False Accusations of Sexual Assault: Between Myths, Stereotypes, and Evidentiary Foundation

SANDRINE AMPLEMAN-TREMBLAY*

ABSTRACT

The case law and literature on sexual assault divide myths and stereotypes into two categories: those related to consent and those that deem some complainants less worthy of belief. The literature also indicates that, while the law is clear on proscribed reasonings, legal actors sometimes rely on such arguments. The paper investigates how defence counsel conceptualize false accusations of sexual assault by compiling data from defence counsel's websites. It then categorizes the narratives surrounding false accusations according to this dual myths and stereotypes typology. The idea is not to claim that defence counsel always rely on discriminatory reasoning, but rather to show how blurry the line can be between a narrative supported by an evidentiary foundation and one that contributes to myths and stereotypes. The paper contrasts defence counsel's narratives with courts' responses to see how judges have

* Assistant Professor, Faculty of Law, University of Alberta. I am deeply grateful to the research assistants who participated in different phases of this project, including Patrick Battigelli, John Paul Shannon, and Eli Ziff. I must also thank my colleagues Ubaka Ogbugu and Anna Lund, who helped me think through the structure of this paper. Finally, many thanks to the peer reviewers for their insightful feedback and to the editorial team of the Manitoba Law Journal for their professionalism.

pushed back on some arguments, when deemed problematic, or accepted others when supported by a proper evidentiary foundation. This methodology leads to two main normative conclusions: (1) the law ought to adopt a case-by-case approach instead of accepting that false accusations may or will happen in a given situation, and (2) courts and counsel must refine their definition of a proper evidentiary foundation. This second suggestion is essential since an evidentiary foundation, if reached, allows for the admissibility of narratives that would otherwise amount to myths or stereotypes. An imprecise or unclear understanding of this requirement can lead to the reintroduction of discriminatory reasoning despite Parliament's efforts to address historical injustices.

Keywords: *False accusations; Sexual assault; Myths and Stereotypes; Consent; Credibility; Defence Counsel; Evidence law*

While false accusations of sexual assault have received increased attention since #metoo,[1] it would be

---

[1] William Jaska Criminal Litigation, "How common are false allegations of sexual assault in Canada?" (4 July 2023), online: <Toronto-criminal-lawyer.co> [perma.cc/L4WG-674J]. Some firms expressed that the increased complexity of sexual charges in a post-#MeToo world, in addition to higher reporting and a change of approach in courts, are key factors. Others tied the social movement to an increase in reporting and attention, unfairness to the accused (by alluding to the erosion of institutional safeguards or a presumption of guilt), a shift in courts' approach to sexual assault, or a delicate political climate muddying the waters between false accusations and valid ones (see, e.g., "What happens if you are falsely accused of sexual assault?" *Céline Dostaler Criminal Defence Lawyer* (16 June 2020), online: <celinedostaler.ca> [perma.cc/C2XS-AEWZ] [Dostaler, "What happens if you are falsely accused"]; "Sexual Assault: Have You Been Charged with Sexual Assault?" *Hepburn Law* (last visited 11 June 2026), online: <criminaldefencelawyerontario.com> [perma.cc/X7JP-PWFL]; "Withdrawn charges sound alarm about false allegations: Harnett", *Aaron B Harnett Criminal Defence Lawyer* (11 November 2018), online: <aaronharnett.com> [perma.cc/WPP6-5FAF] (article originally published on November 11, 2018 by Advocate Daily); "Sexual Assault Lawyer in Winnipeg", *Joshua Rogala*

misleading to characterize the fear of such accusations as new. Legal actors have treated complainants of sexual assault with skepticism, as they worried about false claims and their impact on the innocent. For instance, Glanville Williams, a well-known law professor, wrote in 1962, "[s]exual cases are particularly subject to the danger of deliberately false charges resulting from sexual neurosis, phantasy, jealousy, spite or simply a girl's refusal to admit that she consented to an act of which she is now ashamed."[2] More recently, an author discussing corroboration and gender-based evidence rules pointed to the famous *Treatise on the Anglo-American System of Evidence in Trials at Common Law (Wigmore Treatise)* as an example of historical distrust of sexual assault complainants.[3] The supplement to the second edition of the *Wigmore Treatise*, published in 1923, asserted:

