

# From Women's Duty To Resist

BY ELIZABETH SHEEHY

*L'auteure assure que la preuve de la résistance des femmes au viol continue de jouer un rôle central dans les accusations en dépit des changements de la législation obtenus par le mouvement des femmes et les protestations de la justice qui affirment le contraire.*

Historically, the law of rape reflected women's inequality, in both its substance and process. It is the theme of this paper that proof of a woman's great resistance to rape continues to play a pivotal role in the adjudication of criminal charges despite the many changes in legal doctrine achieved by the women's movement and judicial pronouncements to the contrary.

The rape law passed in 1992 (Bill C-49) requires that men take "reasonable steps to ascertain consent" when they assert that they honestly believe that a woman consented to sexual contact (*Criminal Code* s. 273.2 (b)). This section must be interpreted through a public and relatively explicit discourse on sexual relations in legal argument and fact-finding by judges and juries in rape trials. In the oral argument of one of the first cases in which the Supreme Court began to grapple with the meaning of this law, *Ewanchuk* (1999), members of the Bench struggled to find familiar yet seemly language in which to address the concrete issues and normative determinations that the law now requires. They resorted to the terminology of the baseball game, asking counsel for the defence whether a man who failed to get to "first base" could proceed to "second base." Much of the ensuing exchange continued, wrapped in this veiled and

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worryingly imprecise metaphor. Later, some of us de-briefed, pleased that "reasonable steps" were finally being articulated in the Court, but asking each other, "what *is* first base, anyway?"

The clear implication of the exchange before the Bench was that in fact there are some identifiable and fair principles by which to conduct non-criminal sexual relations. The determination of what are "reasonable steps" to secure consent is new territory for adjudication in rape trials, where judgment has, until C-49, focussed on the less controversial (but not uncontested), narrower, and "neutral" question of what a given man charged with sexual assault actually knew or in fact intended. This example illustrates, I hope, the radical potential of the new law to force into the open our unarticulated assumptions and to generate public debate and discourse around coercive sexual relations.

At the same time, when lawyers

and judges continue to use women's sexual histories to take the "rape" out of even armed or wounding attacks by men on women (*Wald*), when men are not required to wake up sleeping or unconscious women before sexual contact (see below), when a judge of a court of appeal uses his position to make disparaging remarks about a complainant's sexual history, not just in his judgment, but later to the media to justify his earlier remarks (Canadian Judicial Council), and when counsel before the Supreme Court uses a falsetto voice to imitate a coy and half-hearted "no" to argue that "no" does not necessarily mean "no" (oral argument in *Ewanchuk*), one suspects that a powerful belief system remains deeply embedded beneath the rape law reforms. I fear that it will take more than the language we used in high school to uproot the informal requirement of women's "great resistance" and thus take up the challenge that the "reasonable steps" law offers for social and legal change.

## **The "great resistance" requirement**

Constance Backhouse in a 1981 article examined the formal and informal proof requirements for the law of rape in nineteenth century Canada (Backhouse). In the period under examination, she notes that the common law required proof that the rape was "by force" and "against her will." For our purposes, it is important to note that the law did not formally require proof of "great resistance": instead, based on unarticulated beliefs that women's sexuality is unknowable and our de-

# To Men's Duty To Ask

## *How Far Have We Come?*

sire unspeakable (Smart), women who alleged that they were raped, not "seduced," needed to prove non-consent through "great resistance." Moreover, Backhouse's analysis of the case law of the nineteenth-century demonstrates that proof of non-consent and "by force" could not be presumed from facts that spoke on their face of threat, dominance, and grave danger. Further inquiry and speculation always left open the possibility of consent, which needed to be affirmatively disproved.

Two themes flowing from the informal requirement of "great resistance" can be seen in the cases discussed by Backhouse that are of interest to us today. First, women and girls were expected to mount "great resistance" regardless of the context or circumstances in which they found themselves. For example, women and girls were expected to resist vigorously even when they were cornered in completely isolated circumstances where help or flight was impossible, and they were also expected to take on those who were much older, physically more powerful, and their superiors. Second, women's actual resistance was frequently either minimized or completely ignored, such that in cases where women did in fact say "no" or attempt to escape, judges continued to pronounce that the crime had not been proven as there was no "great resistance."

