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R. v. Sullivan and R. v. Chan – Fact Sheet on Extreme Intoxication

What are these cases about?

These cases concern s. 33.1 of the *Criminal Code*. This provision prevents people from using the defence of “self-induced extreme intoxication” to avoid criminal responsibility for certain violent offences, including sexual assault.

What is self-induced extreme intoxication?

Extreme intoxication means that a person is so intoxicated that they are in a state of “automatism”, meaning their actions are not considered voluntary or something they can control. Self-induced means that the person chose to consume intoxicants such as alcohol or drugs.

What is the current status of these cases?

In June 2020, the Court of Appeal for Ontario found that s. 33.1 breaches the *Charter* rights of accused persons, because it allows them to be convicted of a crime even though they did not intend their actions. As a result, the defence is now available in Ontario.

The Supreme Court of Canada has agreed to hear an appeal of this decision, and will decide whether or not s. 33.1 is constitutional. This will determine whether or not the defence is available in all of Canada.

If the Supreme Court says this defence is unconstitutional, does that mean people who commit sexual assault while intoxicated can't be found guilty of a crime?

No. Intoxication has never been, and is not now, a defence to sexual assault.

An accused would have to be in an extreme state of intoxication to have access to this defence. To successfully raise the defence, an accused would need to prove on a balance of probabilities, and supported by expert evidence, that their body was operating independently from their mind.

Extreme intoxication is not something that ordinarily occurs when individuals become intoxicated through alcohol. Some evidence suggests that it is not even physically possible to reach this state through alcohol consumption alone.¹ Having some memory loss as a result of drinking – or even significant blackouts – would not entitle an accused to raise the defence.

Why are LEAF and others concerned about this case?

Section 33.1 was put in place by Parliament, in part, to protect women and children from intoxicated violence. We know that women and children face disproportionate levels of violence, including sexual

¹ This includes evidence that was before Parliament when it enacted s. 33.1. See, for example: Harold Kalant, “Intoxicated automatism: legal concept vs. scientific evidence” (1996) 23:4 Contemporary Drug Problems.



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violence. In addition, many sexual assaults are committed in the context of intoxication, and drugs and alcohol are often factors in sexual and physical violence.

LEAF is concerned about shifting responsibility to women and children to protect themselves from intoxicated violence, instead of requiring perpetrators to take responsibility for becoming extremely intoxicated.

LEAF is also concerned that if the Supreme Court finds that s. 33.1 is unconstitutional, sexual assault survivors will see this as yet another way the justice system has failed them. It will be critical to provide accurate information about the limited availability of the defence, so that survivors who want to report do not see this as a barrier to reporting.

Equally important will be the need to ensure that all participants in the justice system (police, judges, prosecutors, defence lawyers, etc.) understand and correctly apply the decision, so that it does not lead to a lack of accountability. 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.

What happens next?

LEAF will draft its written arguments and provide them to the Court this summer. The Court has set a tentative date of October 2021 to hear the cases.

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.

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