



**Community
Legal Services**

AT WESTERN LAW

Legal Remedies and Resources for Survivors of Sexual Violence on Campus

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DISCLAIMER: This document is not legal advice. It is provided as legal information and a guide to finding legal resources. Also note that the information in this document is correct as of the date above. Any changes in the law after this date may not be reflected in this material. *For legal advice with respect to your personal circumstances, you should consult a lawyer.*

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OBTAINING LEGAL ADVICE

If you have experienced sexual violence, it is important to know that you can obtain free legal advice in addition to other supports that can be accessed on and off campus. It **DOES NOT** matter what your next steps are, you are entitled to speak to someone and obtain independent and free legal advice.

What is sexual violence?

Sexual violence encompasses any form of unwanted sexual contact, including sexual assault and sexual harassment. **Sexual assault** refers to more than forced penetration, and includes **ANY** unwanted sexual activity, such as kissing and touching someone without their consent. **Sexual harassment** can include unwanted comments, behaviour and sexual contact. It can take the form of derogatory jokes, threats and discriminatory remarks about a person's gender or sexuality and can happen both in-person or online.

Why would I want or need legal advice?

Speaking with a lawyer can help you understand your various legal options, including, but not limited to, reporting to the police, suing in civil court, filing a human rights complaint. A lawyer can help you decide what next steps are right for you and how the various processes work. Any conversations you have with a lawyer are privileged and confidential.

Do I have to report the sexual assault to the police before I talk to a lawyer?

NO. You can discuss your situation in confidence with a lawyer before talking to the police or speaking with anyone else in your life. It is entirely up to you and what you want to do.

I was sexually assaulted a while ago. Is it too late to seek legal advice?

There is **no time limit to report a sexual assault to the police or to start a civil lawsuit for compensation**. However, there is a **one-year time limit** for complaints to the **Human Rights Tribunal of Ontario**.

For all legal proceedings, it is important to commence the process as soon as you are able to.

HOW CAN I ACCESS UP TO 4 HOURS OF FREE LEGAL ADVICE?

If you would like to speak to a lawyer about your legal options following an assault, it is best to contact a lawyer who specializes in sexual assault. Most civil sexual assault lawyers will provide some free consultation.

Through its Independent Legal Advice for Survivors of Sexual Assault Program, the Ministry of the Attorney General also offers up to 4 hours of free legal advice by phone or video for survivors:

- Who are at least 16 years of age
- Who live in Ontario, and
- Where the sexual assault happened in Ontario

In order to apply for the service you must fill out this [form](#). Once you have completed the form, send it to ILAVoucher@ontario.ca. For questions about the service of eligibility requirements you can call 1-855-226-3904.

You will receive an email within 3 business days with:

- A list of lawyers to contact
- Instructions on how to use your voucher

Please note – the initial meeting will be for 2 hours (as noted in the voucher), if you require more time or have more questions you can ask for an additional 2 hours. The lawyer can provide advice, but they cannot represent you in court.

What happens if I am not eligible?

If you have received an email after 3 business days advising you do not qualify for the service, you can contact the following to find a lawyer:

Legal Aid Ontario

Toll free: 1-800-668-8258

Victim Support Line

Toll-free 1-888-579-2888

Or you can chat online by clicking [here](#).

Support line for male survivors

Toll free: 1-866-887-0015

WHAT OPTIONS ARE OPEN TO ME ON CAMPUS?

If you have been sexually assaulted by another member of the Western community, Western University has a comprehensive **Gender-Based and Sexual Violence policy** which offers various supports and accommodations and information on how to file a complaint. For more details, you can review the University's Policy on Gender-Based and Sexual Violence [here](#).

You may also contact the **Gender-based Violence & Survivor Support Case Manager** at 519-661-3568 or email support@uwo.ca.

What is the difference between disclosing my sexual assault or harassment and filing a complaint?

If you have experienced sexual violence, you **may disclose your experience to any Member of the University Community**, which includes employees, emeriti, post-doctoral, fellows/associates, students, visiting professors, visiting students, contractors and other affiliated persons. **If you live in residence**, this would also include your [Soph or Don](#).

The person with whom you have disclosed your experience of sexual violence may fill out an online referral to the **University's Resource and Support Adviser** for the sole purpose of ensuring that you will have access to all the relevant information to make an informed decision. This online referral is to remain **solely confidential**, and you get to decide whether you want to file a formal complaint. It is important to note, that disclosing your experience of sexual violence **DOES NOT mean that you have formally filed a Complaint and WILL NOT initiate a formal Complaint process**.

You can learn more about how to formally file a complaint [here](#).

Can I file a complaint with Western?

