



Sexual Crimes



**Community Legal Information
Association of PEI, Inc.**

www.cliapei.ca clia@cliapei.ca

902-892-0853 or 1-800-240-9798



(902) 892-0853 or 1-800-240-9798

If you have been sexually assaulted:

It is not your fault.

There is **never** a valid excuse for someone sexually assaulting another person. It does not matter what you were wearing, whether you were drinking, or if you had consensual sex in the past. **Every** sexual encounter requires consent from all participants.

If you decide to report the assault, a medical examination may be an important step in gathering evidence. You can get immediate medical attention at a hospital emergency department.

You can get support through the **PEI Rape and Sexual Assault Centre**: 902-566-1864 or 1-866-566-1864. You can reach the Centre's counselling services at 902-368-8055 or 1-888-368-8055.

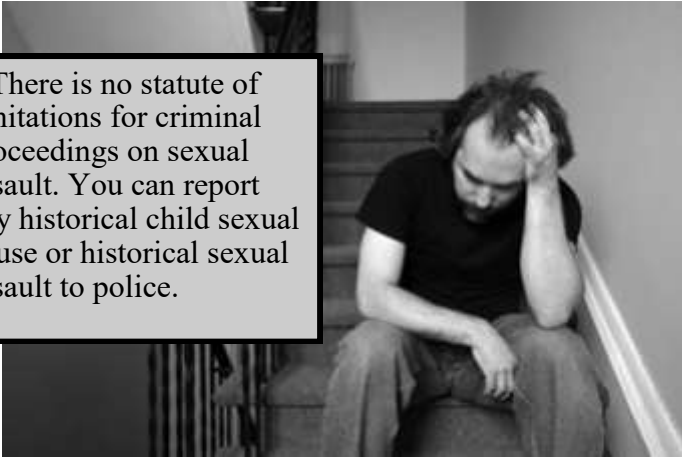
Victim Services provides information about the criminal justice system, short term counselling and emotional support, court preparation, help in preparing a victim impact statement, referrals to other services, assistance under the *Victims of Family Violence Act*, and financial information: Charlottetown 902-368-4582; Summerside 902-888-8218.

If you have been assaulted by a family member, dating partner, or spouse, you may wish to call **Family Violence Prevention Services** for support and information: **Anderson House** (24-hour crisis line) 1-800-240-9894 or 902-892-0960. **Outreach Services**: West Prince 902-859-8849; East Prince 902-436-0517; Eastern PEI 902-838-0795; Queens 902-566-1480.

Anyone can be a victim of sexual violence or exploitation.



* There is no statute of limitations for criminal proceedings on sexual assault. You can report any historical child sexual abuse or historical sexual assault to police.



If I go to a doctor, will they report the assault to police?

If you are an adult, medical practitioners will not report the assault. The doctor will explain the risk of pregnancy, if you are able to get pregnant, and the risk of sexually transmitted infections (STIs). They will treat injuries and infections.

However, if you decide to have a sexual assault evidence kit (rape kit) performed, the police must be involved.

Do I have to report the assault to the police?

It is your choice to report or to not report the assault to police. If you report the assault to police, they will investigate and decide whether or not to lay a charge.

How soon do I have to report the assault to the police?

The sooner you make the report, the sooner the police will be able to investigate the offence. They will be able to talk to witnesses while memories are fresh and collect evidence before it is lost. However, you can report at any time*.

You can get medical and emotional support without reporting the assault to police.



Sexual Crimes in Canada



The word “rape” is not used in Canadian Law. The *Criminal Code of Canada* uses the term “sexual assault”.

You have the right to choose when, or if, you engage in sexual activity. Sexual activity includes any sexual behaviour, from touching for a sexual purpose (kissing, for example) to sexual intercourse (penetration). Sexual activity without consent is a criminal activity, either sexual assault or child sexual abuse.

Sexual assault and sexual exploitation are hidden crimes. According to Statistics Canada, “...the large majority (91%) of these crimes are not reported to police”. They state that “... approximately 512,200 Canadians aged 15 and older were the victims of a sexual assault” during a one year period.

Many people believe that sexual violence is mostly committed by strangers. In reality, the vast majority of victims know the person who sexually assaulted them. Statistics Canada found that 80% of victims know the offender who hurt them.



Your spouse can be charged with sexual assault if he or she sexually assaults you. You are **never** obligated to have sex in a relationship.