> The unchaste (let us call it) mentality finds incidental but direct expression in the narration of imaginary sex incidents of which the

---

Criminal Defence Lawyer (last visited 11 June 2026), online: <winnipegcriminaldefencelawyer.ca> [perma.cc/3PS6-VD5D?type=standard]; Tonii Roulston, "Falsely Charged with Sexual Assault? We Can Help", *Roulston Urquhart Criminal Defence* (2 May 2022), online: <calgarydefence.com> [perma.cc/9C9N-N82J]; "Toronto Sexual Assault Lawyers", *Shaffie Law* (last visited 11 June 2026), online: <shaffielaw.ca> [perma.cc/Z24F-K8E3]; Tonii Roulston, "Sex Assault Accusations Against Canadian Billionaire" *Roulston Urquhart Criminal Defence* (6 September 2024), online: <calgarydefence.com> [perma.cc/LGR2-UWV9] [Roulston, "Billionaire"]. See also the literature emerging since #MeToo (see generally Katie Hail-Jares et al, "False Rape Allegations: Do They Lead to a Wrongful Conviction Following the Indictment of an Innocent Defendant?" (2020) 37:2 Justice Q 281 at 281–82; Ashley K Fansher, Tumelo Musamali &Madison Self, "Fear and Consent: An Exploratory Study of Fear of False Accusations of Sexual Assault and Consent-Seeking Practices" (2023) 22:1 J School Violence 75 at 75; Charlie Huntington, Alan D Berkowitz &Lindsay M Orchowski, "False accusations of sexual assault: Prevalence, misperceptions, and implications for prevention work with men and boys" in Lindsay M Orchowski & Alan D Berkowitz, eds, *Engaging Boys and Men in Sexual Assault Prevention: Theory, Research and Practice* (London: Academic Press: 2022) 379 at 379, 386.

[2] Glanville Williams, "Corroboration – Sexual cases" (1962) Crim L Rev 662 at 662.

[3] Zoé Bernicchia-Freeman, "Gendered Credibility on Trial: Canadian Sexual Assault Law Reform and the Doctrine of Recent Complaint" (2025) 16:1 Western J Leg Studies 1 at 4–5.

> narrator is the heroine or the victim. On the surface the narration is straightforward and convincing. The real victim, however, too often in such cases is the innocent man; for the respect and sympathy naturally felt by any tribunal for a wronged female helps to give easy credit to such a plausible tale.[4]

This quote implies that false accusations will lead to convictions. When contrasting this statement with the literature, it poses two specific problems: (1) sexual assault has been under-prosecuted and under-reported historically, which could translate into an exaggeration of the potential for false accusations,[5] and, (2) there is no clear evidence that false accusations regularly led to the conviction of the innocent.[6] The idea of under-reporting and under-prosecution highlights that discussions of false accusations of sexual assault must take into account–in addition to the possibility for wrongful convictions–the particular challenges experienced by victims of this gendered and traumatic crime.

This sentiment was echoed by the Supreme Court of Canada in *R v Kruk*.[7] The Court held that the law of sexual assault is meant to protect complainants against stereotypes and myths that "developed in a particular historical context".[8] For example, it

---

4 John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, supplement to the 2nd ed (Boston: Little, Brown, and Company, 1923) at 379 (as cited by Bernicchia-Freeman, *supra* note 3 at 4).

5 See judicial recognition of this assertion in *R v Seaboyer*, 1991 CanLII 76 (SCC) at 669, L'Heureux-Dubé J, dissenting in part. For recent statistics on reported rates, see Statistics Canada, *Recent trends in police-reported clearance status of sexual assault and other violence crime in Canada, 2017 to 2022*, by Shana Conroy, Catalogue No 85-002-X (Ottawa: Statistics Canada, 26 April 2024) at 4, online: <150.statcan.gc.ca> [perma.cc/YM3P-2VNB].

6 See Hail-Jares et al, *supra* note 1 at 285–86, 295.

7 2024 SCC 7 [*Kruk*].

