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

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The Globe and Mail

Published Wednesday, Jul. 09 2014, 10:00 AM EDT

Last updated Wednesday, Jul. 09 2014, 7:39 PM EDT

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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.

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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

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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."

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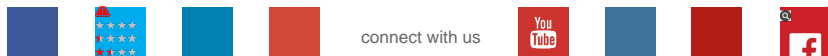
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