No use to holler rape

by Jancis Andrews
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Most Canadians are unaware of an astonishing event that has taken place recently in this country, and which affects the safety of 51 per cent of the population.

I refer to the dangerous precedent which has been established in Canada by the Regina vs. Pappajohn rape case. Although the Supreme Court upheld the conviction of rapist George Pappajohn, a decision was taken which is nothing short of incredible, and which poses a grave danger to all Canadian females.

The Supreme Court of Canada judges, all male, who heard Pappajohn's appeal against conviction, agreed that if an accused rapist claims he honestly believed the woman consented to sex, then he need not provide any reasonable grounds for his belief. In other words, the would-be rapist can feel free to ignore his victim's begging for mercy, screams or kicks.

All he need say is that, in spite of all the woman's protests, he honestly believed it was okay — and he need not provide any grounds outlining why he believed it was okay!

The origin of this incredible line of defence for accused rapists is the 1975 DPP vs. Morgan case in the United Kingdom, where the British House of Lords decided (against bitter protests from women's groups and even from male lawyers) that a man accused of rape need not provide reasonable grounds for his professed belief that a woman had consented to sexual intercourse.

In the Morgan case a woman had been raped by three men at the invitation of her husband. He had told the rapists that his wife would scream and cry, but that was only play-acting; in reality she liked it. Consequently, although the woman cried and begged the men to leave her alone, she was raped.

At the trial, the rapists used the husband's invitation as their defence, and this defence was eventually accepted. The evidence of the victim — that she had screamed and resisted — was apparently considered to be of less importance.

Shortly after the Morgan decision was handed down, a man who had already been convicted of rape had his conviction overturned as a result of the Lords' decision. His defence was that as a result of a conversation with the victim's husband, he too believed she was consenting, even though at the time of the rape the woman herself was crying and asking to be left alone. In this case also, the husband had invited another man to rape his wife.

In other words, because of the Lords' decision, a woman in England in 1975 lost all say in whether any attention should be paid to her protests that she did not want to be raped. A man's opinion — whether that man was her husband or a stranger — was considered to carry more weight than anything she could say or do.

Pappajohn quoted the Morgan decision, and although he lost his appeal, the Supreme Court decided to adopt the Morgan decision that a rapist need not have reasonable grounds for his belief that a woman was inviting him to have sexual intercourse.

Victims of rapists have two choices: to physically resist the attacker, with the risk that this will provoke him to use greater force which may result in her death; or to accept the degradation, physical damage and emotional anguish of a rape.

As most women in Canada know, women have been advised by police and Rape Crisis Centres not to resist strenuously if they are attacked. Women are told to run away if it is possible; they can beg, they can cry, they can scream, but if all these fail, society tells women it is better that they should submit to rape than that they should be murdered.

However, society assures women that if he is caught, the rapist will be punished for his crime. Yet if women accept rape instead of murder, this very acquiescence can be used against them by the rapist's lawyers, who will ask, "If you truly did not want to be raped, why did you not fight back?" (thus insinuating the woman did, in fact, desire sexual intercourse).

It is a Catch 22 situation. Women are murdered if they do fight back, and they are damned by the courts if they do not. It is well known that it has always been extremely difficult for a woman to prove rape. Now, with the Pappajohn decision, it appears women can lose all legal recourse altogether. All the rapist need say is that he honestly believed the woman consented to sex, in spite of his having no reasonable grounds for believing so.

there be two different levels of justice in Canada for rape victims of the future. with the punishment depending on the sex of the victim? This question must be answered!

Readers will note that in both the Morgan and the Cogan cases, a husband had invited men to rape his wife, which apparently was enough to throw charges of rape out of court. Once again, as in previous centuries, a wife was reduced to the position of chattel, to be loaned out by her husband in the same way that he might loan out his car. And it is this Morgan precedent that our own Canadian judges have accepted as being fair and just, and on which they based their Pappajohn decision.