There are some requirements in order for the University to address your complaint:

- You must be a member of the University community at the time of the sexual assault
- The respondent (the person who assaulted you) must have been a member of the University community at the time of the sexual assault
- The respondent must be a member of the University community when the complaint is filed

- The subject matter must not have previously been investigated and determined under the Code of Student Conduct or the Non-Discrimination and Harassment Policy

Will my complaint with Western be kept confidential?

The University is obligated to treat all complaints and disclosures in a confidential manner.

The information will only ever be shared with those who need to know in order to ensure any support, accommodation, investigation, and decision-making processes take place appropriately.

It is important to note that if you are pursuing a **formal complaint** on campus, your name and the material allegations that are made will be disclosed to the Respondent (the person who has caused the harm).

I was drinking while underaged and/or using illegal drugs when I was sexually assaulted. Will I get in trouble for my substance use if I file a Complaint to the University?

NO. You can safely make the report. Western's policy advises that a survivor who is acting in good faith will not be subjected to any sanctions for using drugs or alcohol in a way that potentially violates another Western policy.

I want to tell a Soph/Don/other person in a residence hall. What should I know?

If you choose to disclose to someone in your residence hall or a Soph, that person will reach out to a Resource and Support Advisor who will contact you via email or by phone to offer supports and resources on campus. They will ask for your information and contact details so that they can fill out this [form](#), which will be forwarded to the **Gender-Based Violence & Survivor Support Case Manager**. This will not automatically result in formally filing a Complaint. Ultimately, it is **always** up to you whether you wish to file a complaint. You should not feel pressured by anyone to do anything that is not right for you.

You can learn more about how to **formally file a complaint** [here](#).

What can Western do for me if I feel unsafe in residence or my grades are being affected by the incident?

If you disclose/file a complaint, there are certain options available to you such as:

- Permission for late submissions of assignments
- Permission to write a make-up test or exam
- Waiver of attendance or participation requirements
- Late withdrawal from a course (no penalty)
- Leave of absence
- Moving to a different room or residence
- Moving to a different office
- Removal from the student directory

What accommodations are available if I disclose/file a complaint as an employee of the university?

There are certain options available to you such as:

- Permission to work remotely
- A leave of absence
- Adjustments to work schedule
- Moving to a different office
- Removal from the staff directory
- Assignment of a new telephone number/extension, or new email

I want to file a complaint, how do I do it?

You are **not** required to file a complaint, but if you choose to do so, they can be made in writing and submitted using this online [form](#) or directly to the **Student Support & Case Management Office (Student Experience)**.

In reporting, you should include:

- The name of the respondent
- Any and all details about what occurred
- Any documentation that might be helpful

Please note – If you cannot access the online form contact the **Student Experience** (wse@uwo.ca) or the **Equity & Human Rights Services Office** (519-661-3334). They will provide you with the necessary support to fill out those forms.

You may also contact the **Gender-based Violence & Survivor Support Case Manager** on campus at: 519 661-3568 or at support@uwo.ca.

The perpetrator is both a student and an employee, what does that mean?

In this case, the Provost and Vice-President will decide which process(es) will apply in the circumstances. They may be subject to more than one process.

I've filed a complaint against a student, now what?

1. The University will assess your complaint to determine whether there has been a violation of their policy and if an investigation needs to be conducted.
2. If there is going to be an investigation, an internal or external investigator will be appointed – the decision to investigate is final and is not subject to review or appeal.
3. In the meantime, there are interim options available such as:
 - o No-contact directive
 - o A prohibition from attending campus or other University property
 - o Suspending campus or work-related privileges
 - o Changing lab schedules
 - o Moving to another office/location
 - o Escort services for you

When will the perpetrator be notified?

The perpetrator will be notified in writing about the investigation, and it will include a summary of your complaint, the interim measures to ensure your safety, and any of the documents you provided when filling your complaint.

What does the investigation process look like?

The investigator will speak to you, the other party involved, and any witnesses. They will gather all relevant documents. They will obtain a written response from the other party. At the end of the investigation, they will provide a written report.

Please note – at any point you must interact with the investigator you can have a support person present (**this can be anyone you want, including legal counsel**). While they cannot participate in the investigation, they can be present to assist you throughout the process.

What happens at the end of the investigation?

At the end of the investigation, the investigator will provide the report and will determine their findings on a balance of probabilities. This is a lower standard of proof than “beyond a reasonable doubt”, which is used in the criminal law context. The report will **not** include a determination about a possible breach of policy or recommendations regarding sanctions.

The University will review the report, and then will determine, on a balance of probabilities, whether a violation to the specific policy has occurred and what sanctions are applicable. The University can meet with the parties **separately** again prior to making the decision. All decisions will be made in writing and both parties will be advised about the decision and the sanctions.