Sexual Consent

Sexual consent is a voluntary, informed agreement to a sexual activity. Consent is only possible when there is no coercion, threats, or violence. Silence or passivity is not consent. Consent should be clear and unmistakable.

Adults who are mentally incompetent, unconscious, or impaired by drugs or alcohol (to the extent they are not able to give consent) cannot consent sexual activity.

If a person in a position of power abuses that power to force or compel the victim to agree to sexual activity, it is not consensual.

If a person agrees to sexual activity, but then changes his/her mind and wishes to stop, the sexual activity is no longer consensual.

Sometimes the accused will claim the victim consented. The accused may believe consent was given because he/she was intoxicated, was reckless or willfully blind to the victim's wishes, or did not take reasonable steps to find out if the victim was consenting. **These are not acceptable defences under the *Criminal Code*.**



The law has special provisions to protect children and young people. **In Canada, the age of consent for sexual activity is 16 years old.**

There are exceptions for people who are close in age. It is not a criminal offence if:

- a young person aged 14 or 15 consents to sexual activity with someone less than 5 years older;
- a young person aged 12 or 13 consents to sexual activity with someone less than 2 years older.

These exceptions only apply if the older person is not in a position of authority or trust and there is no exploitation*.

Adults in positions of power, authority, or trust cannot engage in sexual activity with youth under the age of 18. This includes adults in roles such as teaching, coaching, mentoring, and supervising youth.



Children under the age of 12 cannot give consent at all.

The law says adults must take all reasonable steps to determine the age of the young person before engaging in any sexual activity.

*Sexual exploitation happens when someone older or in a position of trust or authority takes advantage of a younger or more vulnerable person for sexual purposes.



Sexual Offences in Canada

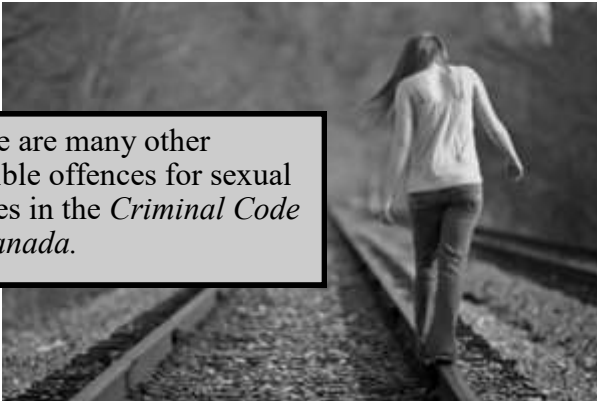
There are many offences related to sexual activity in the *Criminal Code of Canada* including, but not limited to:

- **Sexual Assault** - committing a sexual act upon another person when the person has not consented to the act. Examples include touching, fondling, kissing, intercourse or any other bodily contact of a sexual nature without consent from the other person. This includes sexual contact accomplished by threats to the victim (either threat to use a weapon or threat to cause bodily harm).
- **Sexual Assault with a Weapon, Sexual Assault with Threats to a Third Party or Sexual Assault Causing Bodily Harm** - committing a sexual act upon another person without their consent while using a weapon, or while threatening to harm someone else, or when the assault results in an injury. Examples include: the offender holding a knife to your throat; the offender threatening to hurt your child to get you to “give in”; or the offender giving you serious bruising or broken bones.
- **Aggravated Sexual Assault** - committing a sexual act upon another person without their consent and wounding, maiming, or disfiguring the person during the assault. Wounding is a serious kind of cut or bruise, maiming is a crippling injury, and disfigurement is visible damage to the body. If your life is endangered by the sexual assault, it is an aggravated sexual assault.

The penalties and procedures for dealing with sexual assault depend on the extent of the assault, the amount of violence used, the age of the victim, and the position or authority of the accused in relation to the victim.



- **Voyeurism** - secretly observing or recording a person who has a reasonable expectation of privacy. This includes private spaces where they might undress, be nude, or engage in sexual activity. Distribution of any recordings taken during acts of voyeurism is an offence.
- **Publication of an intimate image without consent** - distribution of an intimate image of a person who did not give consent to the distribution. This can include “revenge porn”, where an ex-partner distributes intimate photos of you that you provided for private use only.

A black and white photograph of a person with long hair, wearing a light-colored shirt and dark pants, walking away from the camera on a path or railway tracks. The person is seen from behind, and their hair is blowing in the wind.

