



## Legal Consent Is The Lowest Standard For Intimate Behaviour.

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I've been thinking about the recent complaint against Aziz Ansari, his response, and the bigger conversation we need to have about consent. Both as a legal term and as a social interaction.

In Canada, legal consent = a clear, sober, present-time, "Yes," between equals.

If one of these factors is missing, it's not legal consent. There are more details to the law (ex: silent passivity is not consent, and restrictions based on age/ relational power/ authority), and judges interpret the law based on context, precedent, and their own

understanding. But, it's important we remember the main points about a law so intimately relevant to our lives.

Canada has a broad definition of sexual assault. It includes all unwanted sexual activity, such as unwanted sexual grabbing, kissing, and fondling as well as rape. There's no statute of limitations for indictable offences here (meaning a person who experiences harm can make a police report anytime, in their own time). So, it's worth knowing this particular law well and developing healthy boundaries regarding our power and authority in relation to others in terms of things like different stages of life, family roles, professional positions, and social statuses.

When I used to deliver Respect Education (Canadian Red Cross) workshops on preventing dating violence, I was repeatedly grilled by Grade 7-12 students regarding the finer points of legal consent in Canada. I came up with the one-liner above so they could remember the core concept. For them, knowing even this simple phrase raises the necessary cautions and opens safe space for more questions.

The current law has been on the books in Canada since the early 1980's, so it shouldn't be a surprise to anyone almost 40 years later. If more of us knew the definition of consent, it wouldn't seem as "blurry." I wish all middle-schools and high-schools announced this one-liner before the last bell on Fridays, and maybe gave out wallet cards every September too.

*In Canada, legal consent =  
a clear, sober, present-time, "Yes,"  
between equals.  
- Marion Little*

*Live link to video about consent & tea:*

<https://www.youtube.com/watch?v=u7Nii5w2FaI>

Of course, the legal definition only sets the very lowest standard for consent, below which behaviour becomes criminal violence.

Ideally, in all our relationships, we're striving for a level of communication and consent that's much more robust than the base line separating criminal violence from emotionally devastating behaviour and even inconsiderate behaviour. Harm is much less likely, and sexual encounters much more fun and satisfying, if we're honest and empathic, inviting enthusiastic affirmative consent, and paying close attention to responses (as we would in any other context where something important is being communicated). We can seek enthusiastic affirmative consent and still be playful, it's not an either/or situation.

If we value mutual respect and mutual participation, whether in a brief fling or in decades of partnership, we need to ask each other positive questions and only proceed when there's a clear yes accompanied by congruent affirmative body language. In a sexual context, positive questions might include: "Would you like...?" or "Does this feel good?" or "May I..." or "Can we try..." or "Do you want me to continue..." or "What do you want to do now?"

It's less robust, more vague, and potentially confusing to ask negative questions where a "no" is necessary to discern what's wanted, such as: "Should I stop...?" or "Do you mind...?" or "Does this bother you?"

That said, we should always halt when we hear the words "stop" or "no" or "I don't care" or "I don't know," and when we notice our partner has gone silent, is not responding, is pulling/pushing away, or has turned their face aside. These are all familiar signals that prompt us to stop and ask if something's wrong when they happen in conversations and many other contexts.

We also want to be conscious of power imbalances, both legal and social, which call for additional awareness on the part of the person with greater authority or influence. In some instances that person has actual legal or professional obligations to maintain safe boundaries (particularly in relation to youth), and in others there's an increasing social responsibility to do so. But none of it is blurry if that person chooses to be informed, pay attention, and exercise basic consideration in addition to minding consent laws. At the very least we're required to know and follow the law.

When people hold to only the legal definition as their standard for interaction, as many do and as Aziz Ansari may have done in this instance, the outcome is likely to be

disturbing and possibly traumatizing (even if it doesn't cross the legal threshold for assault). It has this impact because in our other interactions, with both strangers and friends, we expect and give a level of courtesy that's far higher than the lowest standard of behaviour set out by law.

Platonic friends and strangers are routinely afforded consideration and courtesies well above what's considered criminally offensive. We're mindful of each other's comfort, we avoid being an imposition. We wait. We ask. We take turns. We respect their bodies and belongings. We mind limits. We check in. And, we pay careful attention during important interactions (especially if they could have serious repercussions). When contact is more intimate than between platonic friends surely it makes sense, at minimum, to apply familiar social standards: consideration, respect, courtesy, and careful attention?

There will probably always be awkward, fumbling sex, and sex that wasn't as good as we might like, or that we regret having, or that frustrates us. But, we know we can prevent violence and avoid a great deal of grief, trauma, disruption, and drama, by choosing to not only ensure enthusiastic consent, but also extend basic social graces to each other as part of any sexual communication or interaction.

If we use familiar social standards of care as the base line for intimacy, rather than the lowest legal standard, then even brief encounters have the potential for rich mutual satisfaction. That's a pretty powerful aphrodisiac. Relationships informed by this level of consent, in bed and in communication generally, are more likely to develop that rich mutual satisfaction into deepening respect, trust, and affection, while making more space for lightheartedness too.

Whether in momentary flashes or a lifetime of commitment, isn't that the kind of genuine shared connection most of us yearn for when we reach out to each other in our naked vulnerability?

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### **Links embedded in the article:**

The original article about the complaint:

<https://babe.net/2018/01/13/aziz-ansari-28355>

Aziz Ansari's response:

[https://twitter.com/Phil\\_Lewis\\_/status/952720720865517570/photo/1](https://twitter.com/Phil_Lewis_/status/952720720865517570/photo/1)

The law in Canada:

<http://laws-lois.justice.gc.ca/eng/acts/C-46/page-65.html#docCont>

Easier to understand info about the law in Canada:

<http://www.leaf.ca/the-law-of-consent-in-sexual-assault/>

### **Resources for further discussion:**

A critique of the tabloid quality reporting on the complaint and the implications of that:

<https://www.theguardian.com/commentisfree/2018/jan/16/aziz-ansari-story-missed-opportunity>

A great article about the implications of sex education (or lack thereof) in these situations:

<https://www.vox.com/first-person/2018/1/19/16907246/sexual-consent-educator-aziz-ansari>

Here's a beautiful reflection from the perspective of a young South Asian American man:

<https://newrepublic.com/article/146663/aziz-ansari>