8 *Ibid* at para 30. On corroboration rules, see e.g. *Hubin v The King*, 1927 CanLII 79 (SCC); Constance Backhouse, "Credibility, Corroboration, and Legal Betrayal of Rape Victims" in Lori Chambers & Joan Sangster, eds, *Essays in the History of Canadian Law: New Essays in Women's History*, vol. XII, (Toronto: Osgoode Society for Canadian Legal History, 2023). On the persistence of assumptions about partner rape, see e.g. Ruthy Lazar, "Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario, Canada" (2010) 22:2 CJWL 329. On the doctrine of recent

recognized that the non-criminalization of marital rape, corroboration rules, and the doctrine of recent complaint all conveyed discriminatory ideas, including the fact that women were less worthy of belief.[9] *Kruk* also reaffirmed the existing case law on myths, stereotypes, and false accusations by rejecting that sexual assault complainants are less reliable and credible, and that fabricated allegations reported as a means to pursue ulterior motives are more likely in cases of sexual assault.[10] The excerpts from Glanville and the *Wigmore Treatise* cited above are compelling reminders of this historical context of distrust and exaggeration of false claims to which the Court referred.

More specifically, *Kruk* relied on the distinct nature of myths and stereotypes against complainants of sexual assault when refusing to adopt a rule on ungrounded common-sense assumptions extending prohibitions surrounding inferences based on stereotypes to the accused and other witnesses.[11] The proposed rule would have transformed any ungrounded common-sense assumptions about human nature (including the conduct of the accused) into errors of law and would have allowed for appellate intervention on a correctness basis. Consequently, it would have caused a significant change in the way the law addresses credibility and reliability in sexual assault (or other criminal) cases.[12] The Court decried that "the [proposed] rule disregards the distinct

---

complaints, see Elaine Craig, "The Relevance of Delayed Disclosure to Complainant Credibility in Cases of Sexual Offence" (2011) 36:2 Queen's LJ 551; *R v DD*, 2000 SCC 43.

9 *Kruk*, *supra* note 7 at paras 31–37.

10 *Ibid* at para 31, 35 (citing *R v Seaboyer*, *supra* note 5 at 669, L'Heureux-Dubé J, dissenting in part); *R v Osolin*, 1993 CanLII 54 (SCC) at 625, L'Heureux-Dubé J, dissenting); *R v AG*, 2000 SCC 17 at para 3, L'Heureux-Dubé J, concurring.

11 *Kruk*, *supra* note 7 at paras 23–26.

12 *Ibid* at paras 1–3, 17, 23–24, 26, 69–79. The Court explained the idea behind the rule: "The proponents of the rule against ungrounded common-sense assumptions argue that if reliance on myths and stereotypes about complainant is an error or law, then all unfounded and speculative assumptions about all witnesses, including the accused, should be treated in the same manner" (*ibid* at para 29).

nature of myths and stereotypes about complainants, transforming all factual generalizations regardless of their nature into errors of law and imposing *a false symmetry* to the circumstances of accused persons."[13] It then stressed that this symmetry is not desirable as the rule on stereotypes against complainants originated in a historical context that discriminated against *this* group.[14] *Kruk* thus applied an equality lens to myths and stereotypes about complainants. While accused have not historically faced these same stereotypes as complainants, the Court remained open to engaging with any discriminatory treatment of accused or other individuals.[15] Such open-mindedness, however, does not mean that all ungrounded common-sense assumptions amount to the same form of inequality.

Justice Martin, who wrote the reasons for judgment, divided myths and stereotypes in two categories: the nature of consent and the lack of credibility of complainants due to their membership to a group that is "less worthy of belief".[16] This classification is not surprising in light of s. 276 of the *Criminal Code*, which stipulates that "evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant (a) is *more likely to have consented* to the sexual activity that forms the subject-matter of the charge; or (b) is *less worthy of belief*."[17] While the provision pertains to past sexual history, it clearly highlights the twin myths that have been prejudicial to complainants historically.

A year later, the Supreme Court rendered its decision in *R v Sheppard*, which latter similarly added to the jurisprudence on

13 *Ibid* at para 28 [my emphasis].

14 *Ibid* at paras 30–52.

15 *Ibid* at para 54.

16 *Ibid* at paras 31, 32. For a more expansive discussion of this idea, see also Jennifer Koshan, "Myths, Stereotypes, and Substantive Equality", *ABLawg* (29 November 2024) at 3, online: <ablawg.ca> [perma.cc/LH4L-F96Q] [Koshan, "Myths, Stereotypes, and Substantive Equality"]; and Melanie Randall, "Sexual Assault Law, Credibility, and 'Ideal Victims': Consent Resistance, and Victim Blaming" (2010) 22:2 CJWL 397.