One may ask, "If a rapist is legally entitled to ignore a woman's screams and protests, what can a woman do to make it absolutely clear she objects to being raped?" The answer to this, since the Pappajohn decision, is — nothing. Whatever she says is going to be ignored, whatever she does is going to be ignored, whatever she screams is going to be ignored. The honest belief of the rapist will be considered more important than all her kicking and screaming. The precedent-setting Pappajohn decision represents carte blanche for rapists.

Incredible? Yes. Unjust? Yes. Insane? Yes. But it is really happening.

Women would like to ask: In what other criminal situation is the honest belief of the criminal taken into account?

A man is returning home after an evening out, when he is set upon and beaten up by a stranger who gets a thrill out of doing that particular kind of thing. The man struggles and fights back. Later, the stranger is arrested. He uses as his defence the plea that while it was true the man had resisted his attack, he nevertheless honestly believed, without having reasonable grounds for that belief, that the man in truth enjoyed being physically assaulted. Such a defence would be swept aside with contempt.

Yet this defence is being taken seriously when the attack is against a woman. Why? Why are women being treated with less justice?

Let us explore further. The scene is a prison rape, with a young male prisoner being sexually attacked by three other prisoners. He yells and kicks — it is useless. He is raped. What we women want to know is — can these rapists use the defence that they honestly believed the young prisoner was consenting to sex, although they had no reasonable grounds for their belief?

Will male victims receive the same treatment from the courts as female rape victims? Or will male victims continue to receive the protection of the pre-precedent law? Will

One does not have to think very hard before one can envisage the future. The Pappajohn decision has given rapists a golden excuse for rape, and this line of defence most certainly will be used — how could a rapist turn such a chance down? It is too good to be true. And this at a time when the crime of rape is on the increase!

This dangerous Pappajohn precedent has spurred Svend Robinson, MP for Burnaby to bring in a private member's bill to amend the Criminal Code, so that accused rapists will not have available to them the defence of "honest belief in consent, without reasonable grounds for that belief."

He also wants rape removed from the classification of sexual offence, and reclassified as a crime of violent physical assault, which definition more accurately reflects the crime of rape. It is up to all concerned Canadians to support him, regardless of party affiliations.

Knowing how busy everyone is today, and also that many people have difficulty expressing their thoughts on paper, the North Shore Women's Centre has prepared a form letter for all concerned Canadians, both male and female, to sign. The steps to follow are as outlined:

To the Hon. Svend Robinson, M.P., House of Commons, Ottawa, Ont. K1A 0A6. Dear Mr. Robinson, We support the private member's bill you are presenting this fall, in which you will attempt to have the Criminal Code amended so that accused rapists will not have available to them the defence of "honest belief without reasonable grounds" as decided by the Supreme Court in the recent Pappajohn rape trial. We also demand that the crime of rape be reclassified as a crime of violent, physical assault. We call on all Members of Parliament to support your bill. (Signed.)

Obtain as many signatures (not printed) and addresses as possible, and forward them to Robinson. If you have access to a photostat machine, take three more copies of your letter and forward them to Jean Chretien, minister for justice, Lloyd Axworthy, minister for the status of women, and your own MP respectively.

A bother and a drag? Of course it is. But we are talking about the safety of your sisters, your mothers, your daughters, your friends, both young and old. The matter is urgent. Surely people can afford 30 minutes to make sure such an injustice is never allowed to become a permanent part of Canadian law? If it does, we will only have our own apathy to blame.

The Canadian public must make its legislators understand that an injustice like this cannot be tolerated. Canada does not have to import the blind mistakes of the British House of Lords, or have to accept the blind actions of the Supreme Court. Justice Dickson, one of the Supreme Court judges, made a very confused statement. He said: ". . .the crime of rape involves an act — sexual intercourse — which is not itself either criminal or unlawful and can indeed be both desirable and pleasurable." It is frightening to suspect that those who administer justice in our courts have not kept up with the latest studies on rape. Psychologists and psychiatrists have proved beyond any doubt that the crime of rape does not involve sexual lust — rather, it is an act which uses sex in order to terrify, humiliate and subjugate the victim. In other words, it is the worst sort of power trip. The Supreme Court judges apparently do not know that one of the characteristics that rapists have in common is their hatred and contempt for women.