

SEXUAL ASSAULT:

DISPELLING THE MYTHS

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This booklet is designed to provide information about the myths and stereotypes that exist about sexual assault. Unfortunately, sexual assault is under-reported in Canada. Therefore, the purpose of this booklet is to educate victims and to encourage them to come forward. It is also important to make the criminal justice system more sensitive to victims' rights and needs. Please take the time to discuss these myths and stereotypes with the Crown Attorney. Ask how they will be dealt with during trial.

We want you to know that the use of myths and stereotypes are not allowed in court. Empower yourself by knowing your rights. You have a right to be treated with dignity and respect.

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MYTH No. 1: STRUGGLE AND FORCE

MYTH: A woman will always try to fight back to avoid being sexually assaulted. That is, she will always fight back, struggle and she will use force to stop her attacker.

REALITY: Every victim reacts differently to sexual assault. Further, there is no guarantee that any amount of struggle and force will stop a sexual attack. Sometimes the use of struggle and force can lead to even more serious injury for the victim.

It's important to understand and be aware of this myth because it is used to discredit victims of sexual assault. Sexual assault cases usually involve one person's word against another. There are rarely witnesses to the assault itself.

In reality, many women and children are sexually victimized by someone they know and trust in situations and locations they believe will be safe. In some instances, victims don't fight back because of their relationship with the attacker and/or because they might not initially recognize that they are in a dangerous situation.

The nation's highest court is aware of this myth. The Supreme Court of Canada has said that if a woman is threatened into agreeing to sex, she did NOT consent. It is sexual assault. The Supreme Court has also said it's a myth that anyone who does not fight back has agreed to have sex.¹

Using this myth to discredit a witness is unacceptable in Canadian courtrooms.

¹ *R v Ewanchuk*, [1999] 1 SCR 330 at paras 24ff, 87, 169 DLR (4th) 193 (available on CanLII); *R v Seaboyer*, [1991] 2 SCR 577 at 651, L'Heureux-Dubé J, dissenting, 83 DLR (4th) 193 (available on CanLII) [*Seaboyer*].

MYTH No. 2: KNOWING THE ATTACKER

MYTH: A woman cannot be sexually assaulted by someone she knows – such as her husband, family, friends or co-workers.

REALITY: The notion that only strangers will commit sexual assaults is incorrect. In fact, most sexual assaults are committed by people known to the victims. It is unfortunately the case that a relationship can create situations where victims are left extremely vulnerable to a sexual assault. This is especially true in situations involving children and other people in positions of dependency.

No one should ever think—or be persuaded to think—that because they knew the person who attacked them, the attack was not an assault. The Supreme Court of Canada has said it's a myth that only strangers commit sexual assaults. The Supreme Court has said that an existing relationship is an aggravating factor in the sexual assault – it is especially bad. The Supreme Court and Canadian law make it clear that sexual assault is sexual assault, no matter who the attacker and victim are and no matter what their previous relationship was.²

² *Seaboyer*, R v LWF, 2000 SCC 6, [2000] 1 SCR 132 (available on CanLII); R v Colson, 2001 NSSC 188 at paras 10, 13, 198 NSR (2d) 350 (available on WL Can, QL); R v V(J), 1995 CarswellOnt 3019 (WL Can) at para 4, (*sub nom* R v JV) [1995] OJ No 1401 (Ont Ct J (Gen Div)).

MYTH No. 3: THE EMOTIONALITY OF FEMALES

MYTH: Females are “more emotional” than males. As such, if a woman is raped, she will get hysterical during the event and she will be visibly upset afterward.

REALITY: Every woman will not react in the same way to a sexual attack. No two people are exactly alike; no two sexual assaults are exactly the same. People react differently and different situations produce different reactions. There simply is no way to say how a victim of a sexual assault ought to react.

It is important to understand and be aware of this myth because it is used to discredit victims. It is also important to understand and to be aware that the nation’s highest court knows about this myth. The Supreme Court of Canada has said it’s a myth that a sexual assault requires an emotional reaction, and it’s a myth that anyone who does not scream or cry has agreed to have sex.³

3 *Seaboyer; Sansregret v R*, [1985] 1 SCR 570, 17 DLR (4th) 577 (available on CanLII); *R v Wilson*, 1997 CarswellOnt 37 (WL Can), [1997] OJ No 3784 (QL) (Ont Ct J (Prov Div)).