It is perhaps precisely because "great resistance" has never been a formal common law or statutory requirement in Canadian law that it has proven to be such a tenacious and virulent survivor of law reform. Several high-profile cases illustrate the power and longevity of this idea.

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For example, in the famous *Pappajohn* case wherein the Supreme Court (1980) accepted the validity of the theory of a defence of honest yet mistaken belief in consent, the accused's version of the offence referred to the complainant as having offered "token resistance." Furthermore, according to the British Columbia Court of Appeal, George Pappajohn had testified at trial and, when asked if the woman resisted, had replied—"not violently" (*Pappajohn* 1979). While the majority of the Court refused to let Pappajohn put his defence to a jury on the basis that his alleged "mistake" lacked an "air of reality," his admission was not mentioned by the judges as precluding a defence of honest "mistake."

Almost twenty years later, in *Ewanchuk*, McClung J. of the Alberta Court of Appeal (1998) managed to "disappear" the young woman's resistance. Although she had said "no" repeatedly, used her body

rigidly to fend off Ewanchuk's touching, and ultimately fled, McClung described her as having failed to resist and thereby having impliedly consented. While it is true that the Supreme Court rejected McClung's legal analysis, it took litigation to the highest court to correct the interpretation and it will take much more than *Ewanchuk* to change the way that the law of rape is understood by much of society, police, and indeed by lawyers and judges.

Feminist law reforms efforts have concentrated on, among other things, taking on this informal requirement that women mount "great resistance" before a rape can be proven. Feminist litigation has established that passivity alone or failure to resist does not amount in law to consent (*M.L.M.*). Through the Bill C-49 campaign feminists lobbied for amendments to the *Criminal Code* that define consent as "voluntary agreement" (s. 273.1(1)) and that state that no consent is obtained where the complainant is incapable of consenting (s. 273.1(2)). In *Ewanchuk* the Supreme Court explained that "voluntary agreement" is a communication that must be by word or conduct; in consequence, an accused who argues that he was "mistaken" must identify words or conduct that led him to believe that the woman consented: he cannot rely on her passivity, his "intuition," or misogynist fantasy.

At the same time that the law of rape has undergone such significant doctrinal change, many damaging and distorting practices in the defence of rape charges have resurfaced in other, often more pernicious forms (see for example the translation of

defence efforts to use women's sexual history evidence into disclosure applications for women's personal records: Bond). Furthermore, the search for women's violent resistance continues, such that even the reasonable steps requirement has been undermined by an emerging "unconscious woman" exception, to be described below.

### **Reasonable steps to ascertain consent**

The developing case law on the reasonable steps requirement is, with a few exceptions, rivetting to read and remarkably progressive. The new requirement is a question of fact, such that the question must ultimately be determined by the trier of fact, whether it is a jury or a judge sitting alone. It utilizes a quasi-objective component and asks the accused to identify some evidence in support of his "reasonable steps," and it has, thus far, survived constitutional challenge (*Darrach*). It forces lawyers to re-frame the "mistake" defence and to take positions on non-predatory norms of sexual behaviour and some minimal social understandings about what can be assumed and what cannot. Judges also have a significant role in shaping this emerging discourse, because they must determine when there is sufficient evidence to put the defence of mistake to the jury; they must direct juries on the application of this requirement; they often sit alone in sexual assault trials and must therefore interpret the requirement on the facts before them; and they must, on appeal, set some acceptable parameters for the defence.

The judicial articulation around "reasonable steps" is important in terms of opening public debate and vesting judges with the responsibility to say clearly and directly what they otherwise allude to in vague homilies such as "the facts of life not infrequently impede the drawing of a clean line between what is consensual and non-consensual intercourse"

(*Pappajohn*). The strongest statements emanating from a Supreme Court majority opinion that are relevant to the "reasonable steps" requirement are to be found in *Ewanchuk*:

[O]nce the complainant has expressed her unwillingness to

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engage in sexual contact, the accused should make certain that she has truly changed her mind before proceeding to further intimacies. The accused cannot rely on the mere lapse of time or the complainant's silence or equivocal conduct to indicate that there has been a change of heart and that consent now exists, nor can he engage in further sexual touching to "test the waters."