There are many other possible offences for sexual crimes in the *Criminal Code of Canada*.

- **Sexual interference** - touching a child under 16 (with a body part or with an object) for a sexual purpose.
- **Sexual exploitation** - a person in a position of trust or authority touching a young person (ages 16-18) or a person with a disability, with a body part or with an object, for a sexual purpose. It can also include inviting, counselling or inciting a young person (ages 16-18) or a person with a disability to touch a person’s body, with a body part or with an object, for a sexual purpose.



- **Child Pornography** - creating, possessing, accessing, or distributing sexual images/written material depicting persons as being under the age of 18. It is also illegal to make sexually explicit material available to a minor.
- **Incest** - knowingly, without being forced or coerced, engaging in sexual intercourse with a close blood-relative like a child, sibling, grandparent, parent, or grandchild.

After a Sexual Assault

Going to the Hospital

A medical exam is highly recommended because your health and safety are important. A doctor, a registered nurse, or a nurse practitioner can assess you for sexually transmitted infections, injuries, and for pregnancy if you are able to become pregnant. You may be prescribed antibiotics, pain medicine, drugs to reduce your risk of contracting HIV, and emergency contraception pills.

It can be frightening to go to the hospital after a sexual assault. You may worry that the doctor will call the police. **If you are over the age of 18, the medical personnel will not report the assault to police.** However, if you choose to have a sexual assault evidence kit (rape kit) completed, the police must become involved.

The sexual assault evidence kit (rape kit) is a protocol for collecting evidence of sexual assault. Having the kit done can be emotionally and physically difficult. It is okay to tell the medical personnel that you need a break or that you need to stop the exam all together.



Reporting

If you are the victim of a sexual crime, you may wish to report it to the police. If you decide to report, it is important to write down everything you remember and to save any evidence. There may be evidence on your clothing, on your sheets, in your drinking glass, beneath your fingernails, on your body, or on your phone and electronic devices. Try to collect anything you think might be evidence and try to avoid bathing or cleaning before evidence is collected. If you go to the hospital, a doctor can help collect the evidence on your body.

The police will take a statement from you. It will be audio and video recorded. This is normal procedure. If you would prefer an officer of a particular gender, it is okay to request that. **Tell the police everything you remember, even if parts of it are embarrassing or difficult to discuss.**

The police may also want a medical report and may want to photograph any injuries. Depending on the circumstances, the police may visit the scene of the crime to collect evidence and interview witnesses and others who may have information about the assault. In many cases, the police will be able to find and question the accused*. The police will charge the accused if they have enough evidence. **If the**



police cannot lay charges, that does not mean they think you were lying or that they believe the assault didn't happen.

You may wish to bring a friend or family member to support you. It might not be possible to have a support person with you when giving your statement to police or during a sexual assault evidence kit, but they can wait nearby to support you afterwards.

Municipal Police

Charlottetown Police Department	902-629-4172
Summerside Police Department	902-432-1201
Kensington Police Department	902-836-4499

RCMP Detachments

Charlottetown RCMP	902-368-9300
	(after hours) 902-566-1112
Summerside RCMP	902-436-9300
Alberton RCMP	902-853-9300
Montague RCMP	902-838-9300
Souris RCMP	902-687-9300

You can also get support from:

PEI Rape and Sexual Assault Centre: 902-566-1864 or 1-866-566-1864.

Victim Services: Charlottetown 902-368-4582 and Summerside 902-888-8218.

* Until a person has been convicted of an offense, the justice system refers to them as “the accused”.



(902) 892-0853 or 1-800-240-9798

Privacy

Many victims of sexual crimes are fearful that “everyone will find out”. The police do not release the name of victims and do not always release information about incidents of sexual assault. Sometimes, they may make a statement to warn the public, but without identifying the victim.

If your case goes to court, you can ask the Crown Attorney* to request a publication ban. If the judge agrees, she/he will order that your name, or anything else which could identify you, is neither published in any document, nor broadcast or transmitted in any way.



*The **Crown Attorney** is the lawyer who prosecutes people accused of offences under the *Criminal Code of Canada*, the *Youth Criminal Justice Act* and other statutes in the Provincial, Supreme and Appeal Courts of Prince Edward Island and, occasionally, in the Supreme Court of Canada. The Crown Attorney does not represent the victim. The Crown Attorney represents the Crown, also referred to as the State.



