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**Supreme Court rules extreme intoxication defence available for violent crimes
in Alberta, Ontario decisions:
Ontario Coalition of Rape Crisis Centres (OCRCC) responds**

The [Supreme court has ruled that extreme intoxication is an available defence for violent crimes](#). As sexual violence survivor advocates, we at Ontario Coalition of Rape Crisis Centres (OCRCC) are both alarmed at the implications of this ruling, and frustrated by the recurrent challenge in favor of this particular defense. The unfortunate – and ever-present – ability of the justice system to imperil the hard-won rights of sexual violence victims stand out to us as an act of systemic inequity. There must be protections for sexual violence survivors who are violated by an intoxicated assailant.

About the ruling and its impacts

The Supreme Court has ruled that extreme intoxication is an available defence for violent crimes; this ruling occurred following an analysis of case decisions in Alberta and Ontario. The impact of this is that an accused may now use intoxication as a defence in cases of violent crimes, which in future could include sexual assault. Specifically, an accused may say that they were so intoxicated that they took part in actions or crimes that they did not wish to, or acted in an “automaton” manner, due to extreme intoxication.

The ruling comes following a few cases in court in Canada, in which different men intoxicated and killed or injured other people and were subsequently charged. In two case (Chan; Sullivan) both persons claimed in separate incidences they had no control over what they did – a state called *automatism* – due to their extreme intoxication¹. In a more recent case (Brown), a man violently assaulted a woman in a state of delirium caused by intoxicants.

In its review of such situations in the context of the Brown case, the court agreed that the crime was out of character and not the wish of the accused: in this, intoxication was a viable defense. However, in making this ruling, the court noticed that this could create problems for victims. The authors urged Parliament to enact legislation to protect victims of violent crime committed during extreme intoxication. Federal Justice Minister David Lametti responded to this, saying: "We as legislators have a duty to protect victims and we will do that...there is a sense of urgency; any time that there's a gap in the criminal code, there is a sense of urgency"². What this protection will look like is currently not decided or defined.

We believe this ruling has serious impacts for those most impacted by sexual violence in Ontario—women, girls, trans and gender non-binary people. While the ruling has created a defense option for those accused, it does not speak to the impacts and possible outcomes for victims.

Our criminal justice system’s ability to support sexual violence survivors

The Canadian criminal justice system’s capacity to support sexual violence survivors is already poor. The realities of sexual assault reporting – and [our criminal justice system's effectiveness in holding offenders accountable](#) – deter survivors from reporting.

¹ Perkel, Colin for The Canadian Press. June 3, 2020. *Ontario court throws out law barring self-induced intoxication as defence for sexual assault*. Online: https://nationalpost.com/news/canada/court-throws-out-law-barring-self-induced-intoxication-as-defence-to-violence?fbclid=IwAR11A-DGTVAZk1p4IzGPY9v2A-92OffyE0ws2_lcwXmkGfIG43H-4qC7vnM

² Grant, M. for CBC News. May 13, 2022. *Supreme Court rules extreme intoxication defence available for violent crimes in Alberta, Ontario decisions: Judges call for clarifying law around extreme intoxication defence in cases of violent crime*. Online: <https://www.cbc.ca/news/canada/calgary/supreme-court-calgary-case-assault-mushrooms-extreme-intoxication-brown-1.6451012>

Today, conviction rates for sexual assault remain low³. This reality de-validates the experiences of survivors. Low convictions suggest that sexual assault is a rare crime; low convictions also shore up victim-blaming myths. Unfortunately, many social misconceptions (“myths”) concerning sexual assault persist in our communities: these myths erroneously suggest, for example, that innocent people are commonly accused of sexual assault, and that survivors lie about sexual violence to get revenge, for their own benefit, or because they feel guilty about having sex⁴.

Misconceptions about sexual violence, consent and the use of alcohol or other intoxicants tend to shift blame to the victim/survivor, minimize perpetrator accountability⁵, or suggest that sexual violence is a crime that occurs accidentally, with no one really responsible. The current ruling is just one more thing that can perpetuate these falsehoods.

The perspectives of those most vulnerable: challenged once again

Research has shown that a person’s alcohol consumption, among other factors, is significantly related to sexually aggressive acts committed. Of interest, other factors such as attitudes of hostile masculinity and the offender’s presumptions about another’s interest in sex, are also at play in these risk factors⁶. While these are factors that rest solely *on the offender*, they will become totally invisible under the new ruling.

We worry about the implications of this ruling on other types of crimes: for example, domestic violence, hate crimes (where particular bodies and communities are targeted with violence) and femicide. We are aware that the court also felt this concern: it noted that “protecting the victims of violent crime – particularly in light of the equality and dignity interests of women and children who are vulnerable to intoxicated sexual and domestic acts – is a pressing and substantial social purpose”⁷. Yet while the ruling acknowledged this reality it does not provide any solutions, nor concern itself with the victims’ experience.

We are aware that the part of the Criminal Code – an amendment, specifically introduced to prohibit the self-induced intoxication defence – has a long history of “judges coming to different interpretations of it”⁸. As victim advocates, it is frustrating to us that this particular component of the Criminal Code has been challenged so many times. It was originally passed in 1995 with sexual assault survivors in mind. Despite this, the prohibition to use “intoxication defense” has been challenged many times: most recently in 2011, 2020 and at the Supreme Court now in 2022. Like other specifically gendered or raced legal protections – for example, the [right to choose abortion](#)⁹, or the land and territory rights of Indigenous people in Canada¹⁰ – it seems that these protections are *never permanent*, and often the site of legal challenge by others not representative of those most affected.