Even more powerful statements have been made by Justice McLachlin in her dissenting opinion in *Esau* (1997):

A person is not entitled to take ambiguity as the equivalent of consent. If a person, acting honestly and without willful blindness, perceives his companion's conduct as ambiguous or unclear, his duty is to abstain or obtain clarification on the issue of consent.

### **Men's duty to ask**

Many more lower court decisions have begun to provide guidance as to the interpretation of the "reasonable steps" requirement, setting explicit norms for consensual sexual relations:

Reasonable steps do not ... simply mean that you take what sexual actions you wish by way of physical contact with the complainant until you are told that you cannot do so. More is required to reasonably ascertain consent than that, especially when you have a vulnerable victim in the vehicle, to some degree, of limited resources ... (*Thompson*)

Given the accused's acknowledgement that the complainant had told him to stop, he did not take reasonable steps to ascertain that the complainant was really consenting to the subsequent acts of intercourse. (*T.M.*)

Adequate freedom to say no, requires an absence of any real or apprehended coercion. Having said no while in the bathroom within the embrace of the accused or within his reach on the floor, the complainant was not afforded the physical space necessary to freely consider or reaffirm her initial position. It was unreasonable for the accused not to remove himself from the bathroom to ensure that the complainant could consider her position without real or apprehended coercion to consent and without fear of any harm if she refused ... An honest belief based on previous amorous or sexual relations, despite the absence of any non-verbal or verbal refusal may not, in most cases, meet the standard set by this section and certainly will not meet the standard in the face of any immediate verbal or

non-verbal denial of consent. (K.R.C.)

Those who fail to properly ask, risk conviction ... Failure to object by word or act can rarely, if ever, constitute the basis for assuming consent to sexual advances. (K.R.C.)

To [accept the defence's argument on "reasonable steps"] one would have to assume that male sexual initiative, of whatever degree, is appropriate in any circumstances and that passivity by the female entitles the male to assume that she is consenting. The woman would therefore become a perpetual target assumed to be perpetually consenting unless she made some positive gesture easily interpretable by the male as lack of consent. Further, provided the male stopped his activity upon such gesture being made, he could then walk away with impunity, regardless of how outrageous his behaviour had been. (*Dhanji*)

Knowledge that the complainant is seriously intoxicated reasonably implies that she possesses diminished ability to assess and understand—in such circumstances one cannot simply assume consent. (T.S.)

Because of the risk of unwanted pregnancy and considering the real spectre of disease together with the notorious fact that the careful use of condoms reduces the risk of harm, reasonable steps must be taken to ensure that the consent exists to unprotected sexual intercourse. (T.S.)

What steps are reasonable in the circumstances known to the accused, are those consistent with contemporary social norms and behaviours as fully informed by the complainant's rights of

sexual self-determination. (T.S.)

As a general rule, non-verbal behaviours, when relied upon as an expression of consent, must be unequivocal. Where this is not the case, avoidance of serious risk-taking, and the defeat of confusion, miscommu-

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nication, and unfounded assumption demands that reasonable steps be taken, not themselves sexually assaultive activity, to clarify the limits of any agreement to sexual touching. (T.S.)

S. 273.2 clearly creates a proportionate relationship between what will be required in the way of reasonable steps by an accused to ascertain that the complainant is consenting ... the section clearly contemplates that there may be cases in which they are such that nothing short of an unequivocal indication of consent from the complainant, at the time of the alleged offence, will suffice. (G.R.)

### Sleep, the final frontier

As women are recognized in law as assuming more and more agency with respect to their sexual autonomy and

as a woman's "no" has begun to have legal repercussions, assaults on women who are asleep or unconscious through alcohol use or in drugged conditions have posed the most serious and cynical challenge to the new reasonable steps requirement.