Safety Before the Trial

In many cases, the accused will be released until the trial. This can be a scary situation. If you are afraid that the accused will contact you or harm you, you can ask the police to have the accused sign an **undertaking** that puts conditions on him/her as a condition of his/her release. The undertaking can state that the accused cannot go near your home or your work and that the accused must not speak to you or contact you by phone or electronic device.

If the accused is not likely to show up in court, or presents a danger to the public, then the Crown may ask for a "show cause" hearing. This may result in the accused being held in jail until the trial.

Having Second Thoughts

Sometimes victims of sexual assault feel overwhelmed and want all of it to "go away". You may want the charges dropped and for your life to go back to normal. It is very important to have supports around you, like Victim Services. If you are afraid, or you do not want to give evidence in court, talk to Victim Services and the Crown Attorney.

If charges have been laid by the police against the accused, you cannot withdraw them. Only the Crown Attorney can withdraw charges against the accused.

If you receive a subpoena (court order to appear), you must go to court to give evidence. The subpoena gives the date and time you must be there. If you do not obey a subpoena, the judge can issue a warrant for your arrest.



Preparing for Court

If the police lay a charge against the person who assaulted you, the Crown Attorney will review the case and, if she/he believes, based on the evidence, that there is a likelihood of a conviction and that it is in the Public's best interest to proceed, she/he will take the case to court.

If the Crown Attorney decides not to take the case to court, that does not mean they think you were lying or that they believe the assault didn't happen.

To prepare for trial, the Crown Attorney will want to speak to you about what happened. While this may be stressful, the Crown Attorney's Office has a victim-oriented approach to prosecuting sexual offences. Staff members try to prepare cases in ways that do not cause further trauma to victims.

The Crown Attorney will meet with you and make decisions about your case after talking with you, with the investigating police officer and with the Victim Services worker. When you meet with the Crown Attorney, you will be asked to review your statement to police and prepare to testify in court. **Do your best to answer all the questions you are asked, even if you feel embarrassed.**



Court

Depending on the charge against the person who hurt you, the case may be heard in Provincial Court or in Supreme Court.

The *Criminal Code* sets out the procedure to decide which courts will try offences. There are three categories of offences:

- **summary conviction offences;**
- **indictable offences;** and
- **dual procedure offences** (this means the offence may be summary conviction or indictable depending on the circumstances).

Criminal Code summary conviction offences are tried in Provincial Court. The accused has no say where summary conviction offences are tried.

Indictable offences are tried in either court, depending on whether the accused chooses Provincial Court judge, Supreme Court judge alone, or Supreme Court judge and jury. This choice is called an election.

Dual procedure offences may be tried in either court. The Crown Attorney decides whether to proceed by summary conviction or indictment. If the Crown Attorney decides it is an indictable offence, the accused may choose Provincial Court judge, Supreme Court judge alone, or Supreme Court judge and jury.





Witnesses

Often the victim is the only witness to a sexual assault. However, if other people have any information about the crime, such as things they heard, saw, or experienced, they may have to testify at court.

The accused can be convicted based on your evidence and testimony. There does not have to be an independent witness to the assault. Sometimes there is evidence such as medical evidence indicating that you were assaulted. The judge or jury must be satisfied beyond a reasonable doubt that the accused sexually assaulted you or they cannot find the accused guilty of the offence.



Your Sexual History

In general, the sexual history of the victim is not admissible as evidence in court. There are some situations when this may not be true.

Evidence of your sexual history may be allowed if:

- it has already been raised in court by the Crown;
- there is a dispute as to the identity of the person who committed the assault; or
- the accused wants to provide evidence of other sexual activity that you agreed to on the same occasion as the alleged assault.



Your Medical Records & Private Records

The *Criminal Code of Canada* tries to ensure that only relevant documents from the victim's and witnesses' personal and confidential records are made available to the accused.

The procedures to determine the release of records includes a review process in which the accused must show that:

- the records exist;
- they are held by a named record holder; and
- they contain information which is relevant to the issue at trial.



The trial judge then examines the records, or part of the records, in private to decide whether any part of the record should be given to the accused. This has been a controversial area for courts. These procedures are intended to prevent invasion of a victim's private and confidential records.



Testifying

You may be required to testify in court. If the accused pleads guilty, you will not have to testify. If the accused pleads not guilty, you may have to give evidence in court. As the victim, you may be the only witness to the sexual assault.

