Court curbs access to victims' police records in sex-assault cases

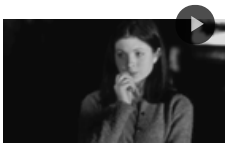
SEAN FINE - JUSTICE WRITER
The Globe and Mail
Published Wednesday, Jul. 09 2014, 10:00 AM EDT
Last updated Wednesday, Jul. 09 2014, 7:39 PM EDT

Sexual-assault victims cannot have police records used against them in court when those records are not related to the case in question, the Supreme Court of Canada has ruled.

In a year in which the court has often taken a strong stand against the government on criminal law, the judges said Parliament intended to protect the rights of sex-assault victims when it passed a rape-shield law in 1997 – notably, the Liberal government of Jean Chrétien, not the current Conservative government.

MORE RELATED TO THIS STORY

- EMMETT MACFARLANE Was this the most offensive question ever asked by an MP?
- LAW How Canada's sex-assault laws violate rape victims
- SEXUAL ASSAULT Sex-assault case falls apart after inmate calls victim 650 times from jail



VIDEO
Video: How Canada's sex assault laws are failing women

The court's unanimous ruling in favour of victims' rights to protection from highly intrusive cross-examination said that unrelated "police occurrence reports" should as a general rule be kept from an accused person and his lawyer. These occurrence reports could include anything from the reporting or witnessing of other crimes to non-criminal matters such as suicide attempts or family disputes.

"Given the sensitive nature of the information frequently contained in such police occurrence reports, and the impact that their disclosure can have on the privacy interests of complainants

IN THE KNOW

- REPORT ON BUSINESS How to fend off those toxic people
- GLOBE INVESTOR He's saving 10 per cent, but it's not enough
- LIFE Stiff from leg day? The best stretches for your glutes and inner thighs
- GLOBE INVESTOR Three top picks from CastleMoore's Hap Sneddon

MOST POPULAR VIDEOS »

NEWS
Why one of Charlie Hebdo's surviving cartoonists is uncomfortable with the paper's new status

LIFE
Globe Style's hits and misses from the Golden Globes red carpet

and witnesses, there will generally be a reasonable expectation of privacy in such reports," Justice Andromache Karakatsanis wrote.

Vincent Quesnelle was convicted four years ago of sodomizing two women – one a prostitute, the other a drug addict – in a Toronto laundromat in 2006 and 2007. He was sentenced to six years in jail. But the Ontario Court of Appeal overturned that ruling and ordered a new trial, saying that he had been wrongly denied access to police records in unrelated matters involving the alleged victims. The Supreme Court restored the conviction, while allowing Mr. Quesnelle to continue his appeal of his sentence at the Ontario Court of Appeal.

Under federal law, defence lawyers have limited access to the medical records of sex-assault victims, but are given access to records that are made by police investigators or the Crown. But the court said this access should be given only when the records involve the offence in question.

Unrelated occurrence reports could reveal private information such as previous sexual assaults suffered by the victims, Justice Karakatsanis wrote, which would harm their "dignity rights" and discourage women from reporting sexual violence.

Jonathan Dawe of Toronto, who represented the Criminal Lawyers' Association, said the ruling could put some accused in an unfair situation. "Imagine a case where the complainant alleges he or she was assaulted, and identifies a cut on their arm from the accused. And there are reports showing the complainant has a prior history of self-inflicted injuries."

The problem for the defence, he said, is that the Crown might recognize the relevance of those records, but be unable to disclose them; and the defence would have to demonstrate the relevance of records it hasn't seen to be allowed to see them.

Amanda Dale, executive director of the Barbra Schlifer Clinic for women, said the ruling protects sex-assault victims from being discredited by the frivolous use of police documents. "We would have seen an increased reluctance to contact the police in cases of violence," if the ruling had gone the other way.

Sonia Lawrence, who teaches at York University's Osgoode Hall Law School, said the court interpreted the law in light of Parliament's purpose: "The government didn't want judges and juries relying on myths and stereotypes about sex assault complainants."

MORE RELATED TO THIS STORY

- SEX ASSAULT Man gets two-year sentence for confining, sexually assaulting teen in cabin
- PROSTITUTION No outside advice sought when drafting prostitution bill, MacKay says

TOPICS: Supreme Court

REPORT ON BUSINESS
Volkswagen, Ford top winners at 2015 Detroit auto show

REPORT ON BUSINESS
What to put in an 'in case I die' file

HIGHLIGHTS

NEWS
Yanna McIntosh: 'We're all aging, you know?'

REPORT ON BUSINESS
Can downtown Halifax put wind in its sails?

MORE FROM THE GLOBE AND MAIL

REPORT ON BUSINESS
UNLIMITED IIROC won't be lenient unless co-operation is 'exceptional'

LIFE
It took 15 years to solve the mystery of a dusty painting

MOST POPULAR

1. In oil boomtown Fort McMurray, 'it's like the place has gone dead'
2. CBC denies 'sabotage' allegation against business anchor Amanda Lang
3. Ottawa to post deficit due to oil drop, tax cuts: TD forecasts
4. B.C. mayor admits he lied to media to hide extramarital affair
5. In France, legitimate ridicule. On Facebook, outright hate

MORE TOP STORIES

TECH NEWS
GoPro shares dive as Apple wins wearable camera patent

GLOBE DEBATE
To respond to terror, we must distinguish its three varieties

FOOTBALL
John Elway hopes Peyton Manning will return to Broncos

HEALTH
Tobacco bans in school linked to lower smoking levels

NORTH AMERICA
Revealed: 2016 Lincoln MKX

TECH NEWS
China bans 50 websites and social media accounts

VIDEO

Divers retrieve second black box from AirAsia crash

Megan Follows explains why Canadian Screen Awards matter

Dream big: The most expensive add-ons at the Detroit Auto Show

Volkswagen, Ford top winners at 2015 Detroit auto show

PHOTOS

15 for '15: Bold predictions for this year's hottest style, design and entertaining trends

In pictures: The weird, wacky and wild at the auto show