Please note - the University will look to their specific policies in place. If the University determines there has been no breach, this **DOES NOT** mean the sexual assault did not take place. You can still seek other legal recourse.

The University determined there was no breach to their policies, now what?

You can appeal the decision and will be provided with the appeal application once you have received the University’s determination. You **must** file the appeal application within 2 weeks of the decision being issued. Your appeal application **must** include:

- A copy of the decision
- The grounds for the appeal
- The outcome sought
- A statement advocating for the appeal (why do you think there needs to be an appeal?)

- All evidence that will be necessary for the appeal

Please note – any sanctions that were ordered upon the decision will still be in place even though you have filed for an appeal.

Please note – you are entitled to have access to the University’s investigation report, the witness statements/summaries, and any other evidence that was relied on to make the final determination. **You may only use the contents of the University’s investigation for the purposes of considering/filing an appeal of the University’s decision.**

Please also look at the other options that are highlighted in this document for you.

The University determined there was a breach, now what?

The possible sanctions available are:

- Written warning or reprimand
- Educational sanctions such as an apology, education program, assignment, or counselling
- Behavioural contract
- Exclusion from a class or other area of university
- Restriction of certain University privilege or service
- No contact orders
- Prohibition or limitation of employment
- Prohibition from entering onto campus
- Forfeiture of University awards or financial assistance
- Probation
- Termination of residence contract
- Suspension and/or
- Expulsion

Should I appeal?

You can appeal for **only** the following reasons:

- New evidence that was not available when the investigation was conducted is now available
- Procedural errors (for example issues with the investigator’s investigation)
- The decision was “unreasonable or unsupportable” based on the evidence provided

- The sanction was “unreasonable or unsupportable” on the evidence

It is ultimately up to the University whether the appeal will take place or not. You will be contacted in writing about the appeal and any necessary follow up steps. You may be required to answer more questions or provide additional information regarding the incident. The University will contact you directly.

I have filed an appeal, now what?

For the Adjudicator (the decision-maker) to decide whether there should be an appeal, there will be a hearing. At this hearing the University and the person who has appealed the decision (the Appellant) will have a maximum of 10 minutes to indicate why there should be an appeal. The adjudicator can ask questions of the parties, the University, witnesses, or anyone else required to attend. If you have questions you want the Adjudicator to ask, you can send them to the Adjudicator in advance of the hearing. Lastly, the Appellant will be provided with a maximum 20 minutes for closing statements after the questioning has concluded.

Please note – the Adjudicator at this hearing will only consider the evidence that was before the University. They will **not** consider any new evidence at this stage.

The Adjudicator has the ability to:

- Deny the appeal
- Grant the appeal, and provide instructions on the next steps (ie a new investigation, or new investigator)
- Grant the appeal and (1) quash or vary the University’s decision, and/or (2) vary the sanctions

Please note at this stage you also have the right to have legal counsel present.

What if I feel as though the University mishandled my complaint?

You could file an application through the **Human Rights Tribunal of Ontario (“HRTO”)**. Survivors of sexual harassment and violence that occur on campuses, workplaces and residences have the right to protection under the *Ontario Human Rights Code*.

Even if you have not formally filed a Complaint, **you may still be eligible to file a Human Rights Application through the HRTO**. More information about the process can be found [here](#).

This is not the right process for me, do I have any other options through the University?

YES. You have the option to participate in an informal resolution.

The informal resolution process can take place after the complaint is filed, but before the University issues their decision. The goal is to come up with a solution that is mutually agreed to by both parties. The resolution process will be conducted by the Director of Equity and Human Rights Services, or another qualified staff or faculty member designated by the University.

It is important to note that you can end the informal resolution process at any time. If there is an agreement reached between the parties, the University must also agree with the resolution for it to be finalized.

WHAT OPTIONS ARE AVAILABLE TO ME IN CRIMINAL LAW?

You have the option to seek independent and free legal advice before, during, or after filing a police report. The Ministry of the Attorney General provides up to 4 hours of free services to ask questions and discuss what legal options are available to you.

There is **NO** time limit to reporting a sexual assault.

Criminal proceedings are focused on holding the perpetrator accountable to the state for behaving in a manner that is against the law. The emphasis is on determining if there is sufficient evidence to find the offender guilty and, if convicted, on determining the appropriate penalty. The role of the victim in such proceedings is as a witness.

How do I report a sexual assault?

- **Call 911.** If you need immediate assistance, call 911.
- **Contact the local police department.** London Police Services can be reached at 519-661-5674.
- **Visit a medical centre.** If you are experiencing any injuries, visit your nearest medical centre and advise them of what has happened. They can assist you with next steps. In London, the Regional Sexual Assault and Domestic Violence Program is located at St. Joseph's Hospital. Information can be found [here](#).

Who will investigate my case?

