

LEGAL BULLETIN

Issue No. 24

The harms of gendered myths and stereotypes about intimate partner and sexual violence: *R v RMD, 2022 ABKB 851 (CanLII)*

Introduction

Claims of false allegations of abuse are problematic defence tactics often intended to undermine survivor’s experiences and facilitate further harm to survivors in family law processes. Specifically, in *R v RMD, 2022 ABKB 851 (CanLII)*, a case related to alleged intimate partner sexual violence, the judge ruled to allow the Accused to cross-examine the Complainant, his ex-partner, on “sexual history evidence,”¹ which could be used to discredit her allegations of sexual assault.² As detailed in this legal bulletin, this case demonstrates how gendered myths and stereotypes, such as women being “vengeful”³ through allegedly levying false allegations of abuse, can underly concerning judicial reasoning and case outcomes.



Background

Charges were laid against the Accused, RMD, for sexually assaulting the Complainant after she “refused to have sex with him” on a camping trip with their two children⁴ in August 2020.

According to the Accused, the morning following the alleged sexual assault, the Complainant requested that he drive her home. They separated quickly thereafter, which the

¹ At p. 3 in Koshan, J. (2023). *The myths of false allegations of intimate partner violence (case comment on: R v RMD, 2022 ABKB 851 (CanLII))*.
https://ablawg.ca/wp-content/uploads/2023/11/Blog_JK_RMD.pdf

² Koshan’s (2023) case comment provided the basis for much of the analysis presented in this bulletin.

³ *R v RMD, 2022 ABKB 851 (CanLII)* at para 60.

⁴ The Accused and Complainant have one biological child, a daughter, and another child “presumably from an earlier relationship one of them was in” (*Ibid* at para. 4).

Accused characterized as him being “done with her now.”⁵ The Accused’s affidavit stated that the Complainant reported the incident of sexual assault to police only after the breakup, which RMD suggests he initiated and that, since then, the Accused and Complainant have been engaged in a family law dispute.

Under the guise of challenges in the parties’ relationship and subsequent separation related to “parenting and financial issues,”⁶ including an on-going custody dispute, the Accused made an application to the court to cross-examine the Complainant under [section 276](#) of the *Criminal Code*,⁷ which is intended to provide “both procedural and substantive protections.”⁸ The Accused argued that this cross-examination was necessary due to the relationship and financial challenges which, he alleged, gave the Complainant “a motive to lie about him assaulting her.”⁹

The introduction of the Complaint’s sexual history into the case was also part of this application, even though the Accused put forward the argument that objective of this cross-examination was not related to the *twins myths*.

“[The Accused] does not intend to question the Complainant about any sexual activity other than to confirm that they had a relationship and have a daughter together. RMD does not intend to rely on any of this evidence on the issue of consent. Cross-examination will focus on the family law issues giving the Complainant a motive to lie.”¹⁰

The stated aim of the Accused was to ensure a fair defence, and the case taking place at a bench trial was suggested to minimize potential harms related to this line of questioning.

Justice Robert Graesser granted the Accused’s application. In Justice Graesser’s decision, he noted:

“The Defence may cross-examination [sic] the Complainant about the circumstances of the breakdown of their relationship as well as the Complainant’s conduct in the family law litigation between her and the Accused. I do not limit the questions on the litigation to parenting issues. They may also include property issues. In saying this, the questions themselves must still be relevant to the issue of a motive to lie.”¹¹

⁵ *Ibid* at para. 11

⁶ *Ibid* at para. 5

⁷ The use of s 276 was supported by precedent set in *R v Goldfinch*, [2019 SCC 38](#), which established that “any evidence of a sexual relationship engages section 276” (*Ibid* at para. 15). *R v Bartholomew*, [2019 ONCA 377](#), *R v Crosby*, [1995] 2 SCR 912, [1995 CanLII 107 \(SCC\)](#), *R v Darrach*, [2000] 2 SCR 443, [2000 SCC 46](#), and *R v RV*, [2019] 3 SCR

237, [2019 SCC 41](#) were also used to support the Accused’s application to the court.

⁸ At p. 3 in Koshan, J. (2023). *The myths of false allegations of intimate partner violence (case comment on: R v RMD, 2022 ABKB 851 (CanLII))*. https://ablawg.ca/wp-content/uploads/2023/11/Blog_JK_RMD.pdf

⁹ *R v RMD*, [2022 ABKB 851 \(CanLII\)](#) at para. 5

¹⁰ *Ibid* at para. 14

¹¹ *Ibid* at para. 67

The Harms of False Allegations and Gendered Myths

The judicial reasoning in this case was deeply interconnected with gendered myths and stereotypes, which is demonstrated in many of Justice Graesser’s findings, such as the belief that women/mothers will falsify allegations of abuse to gain advantage in family law proceedings.

“I can take judicial notice that it is not unheard of for a party involved in family law litigation to lie or exaggerate about violence having been committed against them to gain advantage in parenting matters or property matters.”¹²

Troublingly, Justice Graesser outright dismissed the existence and harms of gendered myths in family law, which is visible in his failure to see the gendered and problematic nature of the Accused’s submission.

Despite the Crown challenging the proposed line of questioning as it may introduce prejudice and gendered myths and stereotypes into the case, such as women allegedly falsifying claims of sexual violence out of “spite” or their supposedly “fickle,” “spiteful,” “malicious,” or “vengeful” nature,¹³ Justice Graesser’s decision notes that:

“[...] I cannot see a connection between the proposed questioning and improper reasoning. Here, no myths of stereotypes are involved. Lying is not influenced by gender, and motives to lie are gender neutral.”¹⁴

In her case comment, Koshan aptly raises concerns about the decision in this case and the courts “failure to see the gendered myths and stereotypes implicit within its reasoning,”¹⁵ which limited elements of this case, such as its evidentiary foundation and scope, and supported the Accused and Defence’s use of false allegations in their application to the court.

Koshan calls into question Justice Graesser’s reasoning in this case, including its prejudicial and gendered implications, and highlights how “the court erred in its interpretation and application of s 276(1).”¹⁶

“By holding that the complainant’s motive to lie is engaged by the accused’s denial of violence and by mere assertion of a family dispute, this decision reinforces myths about the credibility of survivors of violence, engaging one of the ‘twin myths’ in s 276(1) of the Criminal Code. In other words, the evidence that the complainant engaged in other sexual activity – that she was in an intimate

¹² *Ibid* at para. 45

¹³ *Ibid* at para. 60

¹⁴ *Ibid* at para. 62

¹⁵ At p. 5 in Koshan, J. (2023). *The myths of false allegations of intimate partner violence (case*

comment on: R v RMD, 2022 ABKB 851 (CanLII).

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¹⁶ *Ibid* at p. 3

relationship with the accused is now the subject of litigation – was admitted to support the inference that she is less worthy of belief on her allegations of sexual assault, by virtue of this fact alone.”¹⁷

The Justice’s reasoning led to a lack of consideration and assessment of “relevance, probative value, and the potential prejudice to the administration of justice,”¹⁸ which is stipulated under section 276(2) of the *Criminal*

Code. Justice Graesser did not apply section 276(2) in this case.

Justice Graesser’s decision in *R v RMD*, [2022 ABKB 851 \(CanLII\)](#) demonstrates the problematic nature of judicial reasoning that allows for defences based in false allegations of sexual and intimate partner violence. This case also shows the persistence and on-going harm of gendered myths and stereotypes in family law matters.

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¹⁷ *Ibid* at p. 3

¹⁸ *Ibid* at p. 3