

While it is generally understood that individuals must obtain consent to sexual activity, widespread misconceptions confuse people's understanding of consent and sexual violence.

A criminal conviction requires proof beyond reasonable doubt of two basic elements, that the accused committed the actus reus (action) and that he had the necessary mens rea (intent). When the act is sexual in nature, the *action* itself is commonly not contested, but without *intent*, criminality cannot be established beyond reasonable doubt. In situations of sexual violence, "the problem is that the injury of rape lies in the meaning of the act to its victim, but the standard for its criminality lies in the meaning of the act to the assailant."¹

In order to address the subjectivity of the accused who readily claims that "honest belief" that sexual touching was invited or implied, the "mens rea of sexual assault is not only satisfied when it is shown that the accused knew that the complainant was essentially saying "no", but is also satisfied when it is shown that the accused knew that the complainant was essentially not saying "yes".²

The legislative reforms now hold a more "objective" standard of the reasonable person who can prove taking reasonable steps to ascertain the presence of consent, [this] is a crucial attempt to ensure that an equality standard is codified in the Criminal Code.³

We still have a long way to go.

¹ MacKinnon, C., in Randall, M, (2011) The Treatment of Consent in Canadian Sexual Assault Law. The Equality Effect: www.theequalityeffect.org

² Madam Justice Claire L'Heureux-Dubé's analysis in R. v. Park, 1995 CanLII 104 (SCC), [1995] 2 S.C.R. 836 at 86. Retrieved Jul 4, 2014 at: <http://www.canlii.org/>

³ Randall, M, (2011) The Treatment of Consent in Canadian Sexual Assault Law. The Equality Effect: www.theequalityeffect.org