After you have called and informed the police about what has happened, a police officer will get in touch with you. You will likely be asked to provide a video statement of the incident.

Once the police obtain your statement and those of potential witnesses, the case will be assigned to an investigative unit. In London, there is a separate sexual assault investigative unit whose members are specifically trained in the area of sexual assault investigations.

Do I have to meet the police officer on my own?

NOT ALWAYS. You may have the option to bring a family member, friend, or a support person with you, depending on the jurisdiction you are in. If your local police service allows it, and as

long as this person does not disrupt the interview, they may be allowed to sit with you while you participate in the conversation with the officer. The police will also introduce you to a victim services worker. This person may also be able to support you during the interview. It is important to note that **each police service operates differently, you should always confirm with the police service prior to attending your interview** to understand all resources that are open and available to you.

Remember – you can **ask for a male or female officer** to conduct this interview. If you are not asked for a preference by the officer when scheduling, know that you have the ability to ask. The police will make all reasonable efforts to accommodate your request.

What does the interview look like? What kinds of questions will they ask?

The officer will guide you with questions to get the details about what happened. Try to provide as many details as possible. Know that you can ask for a break at any time. If you are uncertain about specific details or about a specific question, be honest and advise that you cannot recall. It is important not to guess or speculate if you are unsure about something.

I was using alcohol/drugs when the assault happened, do I need to disclose this?

YES. Remember the police need all of the relevant details. Keep in mind that **being impaired by drugs or alcohol does not mean that you provided consent and/or that you were not sexually assaulted.** Generally, your assailant being impaired by drugs or alcohol is **not a defence** to sexual assault.

When you meet with the police, they will likely take notes or record the conversation. This is done to create your statement. Your statement may be used in the criminal proceedings, along with your **witness testimony**. At the end of the conversation – do not sign your statement unless you agree with everything that is included in it. If there is anything important you feel the police have left out of your statement, tell them to include it.

You will have access to support when you testify. You can access these supports through the **Victim/Witness Assistance Program (VWAP)** offices, which are available at most courthouses to support victims who are involved in the criminal justice system.

**The local London Victim/Witness Assistance Program office can be reached at:
519-660-3041 or
Toll free at 1-888-660-2721 or
Via email at londonvwap@ontario.ca.**

Do I have to do a Sexual Assault Evidence Kit or a “rape kit”?

NO. Whether or not you have a Sexual Assault Evidence Kit (SAEK) done is your choice. The SAEK will be conducted by medical staff trained specifically to care for people who have been sexually assaulted. The nurse will examine you to document injuries and collect forensic evidence that can be used in any criminal proceedings.

There is a greater chance of collecting physical evidence within 72 hours of the assault; however, evidence may still be available up to 12 days later. In order to increase the likelihood of obtaining forensic evidence; keep the clothing worn during the assault, try not to urinate before you reach the hospital, and try not to shower or use a feminine douche product.

It is important to note that the police can investigate a sexual assault even if no SAEK was done.

You can choose to not report to police right away but still have a SAEK kit done to collect and preserve evidence. The kit can be held for up to six months while you decide whether or not to go to the police.

What if my first language is not English or I prefer to communicate in another language?

You have the ability to ask for an interpreter. Remember, the police want to hear from you, so you ask for whatever will make you the most comfortable.

The interviewing officer made me feel uncomfortable/uneasy/worried/confused about the process. Is there anything I can do?

YES. Remember you are entitled to **4 hours of independent and free legal advice** through the Ministry of the Attorney General. You can also consult a lawyer who works in the field of sexual assault. If you have any questions at any time, you are more than welcome to seek out that advice. Additionally, you can speak to the Staff Sergeant if you've been made uncomfortable by the interviewing officer. If you are able – take note of the officers that you have dealt with directly.

What happens after I report?

The police will continue their investigation. Remember you are entitled to know about the progress of the case. If the police decide to bring formal charges, they will arrest the perpetrator. The police do not always bring formal charges. **This does not mean the police do not believe you or that you were not sexually assaulted.** The police can only formally charge someone if they have reasonable and probable grounds to believe that the crime was committed. **You are entitled to know why no formal charges have been laid.** If no formal charges are laid, you can return back to this resource to look at what other legal recourse options are available to you.

If the police lay charges, the perpetrator will be arrested. Once this individual is arrested, they will either be held in jail, or they will be released with certain conditions (no contact with you, no attendance to your place of residence).