There are, of course, a few non-sleep cases where judges have found reasonable steps simply in the accused's actual sexual advances. When one reads these cases, one notices that they are, at base, about complainants' failures to resist vigorously. These cases tend to involve young and vulnerable persons who have found themselves in extremely difficult situations. For example, one case involved a fourteen-year-old on a first date in a movie theatre where the accused had managed to get his hand down her pants and penetrate her digitally, without others in the theatre noticing. The judge said that "his actions were not opposed by her," even though she testified that she had shaken her head vigorously and tried to move away and block her body in the seat. The judge found that his actions constituted "reasonable steps" in light of their young ages and the location of the assault (*S.(R.J.)*). In another case, a young man was assaulted by his girlfriend's father when they slept overnight in a barn having competed farm work together. The judge there found "reasonable steps" in the accused's initiation of a backrub and the slow approach he took to his assault (*J.J.*).

However, it seems that the biggest category of cases where men accused of sexual assault successfully argue "reasonable steps" and win acquittals are those cases where the woman has been stupefied and effectively silenced as a witness to her own rape. Of the ten unconscious victim cases reported that consider s. 273.2, only three resulted in convictions. A fourth appeal against acquittal resulted in a new trial because the trial judge failed to address the "reasonable steps" requirement (*Malcolm*). In one of the convictions the accused men had

administered a drug to the woman and she could prove it. However, even in this case it took a Crown appeal to the Quebec Court of Appeal to overturn an acquittal: although it was proven that the two men had put PCP in the complainant's drink, the trial judge had noted that she had gone voluntarily with the two men to an apartment to have a drink, and that "at some point, as it is often said, everyone is responsible for his [sic] own actions" (*Daigle* 1997). The Supreme Court upheld the conviction on the basis that the accused had failed to take reasonable steps to ascertain consent, a ruling that in fact greatly understates the criminality of deliberately drugging a woman in order to rape her (*Daigle* 1998). In another of these cases, the accused was alleged to have assaulted two women on the same night while they slept, but only one of the charges resulted in conviction (*T.S.*). The conviction in the third case where an accused raped a sleeping woman was based in part upon his admission ("[i]n his own statement to the police he admitted that she did not say a word, only rolled her head": *Nikkanen*) and in part upon all of the corroborating evidence that the complainant was able to provide.

In the other six cases the accused were either acquitted or returned for a new trial to enable them to argue "mistaken belief in consent," even in cases where the accused and woman were complete strangers. In the cases that follow, judges have not raised the bar for what steps are said to be reasonable when a woman is asleep, unconscious, or extremely intoxicated. And because the women in these cases have either no recall whatsoever or impaired recall, the accused's version of the events cannot be contradicted.

In *Osvath* the accused had lain down behind a sleeping stranger on a couch at the end of a party. He claimed that she rubbed her buttocks against him and that he asked her for intercourse and she said yes, without ever turning around. The

majority of the Ontario Court of Appeal said: "it would be too onerous a test of wilful blindness to require an accused to stop the activity and ask 'wait a minute, do you know who I am?'"

In *R.B.* the woman, ill from alcohol, had gone to sleep in the bed of a man with whom she had no prior

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relationship. He claimed that she moved against him and that they proceeded to intercourse. The judge said: "it was not negligent of him to not go further and wake her. He could reasonably have taken her body language, for want of a better term, and her subliminal signals as being knowledgeable approval."

In *J.E.P.* the accused assaulted a young woman in her bed as she slept. While she claimed that she was woken from sleep by the assault and that she resisted, he claimed active participation. The judge accepted the accused's version, emphasizing that the "200 lb. girl" could have raised a "hue and cry" and that the fact that her underwear was undamaged suggested either consent or honest mistake regarding consent.

In *Redcliffe* the woman woke to find the accused penetrating her. She rejected his assault and he left. The judge here noted that there could have been no consent as the woman had been asleep, and went on to

convict on the basis that reasonable steps had not been taken to ascertain consent. On appeal, the court ordered a new trial to permit the accused to raise the defence of mistaken belief as the Crown had failed to prove beyond a reasonable doubt that no reasonable steps to ascertain consent had been taken. A new trial was also ordered in *Baril*, where the trial judge had found that the accused manipulated a card game to cause the 15-year-old complainant to become so intoxicated that she passed out. Although the judge had found that the accused had not taken reasonable steps to ascertain consent in the circumstances, the appeal against conviction was permitted because the trial judge was said to have failed to analyze the evidence that might have raised a reasonable doubt about the credibility of the complainant.

