

# Sexual Assault and Extreme Intoxication

This fall, the Supreme Court will consider two cases about "self-induced extreme intoxication" and violent offences, including sexual assault.

LEAF will be there to advocate for the equality rights of survivors of sexual and physical violence.

## 1 What are these cases about?

### Section 33.1 of the *Criminal Code*

Section 33.1 prevents people from using the defence of "self-induced extreme intoxication" to avoid criminal responsibility for certain violent offences, including sexual assault.



## 2 What is "self-induced extreme intoxication"?

Self-induced extreme intoxication isn't just getting really drunk, or really high. It has a specific meaning.



### Extreme Intoxication

When a person is so intoxicated that they are in a state of "automatism" - meaning their actions are not voluntary or something they can control

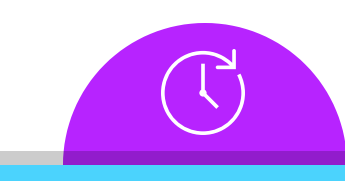


### Self-induced

The person chose to consume the substances, such as alcohol or drugs, that caused their intoxicated state



## 3 What is the current status of these cases?

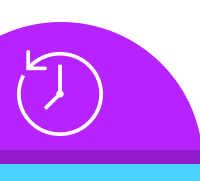


### Court of Appeal for Ontario

In June 2020, the Court of Appeal for Ontario found that s. 33.1 breaches the *Charter* rights of accused persons.

This is 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.



### Supreme Court of Canada

On October 12, 2021, the Supreme Court of Canada will hear an appeal of this decision.

The Court will decide whether or not s. 33.1 is constitutional.

This will determine whether or not the defence is available in all of Canada.

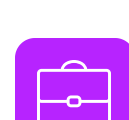
## 4 What if the Supreme Court says this defence is unconstitutional?

Does it mean people who commit sexual assault while intoxicated can't be found guilty of a crime?



### No, it does not!

Intoxication has never been, and is not now, a defence to sexual assault.



### Extreme intoxication is required

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.



### This is not something that normally happens with alcohol

Some evidence suggests that it is not even physically possible to reach this state through alcohol consumption alone.

Having some memory loss as a result of drinking – or even significant blackouts – would not entitle an accused to raise the defence.



## 5 Why are LEAF and others concerned about this case?



Women and children face **disproportionate** levels of violence, including sexual violence.



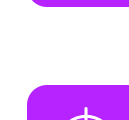
Many sexual assaults are committed in the context of **intoxication**, and drugs and alcohol are often a factor in sexual and physical violence.



Perpetrators should **take responsibility** for becoming extremely intoxicated, instead of requiring women and children to protect themselves from violence.



If the Supreme Court finds the defence is unconstitutional, sexual assault survivors may see this as another way the system has **failed** them.

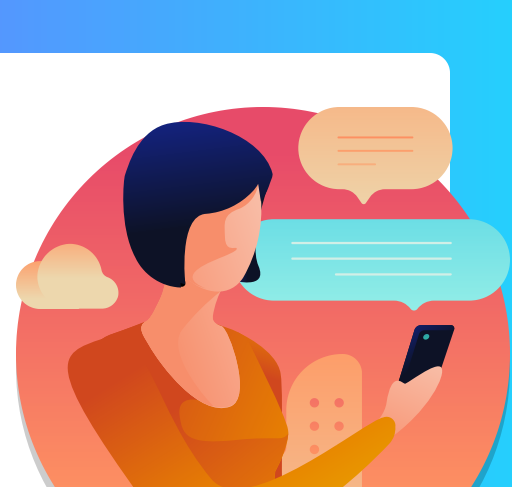


It will be critical to provide **accurate information** about the limited availability of the defence, so that survivors who want to report do not see this as a barrier to reporting.



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.**



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