If you were assaulted by your spouse: Married spouses can testify against each other, although they are normally not legally required to do so. Common-law spouses can be required to testify against each other. Married and common-law spouses can be required to testify in cases where one spouse is accused of assault against a victim under the age of 14.

Testimonial Aids

If you have a mental or physical disability and cannot give evidence without help, there are testimonial aids that you or the Crown Attorney may be able to apply for. Testimonial aids are available for children who are victims or witnesses. Testimonial aids may also be made available for adults without disabilities. If you would like a testimonial aid, speak to the Crown Attorney. The judge will grant the application as long as he or she does not believe that these testimonial aids would interfere with the proper administration of justice. In other situations, the judge will consider the application if it is necessary to allow the witness to give a full and candid account.

These aids may include testifying behind a screen, testifying by closed-circuit television or having a support person with you when you testify. In order to have an application for



these aids granted, you must be able to show that, without the aids, you would be unable to provide a full and candid account of what happened.

Cross-Examination

If you testify during the trial, you will be asked questions by the Crown and by the accused's lawyer. The Crown will guide you through the evidence with questions. The accused's lawyer will ask questions to undermine the evidence. This is called the cross-examination.

If the accused represents himself or herself, you or the Crown Attorney can apply for an order to have a lawyer conduct the cross-examination instead of the accused.

If the judge believes that you would be unable to give a full and candid account of the incident if the accused does the cross-examination, the judge may appoint a lawyer to cross-examine you instead.

With sexual crimes, it is common for there to be little physical evidence. A case may depend entirely on the testimony of the victim. The lawyers may bring up the term "credibility" as you prepare or testify. **Credibility** in legal proceedings means the witness is mentally competent to give testimony and that the witness is reliable, sincere, and has a reputation for honesty. The lawyers may ask questions during the trial to assess witness credibility.





The Verdict

Depending on the evidence presented in court, the judge will make a decision of **guilty** or **not guilty**.

A verdict of not guilty is not a finding of innocence. If a judge finds the accused not guilty, that does not mean the judge believes you lied. It means that there was not enough evidence to find the accused guilty.

If the judge finds the accused guilty, the next step is sentencing the offender.

Victim Impact Statement

If the verdict is **guilty**, you will have the opportunity to write a victim impact statement. This statement describes the harm done to you by the assault and may include information about physical injuries, emotional effects, and any financial losses you may have suffered. The purpose of the victim impact statement is to give the judge information to use when deciding on a sentence.

Victim Services staff will explain victim impact statements so you can make an informed decision to prepare one or not. They will help you prepare and file the document with the court.





The Sentence

If the accused pleads guilty or is found guilty, he or she may be sentenced immediately. Usually the judge will set a later date for sentencing and may ask for a pre-sentence report on the offender.

The pre-sentence report is done by a probation officer. The probation officer will find out about the offender's background, family, education, employment record and previous criminal record.

The judge will also read your victim impact statement if it has been filed with the court.

The judge has many sentencing options including fines, discharges, probation or a jail term. The judge may choose one or more of these penalties.

When deciding upon a sentence, the judge looks at many factors, including, but not limited to, the:

- seriousness of the offence;
- circumstances surrounding the offence;
- harm to the victim;
- amount of force used by the offender;
- offender's attitude towards the crime;
- offender's previous criminal record;
- kinds of sentences that have been given for similar offences;
- prevalence of the crime in the community.



National Sex Offender Registry

If the accused is found guilty of a designated sexual crime, they are automatically placed on the National Sex Offender Registry.

The designated sexual crimes are:

- sexual interference;
- invitation to sexual touching;
- sexual exploitation;
- incest;
- bestiality;
- child pornography;
- parent or guardian procuring sexual activity;
- exposure;
- sexual assault;
- sexual assault with a weapon, threats to a third party or causing bodily harm;
- aggravated sexual assault;
- attempt or conspiracy to commit any of the above offences; and
- some other offences, in special circumstances.

This registry, or database, is administered by the RCMP. It provides police with immediate information about convicted



sex offenders to help them prevent or investigate sexual offences. The database can be used by police to search for a particular offender, or for all offenders within a geographical area, as well as for other search functions.