Finally, in *Esau* the accused was granted a new trial by the Supreme Court of Canada to argue the defence of mistaken belief in consent even though the defence had not been raised at trial. Here the woman had no memory of the assault, but woke up with a broken tooth, her pants around her ankles, and clear evidence of intercourse. She recalled the earlier part of the evening as involving alcohol consumption, and stated that she would never have consented to a sexual liaison with her cousin. When interviewed by police Esau denied sexual contact with his cousin. When DNA evidence pointed to him changed his story and took the position at trial that she had consented. His evidence must have been rejected, for he was convicted at trial. He appealed his conviction and the Supreme Court, without addressing the reasonable steps requirement, ordered a new trial to allow Esau to raise an alternative defence of mistaken belief in consent. The majority stated that her lack of memory meant that she could not in fact contradict his version of the events, and there was no evidence of struggle or force to challenge his version. Therefore,

there was some evidence in support of a possible mistake defence that should have been considered at trial.

## Conclusion

The doping by men of women in order to stupefy them or deprive them of sexual restraint and memory is abetted by these legal decisions, which effectively immunize men from criminal responsibility for predatory sexual aggression against women who cannot mount "great resistance." Vancouver Rape Relief notes that it is very difficult to prove that such a drug has been used since most women do not immediately report their rapes, the presence of the drugs is almost impossible to confirm through testing in any event, these drugs render women's recall weak and confidence in their memories frail, and some of the drugs make women act in sexually uninhibited ways that are humiliating to relive (Gorin). Convictions like *Daigle* where the woman can prove that she was drugged without her knowledge will therefore be extremely rare.

Rape crisis centres like Vancouver Rape Relief report that the use of alcohol to subdue and assault women has long accounted for approximately twenty-five per cent of the rapes that are reported to the centres and that it is critical not to focus exclusively on the new drugs that are being used by men to facilitate the assault of women. They argue that to engage in the hype about "date rape drugs" is to support the "war on drugs" and a law and order agenda. They also note that to focus exclusively on these cases will create a hierarchy of "innocence" among women who have been victimized while drunk, asleep, or drugged and place more burdens on women to assume responsibility for their own rapes by guarding their drinks and never being alone without trusted friends.

It is important, therefore, to develop a legal position on the meaning of "reasonable steps" when a woman is intoxicated, asleep, or drugged,

that places the responsibility squarely on men for sexual assault regardless of how the woman came to be in that condition. To consider "mistake" as a defence in cases such as these, where non-consent can be proven because the complainant was, for example, asleep or helplessly drunk, is to effectively ensure that "mistake" will be available whenever women are sleeping or drinking. In *Esau* Madame Justice McLachlin said, in dissent:

[T]he assertion that the complainant's drunkenness and lack of memory raise the defence of honest but mistaken belief depends not on the evidence but on speculation. It depends, moreover, on dangerous speculation, based on stereotypical notions of how drunken, forgetful women are likely to behave. ... In this case, where the complainant was on any view of the evidence quite drunk it would seem reasonable to expect the accused to take steps to ascertain that her apparent participation represented actual consent, thus obviating the possibility of mistake.

Critical challenge to the emerging gap in the "reasonable steps" requirement for men who approach sleeping or otherwise unconscious women must stay on the feminist law reform agenda, lest the "great resistance" doctrine continue to covertly allocate responsibility to women for their own rapes. For this task we will need to move beyond the baseball metaphor, for it is not just confusing, but cruel indeed to invoke its images of "fair play," "good sportsmanship," and "voluntary assumption of risk," as long as judges refuse to convict men who prey upon women whose agency has been obliterated through unconsciousness.

