to the legal system. This includes warnings about the challenges and barriers women are likely to encounter since there are both advantages and disadvantages to taking legal action. There are also advantages and disadvantages to taking action that is outside the legal system. We discuss this in the handbook.

### **Who is a "survivor of sexual violence"?**

This handbook deals with four broad areas of sexual violence:

Sexual assault

Childhood sexual abuse

Sexual harassment

Criminal harassment (stalking)

- Note: Stalking may or may not include offensive behavior that is sexualized

In *Part 2: Defining Sexual Violence* we give detailed definitions, including legal definitions.

### **What if I don't "fit" the definition?**

Throughout the handbook we include stories from women who have identified themselves as survivors of sexual violence. Through these stories you will sometimes see that the law defines sexual violence in limited terms.

If you do not see your experience in the narrow, legal definitions, you may be able to connect with the experience of the women whose stories you read. These are women who have faced the choice of taking or not taking legal action.

If you think you do not "fit" the legal definitions, we still encourage you to talk with a lawyer, therapist / counsellor, or support worker. They can give you advice based on your specific situation.

You always have the choice of non-legal action that may help you heal from your experience of sexual violence.

### **How can I use this handbook?**

If you are a survivor of sexual violence, we suggest that you use the handbook to:

Help you look at your options as you make the difficult but important decision about whether to use the legal system.

Prepare you before you meet with professionals, such as lawyers, therapists / counsellors, Crown attorneys, etc.

Identify some of the questions you may want to ask your lawyer, doctor, therapist / counsellor, support worker, support group, Victim / Witness Assistance Program staff, Crown attorney, employer, union and others. Who you talk with will depend upon your situation, needs and options.

Identify local resources that may help you.

### **What are the limitations of this handbook?**

First, this handbook is provided as an information resource only and does not constitute legal or professional advice. *The information in this handbook is not a substitute for good legal advice.* Whether you decide to take some form of legal action or choose to deal with your experience of sexual violence in another way, we hope this handbook will help you better understand and alert you to some of the issues and challenges you may face.

Seek the advice of a competent lawyer, therapist / counsellor or other professional so that you will be able to make the most informed decisions possible - decisions that are best for you.

Second, while much of the handbook offers general advice that will apply regardless of where you live in Canada; we focus on the legal options available to you in Ontario. If you live in another province or territory, be sure to check the options open to you in that legal jurisdiction.

### **Why can using the legal system be challenging?**

Once you decide to take legal action, you are faced with making more decisions about your legal options. It may be the case that you will only be able to pursue one option. Sometimes there is more than one option open to you. In some instances it may be

possible to opt for two or more options at the same time. You must keep in mind, however, that certain things may have to be done in a particular order, and that some legal options have strict timeframes.

These choices can be confusing. Dealing with the legal system may be discouraging. It takes a lot of your time, energy and money. You will face obstacles. Some women - expecting the legal system to help them - have found it is not very helpful and sometimes harmful. This is why it is said that the "victims" of sexual violence are often "re-victimized" by the legal system.

### **What is my single most important choice?**

Choosing to get support is the single most important thing you can do to help yourself heal from your experience of sexual violence. *Part 3: First, Take Care of Yourself* talks about the many ways you can get support and from whom. *Whether you take legal action or not, you need to take care of yourself.*

### **What is the "legal system"?**

The legal system - or justice system - consists of criminal, civil and administrative laws. Each has a different purpose. Each gives you different outcomes. Each uses different processes.

For example, usually your starting point with the *criminal system* is to report the sexual violence to the police. In the *civil system* you start by going to your lawyer. For the *administrative system* you notify the institution or organization responsible for the rules, regulations or laws you want to use.

Generally speaking, you use the criminal system to address sexual assault, childhood sexual abuse, and criminal harassment (stalking). You will use civil law to address sexual harassment. Depending on your situation, however, you may have the option to bring action under two areas of law, for example, criminal and civil, or criminal and administrative, or under all three.

In the legal system you may have contact with police, lawyers, crown attorneys, and judges. In *Part 4: If You Take Legal Action* we provide information about the roles these individuals play and discuss the options, issues and concerns associated with taking legal action.

### **What if you are uncertain if you wish to report your sexual assault to the Police?**

If you are a victim of a recent sexual assault but are unsure if you wish to proceed with a criminal investigation at the time, you are able to attend the Domestic Violence and Sexual Assault Centre. If the sexual assault occurred within the preceding 72 hrs. A sexual assault examination can be conducted and includes a brief synopsis of the incident. The results of the examination can then be forwarded to the local Police Service as an anonymous victim and will remain with the Service for one year. A police investigation will not be commenced until the victim contacts police.

Further, if you are a victim of a sexual assault but are unsure of what action you wish, you may also file a report with the police and request that no action is taken until you are certain of your intentions. This report will include your name and the subject of the incident if known. Safety issues and other options will be made available.

However, depending on the information provided, police may be obligated to proceed due to risk factors and community safety.

### **What is considered to be "outside" the legal system?**

The above discussion of the "third party report" is a good example of the choices open to you within the legal system, as well as the help that is available from organizations and services outside of the legal system.

Key people and services outside the legal system are therapists / counsellors, medical professionals, and support workers in women's organizations.

There are many different organizations and services that may be of help. In *Part 5: Who Can Help Outside the Legal System* we outline the services provided by women's organizations, Sexual Assault or Rape Crisis Centres, the Sexual Assault and Domestic Violence Care and Treatment Centres in thirty Ontario hospitals, and the Victim / Witness Assistance Program set up by the Ontario government. In *Part 3: First, Take Care of Yourself* we also discuss the role of therapists / counsellor and how to find a good therapist / counsellor.

### **Why does the handbook have information on the workplace?**

Sexual violence such as sexual assault and criminal harassment (stalking) can take place at work. In this case you would look at your legal options under the criminal law system.

If your concern is about sexual harassment in your workplace, then you have the option to look for a remedy under the civil law system, specifically, the *Human Rights Code* in Ontario. The starting point is usually to try to deal with it through your employer's policies or, if you are unionized, through a grievance under the union-management collective agreement. This is why we have devoted Part 6 of the handbook to the workplace.

As we discuss at length in *Part 6: Help for Workplace Sexual Harassment*, however, there may be other options for you to consider, including the Ontario Labour Relations Board, the Workplace Safety and Insurance Board, Employment Standards, and Employment Insurance under Human Resources Development Canada.