17 RSC 1985, c C-46, s 276 [emphasis added].

myths, stereotypes, and discrimination against sexual assault complainants.[18] For example, the Court denounced myths and stereotypes in the context of sexual violence by emphasizing that not confronting or fleeing from an abuser does not undermine a complainant's credibility.[19] The decision then engaged with other myths and stereotypes that still pervade the legal system. It ruled that equating sexual violence to something more than non-consensual touching–like some reasons of the Court of Appeal had done–reproduces the myth that "real rape" has to include additional physical violence.[20] With this decision, the Court reinforced a judicial attitude that pivoted from historical distrust of complainants to a recognition of the gravity of sexual violence as well as the discrimination experienced in this area of the law. Interestingly, it also brought forward additional examples of the categories of myths and stereotypes outlined by *Kruk*.

This introduction identified two significant themes in the study of false accusations: myths and stereotypes in the ways in which legal actors have perceived victims of sexual violence and wrongful convictions. Wrongful convictions, while a crucial consideration, are outside the scope of this paper. I still deem it important to note this phenomenon as such miscarriages of justice have occurred in sexual assault cases, including when a person falsely claimed sexual assault.[21] This being said, this paper instead seeks to provide an overview of the connection between false accusations, myths and stereotypes, and the legal discourses of legal actors, particularly defence counsel. More precisely, it explores three questions relevant to the understanding of false accusations: (1) what types of accusations do defence counsel label as 'suspicious'?; (2) are these assumptions rooted in myths and stereotypes related to consent, sexual assault or credibility?; and (3)

---

18 2025 SCC 29 [*Sheppard*].

19 *Ibid* at para 60.

20 *Ibid* at paras 19, 93.

21 Kent Roach, *Justice for Some: A Comparative Study of Miscarriages of Justice and Wrongful Convictions* (Cambridge: Cambridge University Press, 2025) at 418–29.

can we trace a line between 'suspicious' narratives and permissible arguments serving to defend the innocent?

In the absence of comprehensive legal scholarship on false accusations,[22] the paper draws on data available on the websites of defence law firms. Indeed, the paper compiles information from defence counsel and identifies motivations or causes of false accusations that lawyers may rely on to defend an accused. The paper organizes each motivation according to the categories of myths and stereotypes articulated by *Kruk*. The idea is not to claim that defence counsel always rely on discriminatory reasoning but rather to show how blurry the line between a narrative that is supported by an evidentiary foundation and one that contributed to myths and stereotypes about consent or credibility can become in practice. Each narrative is contrasted with courts' responses to examine where courts draw the line between myths and stereotypes and suspicious narratives grounded in an evidentiary foundation. The case law overview focuses on sexual assault and public mischief, in particular. The inclusion of public mischief cases aims to reflect that false claims happen and are regulated by the law.[23] The paper concludes that preventing sexual violence myths and stereotypes requires clear messaging on problematic narratives, case-by-case analyses, and a better definition of the type of evidentiary

---

[22] Lisa Dufraimont, however, significantly contributed to the scholarship on myth and stereotypes in sexual assault trials but did not specifically address false accusations (see Lisa Dufraimont, "Myth, Inference and Evidence in Sexual Assault Trials" (2019) 44:2 Queen's LJ 316 [Dufraimont, "Myth, Inference and Evidence"] and Lisa Dufraimont, "Current Complications in the Law on Myths and Stereotypes" (2021) 99:3 Can Bar Rev 536 [Dufraimont, "Current Complications"].

