***R v. Sullivan* and *R v. Chan* - FAQ**

LEAF created this fact sheet to answer some frequently asked questions about the complex legal issues that were raised in these appeals.

Q: What was this appeal about?

Section 33.1 of the *Criminal Code* prevented accused persons from using the defence of 'voluntary self-induced extreme intoxication' in cases where, while in that state, they commit a violent offence. This level of intoxication leads to the accused being so intoxicated that they are in a state of 'automatism', where their actions are not considered voluntary or something they can control. Section 33.1 was put in place by Parliament, in part, to protect women and children from intoxicated violence. In this appeal, the Court of Appeal for Ontario found that this section breaches the *Charter* rights of accused people and, therefore, is no longer in effect in Ontario. This means the defence is now available in Ontario, in certain circumstances, which should be very rare.

Q: What is voluntary self-induced extreme intoxication?

To be able to raise the defence of self-induced extreme intoxication, an accused would need to be so extremely intoxicated that they were capable of acting, but their actions were neither voluntary nor something they could control. This defence would not be available for most cases. Having some memory loss as a result of drinking – or even significant blackouts – would not entitle an accused to raise the defence. Expert evidence would be required to prove the defence.

Q: What does this decision mean for survivors of sexual assault?

When Parliament enacted this section in the *Criminal Code*, it was trying to achieve an appropriate balance between the rights of the accused and the rights of women to equality, security and dignity. The Court of Appeal did recognize the importance of the rights of women and children, but ultimately seemed to give them very little weight in its decision. The Court's failure to recognize the connection between concerns about a lack of accountability for intoxicated offenders and the reluctance of survivors to report their abuse is frustrating. It seems to show us once again that judges do not appreciate or understand the lived experiences of survivors – and their concerns about the justice system's failure to meet their needs or address their trauma.

That said, it is important not to overstate the scope of the Court's decision. The Court did not find that intoxication is now an available defence to sexual assault. Media and social media reports that have said this is the state of the law in Ontario are wrong. An accused would have to be in a very extreme state of intoxication to have access to this defence. It requires proof that your body was operating independently from your mind, which is a rare physical state. It is not something that ordinarily occurs when individuals become intoxicated.

Q: What does LEAF think about this decision?

The message this case sends to women who have been the victim of intoxicated violence is troubling – yet all too familiar. Men can voluntarily consume intoxicants to the point where they lose control over their conduct – and even harm others while in that state – but will not be held responsible for doing so. This absolves men from responsibility for getting themselves into that state of extreme intoxication and shifts responsibility to women to protect themselves from intoxicated violence.

We want to be sure that the meaning – and impact – of this decision are not misrepresented. Uncertainty about the state of the law and one's rights may add to confusion and to the distrust of our criminal justice system. This defence has only been raised a handful of times in the past 25 years. While this is likely due in part to the fact that s. 33.1 of the Criminal Code disallowed the defence from being used in cases concerning violent offences, including sexual assault, it also speaks to how rare this form of intoxication can be.

That being said, women's needs have too often been forgotten in the criminal justice system, and we believe that they have legitimate reason to be concerned that this defence will be raised and accepted even in borderline cases. It is for this reason that we feel strongly that all participants in the justice system (police, judges, prosecutors, defence lawyers, etc.) must ensure that this decision is understood and applied correctly, so that it does not lead to a lack of accountability for people who should not have access to this defence. This is part of the broader work that needs to be done to make the justice system more accessible to sexual assault survivors, and to end rape culture.

Q: What happens now?

The Attorney General of Ontario has advised that they will seek leave to appeal the decision. If the Supreme Court of Canada decides to hear this appeal, LEAF would likely apply to intervene to ensure that women and children's rights to dignity and security are given appropriate consideration in the Court's assessment of whether section 33.1 should be allowed to continue.

Q: What can I do to help?

Help us to share accurate information about the decision. Survivors and possible perpetrators need to know that sexual assault or other acts of violence remain criminal offences for which an accused can be found guilty – even if they are committed while intoxicated by alcohol and/or drugs.

LEAF will continue to advocate for women's rights to equality, dignity and security in all its work. Please consider donating to help support our work at: www.leaf.ca/donate