Once the individual has been arrested, the Crown (these are the prosecuting lawyers in criminal offences in the province of Ontario) will decide whether to prosecute. Part of their decision to prosecute depends on whether or not there is a reasonable prospect of conviction. If the Crown decides to prosecute, there will be many court appearances, but you are not required to attend any of the preliminary court dates. The parties that are required to be in court are the Crown, the accused (the person who assaulted you), and the accused's lawyer. This process can feel frustrating because you are not an active participant in this process. You only have to attend court if you receive a subpoena for a preliminary hearing and/or trial. The Crown attorney will usually meet with you in advance of such a hearing to help prepare you and answer your questions. **Victim/Witness Assistance Program (VWAP)** offices are also available at most courthouses to support victims who are involved in the criminal justice system.

The local London Victim/Witness Assistance Program office can be reached at:
519-660-3041 or
Toll free at **1-888-660-2721** or
Via email at **londonvwap@ontario.ca**.

How long does the court process take?

The process can take months to years. It is extremely important to have access to support, whether that is on campus or off, friends, family or professional support.

Do I need a lawyer if my case goes to court?

As a victim, **you are not considered a party** to the criminal proceedings. The Crown attorney who prosecutes the perpetrator represents the state, not you personally. Most Crown attorneys will meet with you in advance of a trial or preliminary hearing to prepare you to give evidence and answer your questions about the process and next steps. If this does not happen, or you are not satisfied with this meeting, **having independent legal advice is always beneficial**. If you are a witness, you will tell your story and answer questions that the Crown and the defence lawyers have for you on the stand. At the end of the trial, the judge will announce the outcome of the trial. Keep in mind, this can take days or weeks depending on the case.

As a survivor who commences a criminal proceeding, you are entitled to a certain number of rights under the *Canadian Victims Bill of Rights*. You have the right:

- To information
- To be protected
- To be treated fairly and with respect throughout the process
- To participate if you choose to do so

What happens at the end of the trial?

The judge or jury will give their “guilty” or “not guilty” verdict. If the perpetrator is found guilty the following are possible punishments the judge can order:

Probation – this can mean different things such as – mandatory counselling, no contact orders, curfews, etc. Please note – probation on its own is not available for adult offenders. It will normally be accompanied by a custodial sentence or a fine.

Intermittent sentence – if the person is found guilty, they may go to jail on weekends. This will always come with a probation order when the individual is not in jail. This is only available for jail sentences up to 90 days.

Incarceration – the offender is sent to jail. A no contact order will also likely be part of the sentence.

Conditional Sentence – this refers to imprisonment outside of jail with strict conditions. Sometimes this is referred to as “house arrest”

Conditional Discharge – this refers to a finding of guilt, but no criminal record. The offender will have certain conditions to follow and will likely have a probation to follow.

Fine – the requirement of the offender to pay money to the court for the offence.

Absolute discharge – this is the lowest-level adult sentence an offender can receive. In this case a finding of guilt is made but no conviction is registered. The individual does not have any conditions to follow.

What supports are available to me as a complainant in a criminal case?

When you report to the police, you can be connected with **Victim Services**. They can provide support and referrals to support programs and services. They can also help you apply for short-term counselling through the **Victim’s Quick Response Program (VQRP)**. The Victim Services website in London can be found [here](#).

After charges are laid, you will be connected to the **Victim/Witness Assistance Program (VWAP)**. This is separate from Victim Services. VWAP will be involved in your case until the criminal court case is over. The VWAP liaises with the Crown and can provide various services including:

- Answering your questions about the criminal justice system, court procedures, and your role in the process
- Explain and help you prepare for any court dates or appearances

- Set up meetings with the Crown attorney in advance of a trial
- Provide you with copies of documents from the criminal proceedings
- Provide emotional support and connect you to community/medical resources for services you may need, including counselling and safety planning
- Help you complete a Victim Impact Statement, which will be used at sentencing

What is a Publication Ban?

In the criminal justice system, survivors over the age of 18 often have the option to seek a **publication ban** (survivors under the age of 18 will have an automatic publication ban imposed). A publication ban is an order from the court that prevents **any** person (lawyers, perpetrator, witnesses, the complainant, court staff, the judge, journalists, the public, and reporters) from publicly sharing information about the criminal proceeding that may identify either the complainant (survivor) or a witness. The publication ban will remain in place until the proceeding is finished. It is important to note however, **that a publication ban does not prevent members of the public from attending the proceeding or later accessing the court records**. The publication ban will prevent them from publishing, broadcasting or sharing information about the identities of the parties involved.

Can I also pursue a civil lawsuit or a human rights claim?

YES. In addition to participating in the criminal law process, you may either pursue a civil lawsuit or a human rights claim, but not both.

Civil and human rights proceedings are different from criminal ones in that you are a party to the action, not just a witness. You can ask the court or tribunal to award “damages” (i.e. money) for the harm caused to you as a result of the sexual assault.

If you have filed a human rights claim, your human rights application will be deferred pending the result of the criminal proceeding. If there is a finding of fact and a guilty verdict, then the Human Rights Tribunal will accept these facts and the verdict, and the respondent will not be able to challenge these.