[23] *Criminal Code*, *supra* note 17, ss 131, 140. See also *R v Lukasik*, 1982 ABCA 229; *R v Hudon*, 1996 ABCA 331; *R v Ambrose*, 2000 ABCA 264; *R v Little*, 2002 BCCA 2; *R v Bishop*, 2003 CarswellNfld 349, [2003] NJ No 5; *R v Vrentas*, 2018 ONCJ 856; *R v Delacruz*, 2010 ONSC 3060; *R v Fordham*, 2000 CarswellOnt 5378, (sub nom R v CF) [2000] OJ No 5571 (ONCJ); and *Rees v Moore*, 2021 ONCJ 644 at paras 3–4. In the military context, see *National Defence Act*, RSC, 1985, c N-5, s 96; *R v Bridger,* 2009 CM 4013.

foundation permitting reliance on arguments that would otherwise amount to discriminatory reasoning.[24]

I. METHODOLOGY AND PRELIMINARY REMARKS

Elaine Craig argued that defence counsel's websites allow the public to see the type of narratives lawyers may rely on to defend their clients.[25] Using this claim as a starting point, the paper analyzes how defence firms portray false accusations of sexual assault to see what stories related to sexual activity may be labelled as "suspicious". Furthermore, Koshan noted, in 2024, that despite messaging from the Supreme Court in cases like *Kruk*, arguments relying on myths and stereotypes in cases of sexual assaults (and beyond) are still used by lawyers.[26] Therefore, defence counsel's websites emerge as a relevant site of inquiry to examine the types of arguments made to defend clients, how false accusations are portrayed, and whether myths and stereotypes play a role in legal defence. Some problematic arguments or unconscious biases may remain hidden if not explicitly discussed on websites. This constitutes a significant limitation of the present study.

As a means to gather defence counsel's narratives, the research used the keywords "sexual assault lawyer false accusations" on Google. The objective was to reproduce how a layperson may attempt to obtain information about legal defence. The keywords did not include any specific geographical location. Sometimes, the keywords led directly to a defence firm website discussing false accusations. Other times, those keywords led to a distinct rubric or blog post linked to the initial result by hyperlink. Both were

---

24 This is not to say that the concept of evidentiary foundation is foreign to law (see, recently, *R v Fox*, 2026 SCC 4 at para 44). I rather submit that what constitutes a proper evidentiary foundation in cases of fabricated claims could borrow from discriminatory reasoning if the law does not put clear safeguards.

25 Elaine Craig, "Examining the websites of Canada's Top Sex Crime Lawyers: The Ethical Parameters of Online Commercial Expression by the Criminal Defence Bar" (2015) 48:2 UBC L Rev 257 at 259 [Craig, "Examining the websites"].

26 Koshan, "Myths, Stereotypes, and Substantive Equality", *supra* note 16 at 1.

included in the final data. However, results from foreign jurisdictions, not authored by a defence counsel, or referring to risks of false accusations for all crimes (without mention of sexual offences) were removed to maintain a focus on Canadian defence narratives for false accusations of sexual assault. Firms publishing on the topic more than once counted as more than one entry as long as the content published differed between each publication. This methodology was replicated with the following keywords "sexual assault wrongful convictions false accusations" and "false allegations of sexual assault defence". These sets of keywords yielded a total of 81 rubrics or blog posts. The data revealed that it is not entirely uncommon for defence firms to mention the risk of false accusations explicitly. This is done in various ways, including rubrics or posts in the style of "What to do if you are falsely accused of sexual assault?".[27]

Each website was then analyzed to identify specific motivations or causes of false accusations. Case law review complemented this website analysis.[28] For each motivation or cause, examples of judicial reasoning assist in detecting where these narratives conflate with myths and stereotypes. The line between permissible and impermissible use of a narrative lies with the nature of the evidence. As already suggested in the introduction, this paper argues that the line is blurrier than court rulings suggest. It is thus helpful to start with a few comments on evidence law. Two distinct topics in the law of evidence are relevant here: (1) the question of a disproven motive to lie or the absence of evidence of a motive to lie, and (2) when somebody can rely on a narrative that would otherwise amount to discriminatory reasoning.

---

[27] The finding that firms often mention false accusations of sexual assault also confirms Craig's paper (see Craig, "Examining the websites", *supra* note 25 at 294–96).

[28] This paper does not aim at providing a quantitative analysis of each motivation. Although the websites referenced in footnotes can provide some insights into how much some law firms rely on a given motivation, it is not exhaustive of all legal argumentations by defence lawyers. For instance, since cases might be unreported or resolved before trial, any quantification of motivations in legal proceedings is difficult to ascertain.

