

An excerpt from W.S.Dekeseredy & M.S.Schwartz's book 'Woman abuse on campus' clearly demonstrates the North American global image of the situation of rape situation in Canada. 'Many North Americans view Canada as a peaceable kingdom, a place where it is safe to walk the streets, go out at night, and in general live a normal life. This perception is partially correct.' (Preface, p.vii). Rape is illegal in Canada. But has it always been the case? How has the legislation evolved in our country? Does this legislation always favor women? A quick survey of the legislation history, how this crime is viewed by legal officials, a brief description of one notable Canadian rape case and how women were involved in it, and how rape is punished in Canada will help us understand how the problem and its solutions have evolved in Canada.

## **1. Survey of Canadian legislature history concerning rape crimes.**

The rape of women has existed since ancient times. It has often been labeled as an incident, of war. The first laws concerning rape crimes to have appeared in history are dating back to the Middle-Ages in England, more precisely to exactly in 1275 with the Statute of Westminster. For the first time, England's parliament was considering rape as a crime against the security and the public interest. Before 1275, the crime was resolved between the criminal and the victim's family. It often resulted into forced marriage. Women in those days had very few rights, they were considered as being the property of the father or the husband. As most Canadian legislation followed England's legislation, we only see a change appear in 1841 where the Canadian civil code begins to consider consent absence and resistance proof.(Stanley, Intro, p.v) From then, rape victims would have to prove they had actively resisted the aggression to condemn the aggressor. Three elements had to be taken into consideration when deliberating: the force used by the man to fight woman's resistance, the evidence of physical resistance by the woman (as a lack of physical resistance would be considered as consent), and a sperm emission of evidence of penetration (Stanley, Second Part, p.13). Even if certain progress was made considering women's rights, men were often absolved of accusations!

### **1.1 The significant shift in Canadian legislature: The C-127 law project**

However, a significant shift would be brought in the 1980s. After a decade of comments coming from the federal government and feminist organizations a whole revision of the criminal code was made. Indeed, the C-127 project adopted in January 1983 provided a whole revision of the criminal code (Stanley, Second Part, p.9). This revision would focus more on the violent nature of the crime than on the sexual facet of it. The goal of this law was to reform the attitude of the victim toward the complaint, and toward the treatment of the complaint. (Roberts, p.2) This examined more closely the different factors provoking rape crimes. Fewer details would be considered during inquiries: race, age, accused and plaintiff behaviors, etc. As the proof of penetration had to be verified, doctors would be asked to evaluate the person's morality. The medical report would be used throughout the trial. Little modifications have appeared since then, but the penal code has not changed significantly since 1983; rules and procedures are practically the same as the former ones.

## **2. How rape was considered in Canada.**

Since the C-127 law project was conceived as a means to change behaviors toward rape crimes, it would be interesting to examine how rape was viewed before 1983. Canadian legislation defines rape as being a crime against a good of man (Le viol: un crime contre un bien de l'homme) (Stanley, First Part, p.1). As stated earlier in this text, very few women rights were recognized by law. It took a very long time for female victims to be valued. Before the nineteenth century, rape was considered as a crime against the descendants of the victim's father or husband. Women, whose rights were extremely limited under patriarchy's strong influence, had to prove their innocence by their reputation. This was often the determining factor on which judges deliberated. Why? False accusations for rape crimes were a recurrent theme in trials.

In North America, during a trial, most newspapers or broadcast media were forbidden to state the name of an alleged rape victim as a matter of courtesy.

Nonetheless, was rape considered a serious crime in our country before the C-127 law project? Two Canadian researchers compiled data in the 1970s on arrests and condemnations of convicted rape criminals. Among the 1230 declared rapes of 1971, only 58, 3% of them lead to an arrest. Among the 119 accused rape suspects only 65 (an average of 54.6%) were declared guilty. (Stanley, Third Part, p.94)

An inquiry made by Statistics Canada in 1993 on a scale of 12 300 Canadian women revealed that at least one woman out of two had been the victim of at least one physical or sexual aggression. (Néron, p.xiii)

## **3. One Notable case in Canadian history.**



Some rape cases were famous in the country. One of the most notable cases is the Toronto Balcony-rapist, Paul Douglas Callow a serial rapist convicted of brutal knife-point rapes in the mid-1980's (For he stalked young women and used their unlocked balconies as entry into their homes.) One of his victims sued the police for not having warned her neighborhood properly about the Balcony-rapist. This woman (going by the Jane Doe pseudonym) found herself in the position of having to put posters in her neighborhood to warn about the dangers.



She won her case in 1998. Even if the Balcony rapist insisted he was a changed man, the community of Surrey B.C., in which he was released after a 20 years prison sentence, labeled him as a 'persona non grata' and refused to allow him to be seen in the streets. (CTV, 2007)



Jane Doe later won her case against the Toronto police force. She claimed they used her as bait to catch the Balcony-rapist. The Toronto police also refused her the right to put up posters warning her neighborhood about the rapist, stating that it would botch their stakeout plan. Jane Doe was awarded \$220,000 for general and special damages. (CBC, 1998)

#### **4. Canada's punishments for rape cases.**

In Canada, maximum sentences for sexual assaults, armed sexual assaults (including lesions), and serious sexual assaults are set for 10 years imprisonment, 14 years of imprisonment, and life imprisonment. (Roberts, p.2)

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