MYTH No. 4: GENERAL CHARACTER

MYTH: Certain lifestyle choices mean that some women are not credible. This myth suggests that women should not be believed if they are on social assistance, have mental health challenges, dress provocatively, drink or use drugs.

REALITY: There is nothing about social assistance, mental health, clothing, alcohol, drugs or anything else that on its face makes a victim's claim of sexual assault less trustworthy. There is no reason why people in such situations cannot be subjected to sexual assaults.

This myth and stereotype attacks women who may be less fortunate or privileged than others. In fact, many sexual attackers deliberately attack women who are vulnerable, e.g., women who have mental health issues, who are dependant on drugs/alcohol and who are sex workers.

Sometimes people who experience sexual abuse/assault can develop mental health issues, dependancy on drugs/alcohol and other difficulties. These issues should not be used to discredit individuals who disclose/report crimes of a sexual nature.

In reality, sexual assault is sexual assault no matter what the victim's social condition, economic condition or medical condition.

The Supreme Court of Canada has said it's a myth that people living in poverty or who drink or use drugs cannot be trusted concerning claims of sexual assault.⁴

⁴ *Seaboyer; R v Mills*, [1999] 3 SCR 668 at paras 61ff, 87ff, 244 AR 201 (available on CanLII); *R v Osolin*, [1993] 4 SCR 595 at 662, 109 DLR (4th) 478 (available on CanLII); *R v McNeil*, 2009 SCC 3 at para 30, [2009] 1 SCR 66 (available on CanLII).

MYTH No. 5: ONE-DIMENSIONAL REPUTATION

MYTH: Every woman has a one-dimensional reputation: she's either maternal or sexy, good or bad, a Madonna or a whore.

REALITY: Every sexual encounter must be considered as an isolated event because, according to the law, each and every sexual incident requires consent. Reputation does not play a role in determining whether or not a sexual assault has occurred. Reputation has nothing to do with isolated sexual events and sexual assaults.

If a lawyer wants to ask a victim about her prior sexual activity (consensual or non-consensual), he/she must make an application in advance and he/she must prove the relevance first. Victims cannot be surprised by these questions.⁵

The Supreme Court of Canada has said it's a myth that only women with no prior sexual history can be sexually assaulted. The Supreme Court of Canada has also said a woman's prior sexual history should not be considered when deciding whether or not to believe a victim's sexual assault claim.

In fact, the Supreme Court and Canadian law make it clear that the reputation of a sexual assault victim has no bearing on whether or not a victim has consented or whether or not she is worthy of belief.⁶

5 *Criminal Code*, RSC 1985, c C-46, ss 276-276.4, 277.

6 *Seaboyer; R v Darrach*, 2000 SCC 46 at paras 2, 19-20, 34, [2000] 2 SCR 443 (available on CanLII).

MYTH No. 6: EARLY REPORTING

MYTH: If a woman is sexually assaulted, she will report it to police as soon possible.

REALITY: Rape and other forms of sexual assault are severely under-reported in Canada. According to the Canadian Center for Justice Statistics, only eight per cent of sexual assaults are reported to police⁷.

These statistics are troubling. Since 1984, Canada has seen many changes to the law to encourage reporting of sexual assaults but victims are still not reporting these incidents to police. In 1991, the Supreme Court of Canada acknowledged that re-victimization and self-blame have been known to influence the low reporting rate.

The Supreme Court of Canada has said that a decision not to report a sexual assault immediately following the incident does not have any bearing on credibility or truthfulness.

⁷ Roxan Vaillancourt, "Gender Differences in Police-reported Violent Crime in Canada, 2008" Canadian Centre for Justice Statistics (2010), online: <<http://www.statcan.gc.ca>>.

MYTH No. 7: FICKLE WOMAN

MYTH: Women who have consensual sex will claim they have been raped to seek revenge on past partners.

REALITY: In Canada, most sexual assaults are committed by someone known to the victim. Sometimes, there is a prior consensual sexual relationship between the victim and the accused.

Admitting or introducing evidence of prior sexual history between the complainant and the accused to discredit the victim's claim of sexual assault is restricted by s. 276 of the *Criminal Code* when that evidence is intended to invoke a myth or stereotype. The Supreme Court of Canada has said that a prior consensual sexual relationship should not be used to attack the credibility of a victim.

More specifically, a recent Canadian decision has indicated it is not permissible to suggest that a victim has a motive to fabricate an allegation of sexual assault on the basis of her relationship with someone else.⁸

8 *R v Shoo*, 2006 NUCJ 17 (available on CanLII).



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