While this paper focuses on the second evidentiary consideration, a few words on the former are important for contextualizing the law surrounding false accusations. In *R v Gerrard*, the defence submitted that the complainant had threatened to report Gerrard on several occasions and moved forward with fabricated allegations as a response to "a derogatory comment about her to her daughter."[29] On this occasion, the Supreme Court discussed the lack of evidence of a motive to lie. The Court restated that the absence of evidence of a motive to lie or evidence disproving a motive to lie *could* suggest that a witness is truthful. The Court nevertheless reiterated two critical comments. First, "the absence of evidence that a complainant has a motive to lie (i.e., there is no evidence either way) cannot be equated with evidence disproving a particular motive to lie (i.e., evidence establishing that the motive does not exist), as the latter requires evidence and is therefore a stronger indication of credibility".[30] Second, it does not mean that the burden of proof can "be reversed by requiring the accused to demonstrate that the complainant has a motive to lie or explain why a complainant has made the allegation."[31] The first comment protects the accused by not unduly bolstering the credibility of every witness. Given that, as the Ontario Court of Appeal ruled in *R v Ignacio*, the absence of evidence of a motive will be more frequent than evidence disproving a motive, it is essential to proceed with caution so as not to minimize the rights of the accused.[32] The second remark stems

---

[29] 2022 SCC 13 at para 3 [*R v Gerrard* SCC]. The charges in this case included "possession of a weapon for a dangerous purpose to the public peace, common assault, assault causing bodily harm, mischief (damage to property), uttering threats and pointing a firearm without lawful excuse" (*R v Gerrard*, 2020 NSCA 85 at para 2; see also *R v Gerrard*, 2021 NSCA 59 at para 1).

[30] *R v Gerrard* SCC at para 4.

[31] *R v Gerrard* SCC, *supra* note 29 at para 4. See also *R v Stirling*, 2008 SCC 10 at paras 10–11.

[32] 2021 ONCA 69 at paras 31–36, leave to appeal to SCC refused, 39552 (8 July 2021). There are several cases commenting on this issue (see, e.g., *R v Swain*, 2021 BCCA 207 at paras 28–33; *R v Bartholomew*, 2019 ONCA 377; *R v SSS* 2021 ONCA 552; *R v Oldfield*, 2025 BCCA 26; *R v AS*, 2020 ONCA 229).

from the presumption of innocence and the associated burden of proof resting on the Crown.[33]

The importance of balancing the rights and interests of the accused and the complainant is evident when reading decisions like *Gerrard*. *Kruk* further reinforced this idea by asserting that assuming women lie is a myth, but failing to consider a motive to fabricate when the defence submits evidence of one constitutes an error of law.[34] This includes situations where the evidence otherwise coincides with a myth or a stereotype. If there is evidence of fabrication, one can draw inferences from it.[35] Similarly, in *R v JW*, Justice Paciocco explained that evidence rules do not categorically prohibit the admission of evidence that could support myths and stereotype as long as such evidence complies with general admissibility rules.[36] Justice Paciocco clarified that myths and stereotypes prohibit some discriminatory lines of reasoning, but "where there is an evidentiary foundation" one may rely on evidence otherwise aligning with such myths and stereotypes.[37] He provided an example with regards to the myth that complainants will discontinue association with the abuser. While drawing inferences from what a real victim would do is impermissible, case-specific evidence that does not rely on discriminatory lines of reasoning (e.g., the complainant testified to avoidance but there is evidence to the contrary) can be used when weighing credibility.[38]

---

33 *R v Swain*, *supra* note 32 at paras 50–59 explains the burden of proof in the absence of evidence of a motive to fabricate.

34 *Kruk*, *supra* note 7 at para 65.

35 *Ibid* (citing *R v Esquivel-Benitez*, 2020 ONCA 160 at paras 9–15).

36 2025 ONCA 637 at para 24.

37 *Ibid* at paras 23–27. See also *R v JC*, 2021 ONCA 131 at para 70 (with the caveat that the Supreme Court in *Kruk*, *supra* note 7 at para 48, refused to equate all generalizations to stereotypes and thus errors of law); Dufraimont, "Myth, Inference and Evidence", *supra* note 22 ("Broad conclusions that particular forms of evidence are irrelevant should be avoided. Instead, false premises and discriminatory lines of reasoning should be identified and explicitly prohibited" at 346).

