Case Comment: R. v. Ewanchuk, Defining Consent in Sexual Assault Cases:

In 1999, R. v. Ewanchuk before the Supreme Court of Canada was decided after the defendant was acquitted and the Alberta Court of Appeal upheld the acquittal. The Supreme court overturned the trial judge's decision based on his misinterpretation of the term consent and his introduction of the nonexistent defence of implied consent. She stated: "the trier of fact may only come to one of two conclusions: the complainant either consented or not. There is no third option. . . There is no defence of implied consent to sexual assault in Canadian law… An accused cannot say that he thought ,'no meant yes.' Madame Justice L'Heureux-Dube wrote a separate but concurring opinion. Parts of it are worth reproducing, as she goes much farther than the other justices of the Supreme Court in setting out the gendered nature of this issue: "Violence against women takes many forms: sexual assault is one of them. In Canada, one-half of all women are said to have experienced at least one incident of physical or sexual violence since the age of 16. The statistics demonstrate that 99 percent of the offenders in sexual assault cases are men and 90 percent of the victims are women….Violence against women is as much a matter of equality as it is an offence against human dignity and a violation of human rights. . . These human rights are protected by ss. 7 and 15 of the Canadian Charter of Rights and Freedoms. . . .This case is not about consent, since none was given. It is about myths and stereotypes, which have been identified by many authors…

Pamela Cross, Ontario Women' Justice Network

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