



RAPE

The Criminal Allegation That Is Easy To Claim and Increasingly Difficult For The Defendant To Disprove!

For decades, the crime of rape has been known as the easiest criminal allegation to make by the alleged victim and the hardest to disprove by the defendant. In the 1960's, the victims of this brutal crime were able to take advantage of significant changes in the law that made it easier to obtain convictions and justice. Unfortunately, these changes also made it easier for those who were falsely accused of rape to be convicted as well. Adding to the defendant's difficulties is the controversial "Rape Trauma Syndrome," an irresponsible psychological theory that has been rejected by mental health professionals, but is still being used by prosecutors as so-called evidence in cases alleging the crime of rape.

LAWS MAKING IT EASIER TO OBTAIN CONVICTIONS:

The Courts have long known that rape is an easy allegation to make but one that is hard to disprove. In fact, the biggest threat of being falsely accused of a crime was that of being accused of rape. The Courts perceived the potential threat of false allegations of rape and fashioned Jury Instructions to inform members of the jury that such allegations were easy to make by the complainant but difficult for the defendant to disprove. Today, this jury instruction is no longer allowed to be given as a result of changes in the law, changes that also mandate giving a very different set of instructions.

The judge now informs the jury that 1) an allegation of rape does not require any evidence of corroboration; 2) there is no requirement for medical evidence; 3) there is no requirement for DNA evidence; and 4) there is no requirement for a second witness. In short, there is no requirement for obtaining a conviction other than the bare allegation made by a complainant. Even the manner in which the jury is selected is tainted with this attitude that evidence does not matter. Prosecutors can demand that during the selection process, each prospective juror must agree that he/she would not require corroboration of a crime. If the juror disagrees with this demand, he/she can be excused.

Consensual sex is still legal. Being able to prove consent, however, has become more difficult for the defendant. For example, if a man meets a woman at a nightclub and has sex with her that night and later she claims that she was raped, the man used to be able to introduce evidence to help establish a pattern of consensual sexual behaviour on the woman's part. That might be the evidence by witnesses that the woman routinely visited the nightclub every night, engages a man's companionship, and then goes home and has sexual relations. Such evidence is highly relevant to show the sex on the night in question was consensual. This type of evidence is no longer admissible.

Victims' rights were rightly concerned with legal strategies that put the complainant personal life on trial. Unfortunately, highly relevant evidence that can protect an innocent defendant is no longer allowed because politics has obscured justice and powerful lobbies have helped to pass update laws." Under new laws, a defendant in today's courtroom is forbidden to introduce the prior sexual conduct of the complainant on the issue of consent. (Like the example above) And yet, no one has ever successfully shown that the evidence of prior sexual conduct is not relevant in determining consent (we recently won a case because we were permitted to question the complainant's previous sexual history by questioning her former boyfriends). While the rape laws were intended to encourage more women to come forward and give evidence, it simply has made it easier to falsely accuse and convict an innocent individual.



The new law allows the prosecution to introduce allegations made by other women allegedly assaulted on previous occasions by the defendant to prove that a rape occurred in the currently charged offence. However, no corroborative evidence is required to introduce these alleged crimes. There does not have to be a conviction. Nor does there have to exist a criminal charge or even a prior police complaint. The uncorroborated word of a single individual is sufficient.

In a backlash meant to protect victims of rape, the legislature is creating new victims by keeping out the sexual history of the complainant on the issue of consent, and allowing into evidence the sexual history of the defendant. This is sheer politics and not based upon any rational grounds of relevancy or fair play. Such legislation is systematically making it easier to obtain convictions, and while those guilty of rape should be convicted those who are falsely accused must be given back the right to defend themselves adequately in a court of law.

Adolescent Sexual Offenders

Who Are Adolescent Sexual Offenders?

The adolescent sexual offender is defined as a youth, from 12 to 17 years of age, who commits any sexual act with a person of any age, against the victim's will, without consent, or in an aggressive, exploitative or threatening manner.

How Widespread Is the Problem?

It is not possible to accurately estimate the prevalence of adolescent sexual offences as there are no official national statistics on the problem. Furthermore, it is only within the last few years that service providers, researchers, police and correctional officials have begun to recognise and address the seriousness of this problem.

What is known about the prevalence of adolescent sex offending is that:

Nationally, nearly one quarter of all sexual offences are perpetrated by adolescents sexually assaultive behaviour by adolescents is so vastly under-reported that the few figures which do exist significantly under-represent the extent of the problem.

Adolescent sexual offences are under-reported because:

Until recently adolescent sex offences were usually handled as assault charges rather than as sexual offences; thus, arrest records misrepresented the actual extent of the problem.