38 *R v JW*, *supra* note 36 at paras 30–31. See also Dufraimont, "Current Complications", *supra* note 22 at 551–54. For a similar argument on delayed

Justice Paciocco argued that this was not contrary to the Alberta Court of Appeal's decision in *R v ARJD* which had ruled that lack of avoidance tells to the trier of fact "nothing".[39] He interpreted *ARJD* as standing for the idea that avoidance tells nothing *by itself* but that it could be relevant depending on the circumstances of the case at hand.[40] What seems to be a clear rule in *R v JW*[41] does not mean that distinguishing prohibited reasoning from permissible ones is an easy task for courts.[42] It is also interesting to note that the idea a woman would continue to associate with an abuser is a myth that relates to consent or credibility: i.e., 'if she stays she must have consented'[43] or 'if she did not discontinue association, she is not credible as this is not what a real victim would do.'[44]

Parts two and three of this paper go over different types of counsel narratives that can share similarities with the myths and stereotypes identified by *Kruk*. As a reminder, the two categories include myths and stereotypes related to the nature of consent and sexual assault or the lack of credibility of women due to their membership to a group that is "less worthy of belief." Some of these myths and stereotypes are already well-known. For instance, with regard to consent, the ideas that married women did not have to consent or that staying in contact with an abuser suggests consent are now discredited.[45] As for credibility, the fact that a complainant belongs to a group against whom society has had prejudicial views has impacted different communities, including but not limited to Indigenous women and 2SLGBTQI+ individuals.[46] Justice Martin wrote, "not only were women seen as lacking credibility, there was

---

disclosure, see Dufraimont, "Myth, Inference and Evidence", *supra* note 22 at 343–45.

39 2017 ABCA 237 at para 39, aff'd 2018 SCC 6.

40 *R v JW*, *supra* note 36 at para 32 (citing *ARJD*, *supra* note 39 at para 39).

41 See also *R v JC*, *supra* note 37 at para 72 (also authored by Paciocco JA).

42 Dufraimont, "Myth, Inference and Evidence", *supra* note 22 at 354.

43 *Kruk*, *supra* note 7, at para 41.

44 *Sheppard*, *supra* note 18 at para 60.

45 *Kruk*, *supra* note 7 at paras 33, 41.

46 *Ibid* at para 35.

a construct about the specific subset of women who *could* be believed. Negative social attitudes about women were often used to differentiate 'real' rape victims from women suspected of concocting false accusations out of self-interest or revenge."[47]

Parts two and three also contrast narratives with myths and stereotypes as a means to assess where the line should be drawn between proper defence and reliance on myths and stereotypes. They then show whether courts have found an evidentiary foundation and, in the absence of such a foundation, analyze the place given to defence counsel's narratives. More precisely, Part two relies on narratives that could undermine the credibility of the complainant: i.e., the scorned or emotional complainant, the attention seeker, the complainant taking part in a simultaneous legal dispute, the complainant attracted to economic gains, the complainant trying to conceal other behaviours, the complainant with memory issues, and the complainant with mental health disorders. In the absence of an evidentiary foundation, reliance on any of these narratives could suggest that the person is not credible because their experience differs from the 'ideal victim'. Part three then concludes the paper with narratives that pertain to the nature of sexual assault or consent: i.e., capacity to consent, misunderstandings on consent, and casual dating. It also addresses the nature of the Crown burden in sexual assault, although the latter fits oddly with the myths and stereotypes categories from *Kruk*.

II. Myths and Stereotypes Pertaining to Credibility or Proper Narrative?

A. *Negative Feelings Between the False Accuser and the Accused*

A narrative that came up with some regularity on defence firms' websites is that false accusations arise from conflicts and negative

[47] *Ibid* [emphasis in original].

emotions.[48] For example, one firm proposed that, in a specific case, the complainant falsely claimed sexual assault because their client accused the complainant of lying about the paternity of a fetus.[49] The same firm alluded to a false accusation following rejection during sexual activity.[50] Another website referred to a desire to punish a partner or exert vengeance in unhappy or abusive relationships as a motivation for false accusations.[51]