For example, in its Ontario-wide research, TransPulse found that trans people are the targets of specifically directed violence; 20% had been physically or sexually assaulted for being trans¹¹. Canadian studies also note that young women from marginalized racial, sexual and socioeconomic groups are more vulnerable to

³ See The Attrition Pyramid (Sexual Assault). Online: http://www.vawlearningnetwork.ca/our-work/issuebased_newsletters/issue-1/Issue_1-LN_Newsletter_May_2012_.pdf, page 2.

⁴ See: The Learning Network. *Overcoming Barriers and Enhancing Supportive Responses: The Research on Sexual Violence Against Women A Resource Document*. May 2012: 14.

⁵ The Learning Network. *Overcoming Barriers and Enhancing Supportive Responses: The Research on Sexual Violence Against Women A Resource Document*. May 2012: 11.

⁶ Abbey, A. & Jacques-Tiura, A.J. (2010). Sexual assault perpetrators’ tactics: Associations with their personal characteristics and aspects of the incident. *Journal of Interpersonal Violence*, 26(14), 2866-2889, as quoted in: The Learning Network. *Overcoming Barriers and Enhancing Supportive Responses: The Research on Sexual Violence Against Women A Resource Document*. May 2012: 14.

⁷ Grant, M. for CBC News. May 13, 2022. *Supreme Court rules extreme intoxication defence available for violent crimes in Alberta, Ontario decisions: Judges call for clarifying law around extreme intoxication defence in cases of violent crime*. Online: <https://www.cbc.ca/news/canada/calgary/supreme-court-calgary-case-assault-mushrooms-extreme-intoxication-brown-1.6451012>

⁸ Grant, M. for CBC News. May 13, 2022. *Supreme Court rules extreme intoxication defence available for violent crimes in Alberta, Ontario decisions: Judges call for clarifying law around extreme intoxication defence in cases of violent crime*. Online: <https://www.cbc.ca/news/canada/calgary/supreme-court-calgary-case-assault-mushrooms-extreme-intoxication-brown-1.6451012>

⁹ Learn more here: <https://www.cbc.ca/news/canada/abortion-rights-significant-moments-in-canadian-history-1.787212>

¹⁰ Learn more: <https://globalnews.ca/tag/indigenous-land-rights/>

¹¹ Bauer, Greta & Scheim, Ayden. (2015). *Transgender People in Ontario, Canada: Statistics from the Trans PULSE Project to Inform Human Rights Policy*: 4.

being targeted for sexual violence¹². Not only does this affect sexual violence prevalence rates, but it also diminishes the efficacy of our criminal justice system for these groups.

When enacted in 1995, this amendment to the Criminal Code was intended to highlight that sexual and other forms of gender-based violence are a real and pervasive social problem, informed by social inequities. In presenting it as a Bill to Parliament at that time, then-Justice Minister Allan Rock said:

“the time has come for us to speak directly of such matters and to recognize that women are not equal in this society...[and] one of the symptoms of that inequality is the extent to which they are victims of violence... and alcohol is very much tied up in that, statistically ... and factually and demonstrably... Let's also acknowledge that inequality is depriving them of the very charter rights contemplated in the sections that are mentioned”¹³.

Yet here in 2022, intoxication is again available as a defense in violent crimes.

There's work to do to uphold the rights of sexual violence survivors

The Supreme Court decision flies in the face of some of the progress made by the #MeToo movement, and other past legal victories protecting survivors of violent crime including sexual assault.

Here's what you can do to help:

- Talk about this legal ruling with others you know. Decisions by the Supreme Court of Canada are binding on all Canadian courts, so this ruling can impact court cases in all provinces, moving forward
- Contact your federal Member of Parliament (MP) and tell them that you are concerned about this ruling and its impacts on sexual assault cases and survivors of violent crime: [find your MP here](#)
- Contact your federal MP and Federal Justice Minister David Lametti: urge them to consult with sexual violence survivors, survivors of other violent crime including hate crimes and community-based victim-survivor advocates about this ruling. It is key to begin to identify possible next steps now, to ensure the protection of victims
- Contact your federal MP and Federal Justice Minister David Lametti: urge them/Parliament to enact legislation as soon as possible to protect victims of violent crime committed during extreme intoxication
- Stress that any new policy and legislation *must* be informed by the perspectives and expertise of sexual violence survivors, survivors of other violent crime including hate crimes and community-based victim-survivor advocates.

[Ontario Coalition of Rape Crisis Centres \(OCRCC\)](#) is a network of 30+ community-based sexual assault centres in Ontario. If you or someone you know has experienced sexual violence, go to <https://sexualassaultsupport.ca/support/>.

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¹² Wolfe and Chioda, as quoted in Safe Schools Action Team Report on Gender-based Violence, Homophobia, Sexual Harassment & Inappropriate Sexual Behavior in Schools. 2008. *Shaping a Culture of respect in our Schools: Promoting Safe and Healthy Relationships*: 3.

¹³ Isabel Grant, *Second Chances: Bill C-72 and The Charter* (Osgoode Hall Law Journal – Vol. 33 No. 2, 1996) p. 385