If you have filed a civil lawsuit, a judge may also decide to defer your claim (called a stay in proceedings) until the resolution of the criminal proceeding, if they believe there is a real risk that conducting the civil claim will result in an unfair criminal trial. Similarly to a human rights claim, if there is a finding of fact and a guilty verdict, then the judge will generally accept these

facts and verdict in the civil lawsuit. Generally, a civil lawyer will advise that you wait until the criminal proceedings have been resolved before you commence a civil claim.

I am already involved in the criminal law process. Why would I want to pursue a civil lawsuit or a human rights claim?

It's important to note that criminal proceedings are distinct from civil proceedings and human rights claims. The distinction between criminal and civil proceedings is the following:

In a criminal proceeding, you, as the complainant, are not an active participant in the process. It is the Crown, on behalf of the government, that decides whether to lay charges. The aim of the criminal justice system is to punish the accused (perpetrator) of a crime if they are found guilty of the crime, beyond a reasonable doubt. However, even if there is a finding of guilt, the criminal court will not provide you monetary compensation for the harm you suffered.

In a civil proceeding or a human rights claim, you have more control over the process because the proceeding is entirely between yourself and the person or organization you are suing. While you cannot make your assailant go to jail, you may be entitled to financial compensation for the injuries suffered (pain and suffering, income loss, treatment expenses). However, both civil and human rights claims can be expensive and may take a long time to resolve. Depending on the case, a civil sexual assault lawyer may work on a contingency-fee basis, so you do not have to pay any retainer upfront.

It's important to consult with a legal professional about your options before proceeding.

While you have many legal options available to you, **it is important to remember that there is no right or wrong way to react to sexual violence**. Some survivors choose to concentrate on their own emotional healing, while others feel as though pursuing the legal process is an important step in moving on.

What if the assailant has been acquitted in the criminal trial? Can I still pursue a civil lawsuit or a human rights claim?

YES. An acquittal **DOES NOT** prevent you from pursuing a civil lawsuit or a human rights claim. An acquittal is not a declaration of innocence; rather, it means that the evidence presented did not meet the standard of proof (*beyond a reasonable doubt*) that is required in criminal cases.

The standard of proof in civil cases is lower than it is in criminal cases. In the civil context, you only need to prove the sexual assault occurred on a *balance of probabilities* (i.e. “more likely than not” that the assault happened). This means that you can be successful in a civil lawsuit even if the perpetrator of your abuse was not convicted.

WHAT OPTIONS ARE AVAILABLE TO ME IN CIVIL LAW?

There is **NO** time limit to filing a civil lawsuit for a sexual assault.

Can I pursue a civil lawsuit if there is already a criminal proceeding?

YES. In addition to pursuing a civil lawsuit, you may also participate in the criminal law process.

If your case is involved in criminal court, your civil lawsuit might be stayed (put on hold) pending the result of the criminal proceeding. If there is a finding of fact and a guilty verdict, then the judge overseeing your civil lawsuit will generally accept these facts and the verdict and the perpetrator will not be able to challenge these in a human rights or civil claim. It is important to note that often a civil lawyer will recommend waiting until the criminal proceeding has concluded to commence a civil action.

Can I pursue a human rights claim if I have already started a civil lawsuit?

NO. You cannot bring a civil claim and a human rights claim for the same allegation of sexual assault. A lawyer can help you choose which avenue might be more appropriate for your case.

What is the process involved in filing a civil lawsuit?

Below is a general overview of the civil law process. All cases and lawyers are different and not all will require every step outlined. **The decision to pursue a civil lawsuit is entirely your own.** It is strongly recommended that you have a good support system while you pursue a civil lawsuit. This can include medical professionals, counsellors, family, and trusted friends.

1. Contact a Lawyer

Sexual assault is a unique area of law. It is recommended that you contact a personal injury lawyer who *specializes in sexual assault* and has experience working with survivors of sexual violence. You will usually have an initial intake meeting or consultation during which you will discuss your case and legal options. The lawyer will provide you with an opinion of your case, including potential difficulties which may be involved and your likelihood of success. They will explain the fees involved and the range of any potential damages to be awarded.

If you decide you want to work with the lawyer, you will sign a retainer. Depending on the case, lawyers may work on a contingency-fee basis, which means that they will take a portion of the settlement after the case concludes. That way, you do not need to pay any legal fees upfront.

Your lawyer can also speak to you about options to remain anonymous in the civil proceeding. There are options available to civil litigants to proceed by pseudonym that your lawyer will be able to seek on your behalf.

