

LEARN MORE victim witnesses in the court:

Jane Doe

Jane Doe was raped at knifepoint in her own bed in the early morning hours of August 24, 1986 by a stranger. Ms. Doe was the perpetrator's fifth known victim. During the trial, Jane Doe learned that the police had failed to warn women whom they knew to be potential targets (herself included). Jane Doe sued the Board of Commissioners for the Metro Toronto Police on three separate grounds: negligence, a violation of her Charter equality rights, and an infringement of her Charter right to security of the person. On July 3, 1998, Madam Justice MacFarland ruled in her favour on all three counts.¹ Following the decision, Toronto City Council and the Toronto Police Services Board issued formal apologies to Jane Doe.

Jane Doe learned details about the police investigation because she fought for and won the right to remain in the courtroom.²

This section is excerpted and summarized from Elizabeth Sheehy in *Sexual Assault in Canada: Law, Legal Practice and Women's Activism*³:

Witnesses are excluded so that their testimony is not affected by hearing the other witnesses. This is standard practice because defence lawyers will suggest that if a witness has heard other witnesses for the prosecution, they may change or at least shade their testimony to render it consistent with that of others. Defence lawyers will claim disadvantage because they have been precluded from surprising the witness by confronting her with contradictory evidence given by others. From the Crown's point of view, they worry about the defence ability to destroy their case in just those ways described above. Knowing the odds against successful prosecution of rape in this country, Crowns may be extremely risk-averse.

Complainants — those “primary witnesses” who testify as to criminal wrongs committed against them — and other witnesses have no “legal standing” to object on their own to matters that arise during a criminal trial. (ei are considered to have no personal stake in the trial.) Crown attorneys do not represent the interests of any witness, even the complainant. Rather, they represent the “public interest”.

A woman who wishes to challenge “the way things are done” in the trial of her rapist must first find a lawyer to argue for her right to “standing” to address the court on the issue. However, most provincial legal aid societies will not provide funding for a complainant or witness to hire a lawyer to speak on their behalf. One relatively recent, and narrow, exception is when complainants' private health and counselling records are sought by defence lawyers to discredit them. In this case, in most provinces, they are entitled to standing and to legal aid, so that they can defend their privacy and equality rights.

This important legal decision remains obscure, since it was never “published”. Legal decisions are published on the basis of their interest to other practising lawyers. While this decision was noteworthy in that it was novel, neither defence lawyers nor Crown attorneys would have been likely to use it in their pleadings. Both camps see damaging consequences for their own cases if raped women are to stay in the courtroom while others testify. And, unfortunately, standing for those who would see value in this precedent — witnesses and complainants who wish to insert themselves into the criminal trial process — is rarely and begrudgingly granted. In other words, apart

¹ Jane Doe v. Board of Commissioners of Police for the Municipality of Metropolitan Toronto (July 1998), retrieved June 24, 2014 at: <http://www.canlii.org/en/on/onsc/doc/1998/1998canlii14826/1998canlii14826.html>

² Doe, J. (2003). *The story of Jane Doe: A book about rape*. Toronto: Random House Canada.

³Sheehy, E (2012), *The Victories of Jane Doe, Sexual Assault in Canada: Law, Legal Practice and Women's Activism*, editor, Elizabeth A. University of Ottawa Press

from feminist activists and lawyers working to change the legal system, there was no one to whom this unprecedented legal advance would have been “of interest.”