Each offender must re-register annually, submit a DNA sample, provide recent photos, provide information about any identifying marks on their body, keep the RCMP up to date on where they work and live, provide details of any travel plans within Canada and other personal information. The offender must also alert the RCMP about international travel of more than seven days. In the case of offenders who committed a sexual offence against a child, the offender must alert the RCMP about any international travel.

If a Canadian is convicted of a designated sex offence in another country, they will be placed on the National Sex Offender Registry in Canada.



All offenders on the Registry must remain registered for at least 10 years. Some will be on the Registry for 20 years or even for life, depending on the maximum sentence for the crime.



Once the Trial is Over

After the court process is over, Victim Services will continue to offer you information and support. They can help you with information about orders to refrain from contact, offender release dates and conditions, letters to the National Parole Board, and anything else you may need to help you with the criminal justice system.

Financial Compensation

There are three possible ways that you could be compensated financially:

1. The judge may order the offender to pay restitution to cover actual financial costs to you.
2. You can apply to the *Criminal Injuries Compensation Fund* if you have suffered physical injuries and/or emotional trauma as a result of being sexually assaulted. A Victim Services worker will document evidence during court proceedings and gather medical, hospital, police and other reports to support your claim. When the application for compensation has been completed, the Victim Services worker will write a case analysis and forward all the documents to an adjudicator who will assess your claim.



3. You may wish to speak to a lawyer to get legal advice about launching a civil lawsuit to sue the person who sexually assaulted you for compensation.



Historical Child Sexual Abuse

If you were sexually abused during your childhood, it may be possible to have criminal charges laid against the person who assaulted you. You can discuss your situation with the police.

You may wish to think about a civil lawsuit for financial compensation - a lawyer can help you decide about this.

There are also counselling services available for survivors of childhood sexual assault. **PEI Rape and Sexual Assault Centre:** 902-566-1864 or 1-866-566-1864.



(902) 892-0853 or 1-800-240-9798

More Information

Community Legal Information Association (CLIA) provides information about the law and the justice system through email, a telephone inquiry line, a walk-in service, a comprehensive website (www.cliapei.ca), booklets, pamphlets, speakers' bureau, and workshops. clia@cliapei.ca, 902-892-0853 or 1-800-240-9798

Lawyers' names and the names of law firms are listed alphabetically in the yellow pages in the PEI phone book under "Lawyers". You can also call the **Lawyer Referral Service**. You may see a lawyer for a brief consultation at a modest fee. Our phone lines are open Monday to Thursday, from 9:00 a.m. to 3:30 p.m. at 902-892-0853 or 1-800-240-9798.

Victim Services has offices in Charlottetown, 902-368-4582 and Summerside, 902-888-8218.

The **PEI Rape and Sexual Assault Centre** provides support and counseling for victims of recent and historic sexual assault and childhood sexual abuse: 902-566-1864 or 1-866-566-1864. The Centre's counselling services are available at 902-368-8055 or 1-888-368-8055.

In cases of dating or spousal sexual assault, you may also wish to speak with a worker with the **Outreach Services of Family Violence Prevention Services**. They offer crisis support, information, referrals, and emergency shelter if needed. West Prince 902-859-8849; East Prince 902-436-0517; Eastern PEI 902-838-0795; Queens 902-566-1480 ex. 224.



Community Legal Information Association has pamphlets related to this topic. Free copies are available if you would like to learn more.

- Court Orders for Your Protection.
- Making a Safety Plan in Violent or Abusive Relationships.
- The Age of Consent: Young People, Sex and the Law.
- Family Violence and the Law.
- A Guide for Witnesses.
- Going to Court: Criminal Trial Procedure.
- Going to Court: Civil Trial Procedure.
- Sentencing.



This pamphlet was published by Community Legal Information Association of Prince Edward Island Inc (CLIA) for information and education purposes only. It contains general information about the law. It does not contain a complete statement of the law in this area and is not a substitute for legal advice.

If you need legal advice contact a lawyer. If you do not know a lawyer, you may contact one through the Lawyer Referral Service (902-892-0853 or 1-800-240-9798). You can have a brief consultation with a lawyer for a modest fee.



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For more information, you can visit our website at www.cliapei.ca, email us at clia@cliapei.ca, or telephone CLIA at 902-892-0853 or 1-800-240-9798. You can also find us at: www.facebook.com/CLIAPEI, www.twitter.com/CLIAPEI and www.youtube.com/CLIAPEI.

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