2. Information gathering

Your lawyer may conduct additional interviews and collect all relevant documents that need to be obtained. They will use this information to draft the Statement of Claim, the document that starts the lawsuit. The Statement of Claim will set out the main points of your lawsuit.

The defendant(s) (the perpetrator and any other people/institutions you are suing) will have an opportunity to prepare a Statement of Defence to respond to your claims.

3. The Discovery Process

All parties in a lawsuit are required to exchange all relevant documents and attend at an examination for discovery. The documents you will be required to provide can include medical records, employment records, and school records. These will help illustrate your life before and after the sexual assault. The examination for discovery is a day-long question and answer session during which the opposing lawyer will ask you what happened and how it affected your life.

4. Settlement or Trial

After the discovery process is complete, efforts will be made to settle your case either through informal settlement negotiations, mediation or at a pre-trial.

A **mediation** is an informal and completely confidential process that usually takes a day. The goal of a mediation is for the parties to reach a settlement without going to court. During the mediation, you and your lawyer will be in one room, and the defendants and their lawyer will be in another room. A mediator will go between the two rooms to communicate offers and facilitate a settlement.

If the matter does not settle at mediation, your case will likely go to a **pre-trial conference**. This is a meeting between the parties, their lawyers and a judge. The parties will try to settle the matter during the pre-trial conference. The judge will provide their opinion on the matter and encourage a reasonable settlement.

If the matter does not settle, then it will proceed to trial. Your lawyer will attempt to settle the matter before trial as well. Your lawyer will give you advice, but it is ultimately your decision as to whether or not you should settle or proceed to trial. Though trial is necessary in some cases, **more than 90% of lawsuits settle without going to trial.**

Who do I sue?

This is not always straightforward. In addition to the person who assaulted you, there may be other people or institutions who were responsible for the assault or allowed it to happen even though they should have intervened or prevented it. It is advisable to consult a lawyer to determine who all the potential defendants are.

What are the possible outcomes of a civil lawsuit?

If successful at court or through settlement, you will likely be awarded financial compensation in the form of monetary damages. In the civil system, the aim of damages is to put you back in the place you would have been if not for the assault. In sexual assault cases, damages are often comprised of general damages (pain and suffering), economic damages (past and future income loss or a loss of earning capacity, and special damages (out of pocket expenses for treatment etc.). In some instances punitive damages are also awarded. Punitive damages are only awarded in cases where compensatory damages are insufficient to meet the objectives of punishment, denunciation and deterrence.

Your lawyer will advise you on the amount of damages you should claim.

WHAT OPTIONS ARE AVAILABLE TO ME IN HUMAN RIGHTS LAW?

You have the option to seek independent and free legal advice before, during, or after filing a claim at the Human Rights Tribunal of Ontario (“HRTO”). The Ontario government provides up to 4 hours of free services to ask questions and discuss what legal options are available to you. You can apply [here](#). You can also contact a lawyer who specializes in sexual assault law.

Additionally, you can obtain free and independent legal services from the [Human Rights Legal Support Centre](#) to help you with your application.

While the Human Rights Tribunal of Ontario is designed to be more accessible to self-represented litigants (people without lawyers), it is always helpful and recommended to have legal counsel help you with your application.

What is the time limit for filing an application at the Tribunal?

You must file your application within **one (1) year** of the date of the incident, or if there was a series of events, within **one (1) year** of the last event.

If you are late in bringing your claim, you could argue that the delay was incurred in good faith and that the delay will not cause substantial prejudice (i.e. not overly unfair) to any person affected by the delay.

This time limit **DOES NOT** apply to those who wish to report through the criminal justice system or pursue a civil lawsuit.

Can I file a human rights application at the Tribunal?

Survivors of sexual harassment and violence that occur on campuses, workplaces and residences have the right to protection under the *Ontario Human Rights Code*.

If you have experienced sexual harassment or violence, you may bring a human rights claim against both the individual responsible **AND** against the organization/institution where it occurred, if the behaviour is experienced in the following situations:

- At work or in the context of employment
- In a housing situation, such as a student residence, apartment building, condominium, co-operative, or another kind of shared residence
- While using a service, including attending university or school, seeing a doctor, or shopping at a store
- In a facility, such as a gym or in the context of a commercial lease
- In a contractual relationship
- As a member of a vocational association, like a trade union

I was sexually assaulted. Does this count as sexual harassment under the *Ontario Human Rights Code*?

YES. Sexual or gender-based harassment under the *Ontario Human Rights Code* involves any unwanted physical or verbal behaviour that harms, offends or humiliates. A single, serious incident such as a sexual assault is likely to be considered harassment.

Can I pursue a human rights claim against my university if I believe they mishandled my complaint?

YES. You may file a human rights claim against the university within **one (1) year** of their mishandling of your complaint.

Can I pursue a human rights claim if there is already a criminal proceeding?