Sexually abusive acts committed by adolescents are often downplayed or dismissed as sexual curiosity or experimentation. Professionals called upon to intervene in these cases often minimise the behaviour rather than treating it as a sexually deviant offence.

* The desire to protect adolescents from what has often been viewed as a harmful label extends into the criminal justice system; plea bargaining has allowed adolescent offenders to plead guilty to a simple assault, or even a property crime, rather than be convicted of a sexual offence.

* Victims are hesitant to disclose assaults because of fears, of their parents' reaction, of being stigmatised, of being blamed for the incident, or of possible reprisals by the offender.

* Sex offenders very rarely refer themselves for treatment.

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Characteristics of the Offender

- * No single profile describes all adolescent offenders. All economic groups, all levels of intelligence, all races, and all religions are represented in the backgrounds of adolescent sexual abusers.
- * Adolescent offenders can sometimes be loners, isolated from their own peer group, preferring to play with younger children. They tend to have a limited work history, to be under-achievers and generally immature in most areas of functioning.
- * A large percentage of offenders experience a variety of social and behavioural problems at school.
- * Adolescent sexual offenders view their world as being basically antagonistic. Their abusiveness can be understood in part as a reflection of their need to retaliate against a world they perceive to be hostile toward them.
- * A recent study reveals that adolescent offenders are being identified earlier, sometimes as young as 12 years of age. The younger adolescents tend to engage in less violent sexual offences than older adolescents, though this too is changing.
- * There are probably more female adolescent offenders than current research suggests but to date the vast majority of abusers who have been identified are male.
- * Adolescent sex offenders are not, as many assume, strangers hiding in the shadows. In most cases, they are well known to their victims, as family members, neighbours, babysitters or friends.
- * When confronted about their sexually abusive behaviour, adolescent offenders characteristically respond with denial and minimisation and routinely blame their victims.

Previous Victimisation

- * One of the few studies on this subject revealed that one third of the adolescent offenders interviewed had experienced an abusive or neglectful childhood.
- * A study on adolescent sexual offenders found that over 60% had been physically abused, almost half had been sexually assaulted and 70% had been subject to neglect, while over half the sample had experienced a combination of these forms of abuse as children.
- * Child sexual abuse victims are at a greater risk of offending than are non-victims. However, while previous victimization is a contributing factor, it is not the cause of adolescent sexual offending. Most victims do not go on to abuse other children.

Characteristics of the Offence

- * Offenders are usually older than their victims. However, in a significant number of cases, the victim is older than the offender. This suggests that strictly defining the offence in terms of the age difference between the victim and the offender can be misleading.
- * Sexually abusive behaviour does not suddenly manifest itself in adolescence. The offender often has a well-established history of sexually aggressive or exploitative behaviour, though in



most instances the assaults have been ignored, minimised or excused as sexual experimentation and left unreported.

* In most cases, the sexual act that has brought the young person to the attention of the authorities is not an isolated one. A study discovered that almost half of the offenders surveyed had previously committed one or more sexual offences.

* Threats and physical force are used most frequently against older victims, while a less violent abuse of power and authority is usually used with younger victims.

* The older the offender, the greater is the likelihood that a charge will be laid for sexual assault.

Young alleged sexual offenders

This is not an easy matter. Psychologists are not infallible. They contribute something to the whole assessment. Frequently such children, who have alleged sexual abuse have only been identified or assessed by social workers and the police.

Children tell the truth, but not always. This fact must be kept foremost in the minds of those who investigate child sex abuse. The result of false allegations can result in innocent people facing criminal charges and loving parents losing their children or one of the parties i.e. a parent. Psychologists must discriminate between plausible and implausible allegations. Psychologists have therefore tried to improve their reliability by developing components of statement validity analysis (SVA) or criterion-based content analysis.

There are many who rely heavily on the interview and in most cases solely on the interview. There have been complaints of both false negative identifications as well as false positive identifications. An aspect considered by the social services and the police as well as the courts of whether to believe or not to believe a child making allegations of sexual abuse was, whether there was immediate reporting of a sexual abuse allegation or whether there was a delay in the reporting. When reporting was delayed the believability of the alleged victim was less certain than when the report was immediate. Women were more likely to believe a child making allegations of sexual abuse than were men, who were often more sceptical of such accusations. Women were also more likely than men to accept hearsay evidence. Here again women were consistently more supportive than men towards children who made allegations of sexual abuse.

Defences - When an individual is falsely accused of rape, the defences fall into three basic categories.

1. The defendant did not have sex with the complainant. This means that either the complainant is lying about having sex, or the complaint has mis-identified the assailant.
2. The defendant had sex with the complainant but the sex was actually consensual.
3. The defendant had sex with the complainant and the defendant had a reasonable good faith belief that the complainant consented, whether or not there was actual consent.