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*Elizabeth Sheehy is a law professor whose work focuses on male violence against women and equality issues.*

## References

- Backhouse, Constance. "Nineteenth-Century Canadian Rape Law 1800-92." *Essays in the History of Canadian Law* Ed. David H. Flaherty. Toronto: The Osgoode Society, 1981. 200-247.
- Bond, Sadie. "Psychiatric Evidence of Sexual Assault Victims: The Need for Fundamental Change in the Determination of Relevance." *Dalhousie Law Journal* (16) (1993): 416-447.
- Canadian Judicial Council. "Panel expresses strong disapproval of McClung conduct." Ottawa: Canadian Judicial Council, 1999.
- Gorin, Tamara. "A Rape Crisis Centre View of Rohypnol: How the Hype Tricks Raped Women." Vancouver: Vancouver Rape Relief, 1998.
- R. v. Baril*, [1999] Sask. J. No. 472 (Q.B.).
- R. v. Daigle* (1997), 127 C.C.C. (3d) 130 (Que. C.A.).
- R. v. Daigle*, [1998] 1 S.C.R. 1220 (S.C.C.).
- R. v. Darrach* (1998), 38 O.R. (3d) 1 (C.A.).
- R. v. Dhanji*, [1995] O.J. No. \* (Ct. Just. Gen. Div.).
- R. v. Ewanchuk* (1998), 57 Alta. L.R. (3d) 235 (C.A.).
- R. v. Ewanchuk*, [1999] 1 S.C.R. 330 (S.C.C.).
- R. v. Esau*, [1997] 2 S.C.R. 777 (S.C.C.).
- R. v. G.W.P.*, [1994] Y.J. No. 80 (Yukon Terr. Ct.).

- R. v. G.(R.)* (1994), 38 C.R. (4th) 123 (B.C.C.A.).
- R. v. J.E.P.*, [1997] Alta. J. No. 743 (Prov. Ct.).
- R. v. J.J.*, [1994] O.J. No. 1576 (Ct. Just. Prov. Div.).
- R. v. K.R.C.*, [1995] Y.J. No. 74 (Yukon Terr. Ct.).
- R. v. Malcolm*, [2000] Man. J. No. 387 (C.A.).
- R. v. M.L.M.*, [1994] 1 S.C.R. 782 (S.C.C.).
- R. v. Nikkanen*, [1998] O.J. No. 1640 (Ct. Just. Gen. Div.).
- R. v. Osvath*, [1996] O.J. No. 193 (C.A.).
- R. v. Pappajohn* (1979), 45 C.C.C. (2d) 67 (B.C.C.A.).
- R. v. Pappajohn* (1980), 111 D.L.R. (3d) 1 (S.C.C.).
- R. v. R.B.*, [1996] O.J. No. 3140 (Ct. Just. Prov. Div.).
- R. v. Redcliffe*, [1994] O.J. No. 2178 (Ct. Just. Gen. Div.).
- R. v. S.(R.J.)* (1994), 25 W.C.B. (2d) 275 (P.E.I. Sup. Ct.).
- R. v. Thompson*, [1995] O.J. no. 4528 (Ct. Just. Prov. Div.).
- R. v. T.M.*, [1998] O.J. No. 3559 (Ct. Just. Gen. Div.).
- R. v. T.S.*, [1999] O.J. No. 268 (Ct. Just. Gen. Div.).
- R. v. Wald*, [1989] 3 W.W.R. 324 (Alta. C.A.).
- Smart, Carol. "Rape: Law and the Disqualification of Women's Experience." *Feminism and the Power of Law*. London: Routledge, 1989. 26-49.

## PATIENCE WHEATLEY

### Harvest

The neighbours  
in their garden  
she watching him plant fruit trees  
in the first hot April sun

We hadn't seen her for weeks—  
and she held her jacket  
close around her  
and you could tell,  
though she wasn't thin  
or even pale  
that she was ill,  
for instance, her red hair,  
had lost its sheen.

Only a few days later,  
that first Saturday in May,  
he knocked on our door before breakfast:  
"Beth died last night":  
eyelids pink with tears.

Later the daughters,  
in-laws, cousins, aunts,  
and another women, red-haired too,  
stood in the garden turning faces to the sun,  
chattering over punch and coffee,  
while he, with hectic cheeks,  
drank Scotch,  
showed off his fruit trees,  
glancing at the new red-haired woman,  
reminding me of what I thought  
I'd seen that morning  
in his eyes as well as tears:  
the imagined harvest in his new orchard—  
plums, apples cherries.

*Patience Wheatley's poetry appears earlier in this volume.*