YES. In addition to pursuing a human rights claim, you may also participate in the criminal law process.

If you have filed a human rights claim, your human rights application will be deferred pending the result of the criminal proceeding. If there is a finding of fact and a guilty verdict, then the Human Rights Tribunal will accept these facts and the verdict, and the respondent will not be able to challenge these.

Can I pursue a human rights claim if I have already started a civil lawsuit?

NO. You cannot bring a civil claim and a human rights claim for the same allegation of sexual assault. A lawyer can help you choose which avenue might be more appropriate for your case.

What is the process involved in filing a human rights application?

Below is an overview of the steps involved in a human rights claim. You can go to the [HRTO webpage](#) for a more detailed explanation.

1. Filing your claim

You will first file your application with the Tribunal by using their [online service](#), or via mail. If you are the one to draft your application, the Tribunal provides an [Applicant's Guide](#) to assist you in writing.

Once filed, the Tribunal will send you a letter in the mail with your HRTTO file number and will review your application to determine whether it is complete and within the Tribunal's jurisdiction. If it is considered complete and they do not require any additional information, the Tribunal will then serve your application on the respondent(s), who will have 35 days to respond to your claims.

2. Mediation

The application and response forms will ask if you are willing to proceed with mediation. This is a **voluntary process**. If one or more parties decides not to proceed with mediation, then the application will go directly to a hearing.

The goal of mediation is to help the parties reach a settlement without proceeding to a hearing. The mediator will not decide the application; rather, they will consider both sides and help find a resolution that is acceptable to both parties.

3. Hearings

a. Summary / Preliminary Hearings

A summary hearing may be held ahead of your hearing date in the case where it appears that your application or a part of your application may not succeed. The summary hearing will give you an opportunity to explain what you are alleging in your application.

Generally, summary hearings are held in cases where you are stating that the respondent's actions are connected to a Code ground, but what is written in your application does not clearly connect those actions to a type of discrimination. Another common reason is when an applicant is alleging a type of discrimination that is not covered by the *Ontario Human Rights Code*.

Preliminary hearings might be held when the Tribunal needs to assess whether they have jurisdiction to hear your case. This often happens when the respondent institution is covered by federal laws, or if you have already started a civil lawsuit for the same matter.

The University is **NOT** considered a federal organization and would likely fall under the jurisdiction of the HRTO.

b. Before your Hearing

You and the other party will receive a **Notice of Hearing**, which will give the date and the format of your hearing.

You will have **21 days after the Notice of Hearing** to send in all the documents relevant to your application to the other party. You do not have to send these documents to the HRTO; rather, you will have to send them a [Form 23](#) to let them know that you have shared those documents with the other party.

You will have **45 days before your hearing date** to send the other party a list of all your witnesses, if you have any, along with a statement of each witness' intended evidence and a list of the documents you will rely on at the hearing. You will send the HRTO your witness list, witness statements, and copies of your documents.

Sometimes a **Case Assessment Direction (CAD)** will be issued in order to help the parties prepare for the hearing. They might remind you of documents needed or identify important issues to be heard at the hearing. **This does not always happen.**

c. The Hearing

Before your hearing starts, the adjudicator might ask you and the other party if you wish to try mediation/adjudication. The mediation/adjudication is similar to what was described above, and if resolution is not successful, then the hearing will go ahead with the same adjudicator. The adjudicator will not consider what was heard or said in the mediation when making a decision after the hearing.

When the hearing begins, the adjudicator will control the hearing. They will explain the process, what they understand to be in dispute, and may ask the parties whether they can agree on any facts or issues. They will often ask questions. You (or your legal counsel) and the other party will be responsible for presenting evidence in support of your position.

The HRTO offers a comprehensive [Guide to Preparing for a Hearing](#).

4. Decisions

a. Interim Decision

Interim decisions are decisions that are made ahead of the actual hearing. They may decide on questions as to how a decision will proceed, or may decide that some parts of the application be removed after a summary or preliminary hearing.

b. Final Decision

If your application is successful, the adjudicator will order remedies. If it is unsuccessful, than it will be dismissed.

Depending on the length of the hearing, it may take between **3-6 months to receive your final decision**.

What are the possible outcomes of a human rights claim?

If your claim is successful, the Tribunal can hold both the offending individual AND the organization responsible for the sexual harassment or violence that you have experienced. The Tribunal can order:

- Financial compensation in the form of
 - “General damages” for injury to dignity, feeling and self-respect as a result of the harassment; as well as
 - “Special damages” for expenses incurred as a result of the harassment, such as lost wages if you had to quit your job or were terminated following the harassment.
- Systemic or public interest remedies to be implemented at the organization where the harassment occurred, such as mandatory training for managers or a change in policies and practices.