

RELEVANCE, GOOD FAITH AND PREJUDICE IN CROSS-EXAM IN SEXUAL ASSAULT TRIALS (EMPHASIZING MATTERS NOT EXPLICITLY DEALT WITH IN SS. 276 AND 278)		
Principle	Specific application to SA	Support
Relevant evidence may nevertheless be excluded	to protect values that our society holds dear (such as sexual equality, encouraging of the report of SA)	<i>Seaboyer</i> ; Charter ss. 15, 28; list of factors under CCC s. 276
	if it distorts rather than enhances the truth (particular danger in SA cases)	<i>Seaboyer</i> ; Osolin; <i>McCormick's Handbook of the Law of Evidence</i> (2nd ed. 1972) at pp. 439-40 (as quoted in <i>Seaboyer</i>); <i>Wigmore on Evidence</i> , vol. 1A (Tillers rev. 1983), at p. 969 (as quoted in <i>Osolin</i>)
Relevant evidence may be excluded if it distorts rather than enhances the truth	because the facts offered may unduly arouse the jury's emotions of prejudice, hostility or sympathy	<i>Seaboyer</i> ; J. A. Tanford and A. J. Bocchino, "Rape Victim Shield Laws and the Sixth Amendment" (1980), 128 <i>U. Pa. L. Rev.</i> 544 (as quoted in <i>Seaboyer</i>)
	because of the probability that the proof and the answering evidence that it provokes may create a side issue that will unduly distract the jury from the main issues	<i>Seaboyer</i> ; J. A. Tanford and A. J. Bocchino, "Rape Victim Shield Laws and the Sixth Amendment" (1980), 128 <i>U. Pa. L. Rev.</i> 544 (as quoted in <i>Seaboyer</i>); <i>W(DD)</i>
	because of the likelihood that the evidence offered and the counter proof will consume an undue amount of time	<i>Seaboyer</i> ; J. A. Tanford and A. J. Bocchino, "Rape Victim Shield Laws and the Sixth Amendment" (1980), 128 <i>U. Pa. L. Rev.</i> 544 (as quoted in <i>Seaboyer</i>)

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Where a question implies the existence of a disputed factual predicate that is manifestly tenuous or suspect , a trial judge may seek assurance that a good faith basis exists for the question	The Crown is entitled to object and ask that the judge make an inquiry as to whether there is a good faith basis for the questions or to show good faith on a voir dire if a question implies the existence of a disputed factual predicate that is manifestly tenuous or suspect	<i>Lyttle</i>
"Good faith basis" means "honestly advanced on the strength of reasonable inference, experience or intuition"	Suggest: Rape or gender myths are never reasonable, therefore never can form good faith basis for questioning	<i>Lyttle</i>
To assert or to imply in a manner that is calculated to mislead is improper and prohibited	Suggest: questions based on rape myths that counsel should know are prohibited are "calculated to mislead"	<i>Lyttle</i> ; and <i>Seaboyer</i> ; or <i>Osolin</i>
Counsel merely taking a random shot at a reputation imprudently exposed or asking a groundless question to waft an unwarranted innuendo into the jury box is not permissible		<i>Lyttle</i> ; <i>Michelson</i> (as quoted in <i>Lyttle</i>)

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<p>Generally, in SA cases, trial judge must exercise caution in permitting examination on matters like the complainant's background, which may have little or no relevance to the actual issues and at the same time may unduly prejudice her reputation and privacy</p>		<p><i>Osolin</i></p>
<p>As a general rule the trial of an accused on a charge of sexual assault need not and should not become an occasion for putting the complainant's lifestyle and reputation on trial. The exception to this rule will arise in those relatively rare cases where the complainant may be fraudulent, cruelly mischievous or maliciously mendacious.</p>		<p><i>Osolin</i></p>
<p>Rape myths always more prejudicial than probative</p>	<p>Prejudice may be to complainant <i>or</i> the proper administration of justice</p>	<p><i>Osolin;</i> <i>Charter ss. 15, 28</i></p>
<p>Rape myths enumerated by the SCC include</p>	<p>certain types of women "unrapable"</p>	<p><i>Osolin</i></p>
	<p>certain women because of their occupations are unworthy of belief</p>	<p><i>Osolin</i></p>
	<p>women by their behaviour or appearance may be responsible for the occurrence of sexual assault</p>	<p><i>Osolin;</i> <i>Ewanchuk</i></p>
	<p>drug use is relevant to the issue of credibility as to consent</p>	<p><i>Osolin</i></p>
	<p>dependence on social assistance is relevant to the issue of credibility as to consent</p>	<p><i>Osolin;</i> <i>Ewanchuk</i></p>

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	Women are "emotional." Certain emotional reactions lend credibility to the assault report, whereas the opposite reactions lead to the conclusion that the complainant must be fabricating the event. if a woman is raped, she will get hysterical during the event and she will be visibly upset afterward. If she is able to "retain her cool," then "nothing happened".	<i>Osolin; Seaboyer</i>
	Immediate reporting of the assault, despite all of the barriers that might discourage such reports, lends credibility to the assault report, whereas the opposite diminishes credibility	<i>Osolin; Seaboyer; CCC s. 275</i>
	women, out of spite, fickleness or fantasy are inclined to lie about sexual assault	<i>Osolin; Ewanchuk; Seaboyer</i>
	false allegations are more common in sexual assaults than in other offences	<i>Osolin</i>
	extraordinary need for caution with respect to the credibility of SA complainants	<i>Osolin</i>
	a woman cannot be raped against her will, that if she really wants to prevent a rape she can	<i>Seaboyer</i>
	rapists are strangers; interaction between friends or between relatives does not result in rape	<i>Seaboyer</i>
	women must be 100% "proper and respectable" to be believed	<i>Seaboyer</i>
	Female sexual behavior, depending on her age, is under the surveillance of her parents or her husband, and also more generally of the community. Thus, if a woman says she was raped it must be because she consented to sex that she was not supposed to have.	<i>Seaboyer</i>
	women may say "no" but mean "yes"	<i>Ewanchuk</i>
	sexually experienced victim/survivors experience less harm than less sexually experienced victim/survivors	<i>Ewanchuk</i>
	rape by a stranger is worse than rape by an acquaintance	<i>Ewanchuk</i>
	women's "normal" sexuality is passive, constituted largely of "submission"	<i>Ewanchuk</i>
	sexually aggressive behaviour is more "hormonal" than "criminal"	<i>Ewanchuk</i>

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Improper to consider so-called "victim-precipitating" conduct		<i>Seaboyer; Ewanchuk</i>
	such as going to a bar	<i>Seaboyer</i>
	or getting into a car with the defendant	<i>Seaboyer</i>
Complainant should not be measured against current rape mythologies of 1. who she should be in order to be recognized as having been, in the eyes of the law, raped; 2. who her attacker must be in order to be recognized, in the eyes of the law, as a potential rapist; and 3. how injured she must be in order to be believed.		<i>Seaboyer</i>
Cross-examination on prior sexual abuse by other than accused disallowed as irrelevant.		<i>Bunn</i>
Cross-examination on prior sexual assault allegations only allowed where demonstrably false. Acquittal does not demonstrate allegation was false.		<i>Riley; Bunn</i>
Prior allegations totally collateral matters; trial judge has discretion to exclude cross-examination		<i>Bunn; Meddoui</i>
Evidence of prior sexual assault allegations subject to s. 276 screen		<i>Bunn</i>