Because the crime of rape has become a political hot button, the state legislature has passed no laws to make it easier for anyone falsely accused of rape to introduce evidence in any of these three defences. Quite simply, being concerned with the rights of someone falsely accused of this terrible crime doesn't make politicians popular in the poles. That is why the



fate of the falsely accused rests in the trial skills of the defence team to overcome a biased system.

SENTENCING - There is only one thing worse than being falsely accused of rape that is being falsely convicted of rape. As a convicted rapist, the "falsely convicted" faces registering as a sex offender for the remainder of his life—after having served a long prison sentence.

More disturbing is the prosecutor's ability to turn a single alleged rape into numerous counts because different sexual acts during one encounter can now be considered separate crimes. For example the "falsely convicted" could be sentenced to two years for intercourse, two years for rape with a foreign object (i.e. a finger), and two years for sodomy if the jury finds the defendant guilty. If the complainant alleges that the accused stopped the rape and then started over, each new act becomes an additional count. Extreme sentences of 18 years or more years have become commonplace as a result of these changes.

CONCLUSION - Because of the nature of the crime and the previous victims who did not obtain justice, the rape complainant has an army of lobbyists still pressuring the legislature to pass laws that favour the alleged victim at the expense of the defendant's rights. Those who are falsely accused rarely have representation when new laws are being proposed. Even if the falsely accused do have a few lay spokespersons attempting to educate the legislature, the typical politician does not want to become involved with such an explosive issue. There are few people in office willing to risk a political career for a few people falsely accused of rape.

The only way to overcome judicial and legal inequity is with a thorough, professional investigation and with evidence presented by a highly skilled defence team. It is a matter of educating the jurors so that they can make informed decisions about what is and is not true in an allegation of rape.

A powerful appellate team also requires an investigator who specialises in appeal cases. If, for example, the prior defence trial Barrister failed to conduct an investigation that was necessary to prepare the case, this failure could cause information that could have led to an acquittal or was necessary for proper rebuttal to not be presented on behalf of the client. Failure to do so is grounds for reversal based on the incompetence of counsel. In order to correct this error, an investigation must be conducted by someone who is experienced and knowledgeable to determine if crucial evidence was overlooked to the detriment of the client's defence.

It is then the job of the appellate specialist to establish the legal grounds for the reversal of a case based on the information gathered by the investigator and analysed by the trial Barrister. Without all three team members, someone wrongfully convicted could easily lose his chance for a successful appeal.

While such a strategy appears more expensive, it is actually a financially competitive alternative to the traditional appeal processes because timely and expert advice is concentrated earlier in the process for better chances of reversal.

JUDGMENT AND SENTENCE - After a defendant has been convicted he / she must be sentenced. What determines one's sentence?

The first issue to be resolved is if the defendant is eligible for probation or if the law mandates that he / she serve a prison term. Even though the defendant is eligible for probation, the court is not required to grant it. The court's decision is governed by what is called the Rules of Court that lay out the factors that a judge must consider for granting or denying probation. At

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this stage, your defence team will gather evidence to present to the judge at the sentencing hearing to support those factors that can legally be considered in granting probation. It is also an opportunity to find and present any evidence that mitigates or rebuts evidence presented by the prosecution favouring denial of probation.

In cases where the law mandates a prison commitment, the remaining issue for the court is to determine the length of the prison sentence. Again, the trial court is governed in what constitutes an appropriate sentence by the Rules of Court. Once more, your defence team will gather evidence that supports lessening the sentence as well as evidence to rebut the prosecution's evidence that favours increasing the sentence. If there are multiple counts, the judge must decide if the sentences will run concurrently (at the same time) or consecutively (one after the other). As before, the judge's rulings are governed by the Rules of Court. One of the major roles your team plays during the sentencing hearing are to ensure that the court is properly advised of the options available and the circumstances that limits the court's discretion.

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What the law states about bringing the Complainants previous sexual history into play!!

Taken from Youth Justice and Criminal Evidence Act 1999

Chapter III

PROTECTION OF COMPLAINANTS IN PROCEEDINGS FOR SEXUAL OFFENCES

Restriction on evidence or questions about complainant's sexual history.

41. - (1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court-

(a) no evidence may be adduced, and

(b) no question may be asked in cross-examination, by or on behalf of any accused at the trial, about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied-

(a) that subsection (3) or (5) applies, and

(b) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

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(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either-

(a) that issue is not an issue of consent; or

(b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or

(c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar-

(i) to any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused, or

(ii) to any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event, that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question-

(a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and

(b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.

(6) For the purposes of subsections (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).

(7) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence-

(a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but

(b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.