Negative emotion narratives are also present in legal argumentation before courts. The example of *R v TM* is compelling.[52] This case is evidence that feelings towards the accused can be used in defence to attempt to raise doubts about the veracity of the accusation. Indeed, the defence identified a "grudge" held against a step-father, combined with contempt for his economic situation, as reasons explaining the alleged falsehood of the accusations.[53] The Ontario Court of Appeal dismissed the appeal on the basis that the judge had not erred on the assessment of credibility and evidence.[54] Reported decisions showcase a broad range of negative emotions beyond those alluded to in *TM*. In *R v England*, the defence suggested that the complainant fabricated

---

48 See e.g. "False Accusations Of Sexual Assault: How Slaferek Law Can Help Clear Your Name", *Slaferek Law* (9 May 2024), online: <slafereklaw.ca> [perma.cc/W8XY-VYY9][Slaferek, "Clear Your Name"]; "How A Calgary Lawyer Can Defend Against False Sexual Assault Allegations", *Akram Law* (28 August 2024), online: [perma.cc/3U2E-3BVX][Akram Law, "How a Calgary Lawyer can Defend"]; "Key Defences Used by Lawyers in Sexual Assault Cases", *Wyman & Williamson* (11 October 2024), online: <criminallawyercalgary.ca> [perma.cc/RZN2-QGSU] [Wyman & Williamson, "Key Defences"].

49 Weisberg Law, "Previously Defended Sexual Assault Cases", *Weisberg Law* (last visited 11 June 2026), online: <Weisberg.ca> [perma.cc/P7AR-T5JX] [Weisberg Law, "Previously Defended Cases"].

50 *Ibid.*

51 "Domestic Sexual Assault charges under Section 271 of the Criminal Code of Canada", *Toronto Assault Lawyer* (last visited 11 June 2026), online: <torontoassaultlawyer.ca> [perma.cc/KFS4-U4TJ] [Toronto Assault Lawyer, "Domestic Sexual Assault"].

52 2014 ONCA 854, leave to appeal to SCC refused, 34649 (18 June 2015).

53 *Ibid* at paras 32–44.

54 *Ibid*.

allegations of breaking and entering to commit sexual assault and uttering threats because she was unhappy with the accused and the way in which the police treated her after she reported another instance of sexual assault.[55] The court concluded that the fabrication theory did not take into account evidence that supported the allegations, including admissions, injuries, DNA, and messages between the accused and the complainant.[56]

In addition to the role of evidence law, *JW*—alluded to in Part one—presented a narrative centred around negative feelings. In this case, the accused testified that the complainant was violent towards herself and the couple's house, but that he never reported her behaviour to the police because she threatened him with false allegations.[57] *R v JH* offered a different example of defence argument based on negative feelings between partners.[58] The defence claimed that "experience had taught [the complainant] that making a complaint to the police about her partner was an effective way for her to unilaterally terminate a relationship and keep her partner away from her."[59]

The data from firms similarly referred to negative feelings of ex-partners and break-ups. It highlighted different contexts in which allegations might be somewhat "suspicious". A firm stated that former partners may be "[v]indictive after finding out about cheating or a new relationship after a break up";[60] whereas another one called for caution when a report of sexual assault arises after a divorce, a break-up, a new partner entering the mix, or other

---

55 2021 BCSC 2585 at paras 9, 90.

56 *Ibid* at paras 92–102.

57 *R v JW*, *supra* note 36 at para 13. This case also relied on the narrative of family law proceedings, discussed below.

58 2014 NLCA 25.

59 *Ibid* at para 23. The judge refused to allow evidence on this matter; a conclusion maintained by the Court of Appeal (see *ibid* at para 39).

60 Toronto Assault Lawyer, "Domestic Sexual Assault", *supra* note 51. See also "Sexual Assault", *The Criminal Law Team* (last visited 12 June 2026), online: <thecriminallawteam.ca> [perma.cc/UP7K-542W] [The Criminal Law Team, "Sexual Assault"]; "Main Reasons of False Sexual Assaults", *Vilkhov Law* (25 January 2021), online: <vilkhovlaw.ca> [perma.cc/6Q58-QHQL].

positive events happening in the life of an ex-partner.[61] Some publicized reports on successfully defended cases available on defence websites were also consistent with these narratives, notably when pointing to a man being accused upon deciding to see other people or an accusation of sexual assault following notice that the complainant's partner wanted a divorce and refused to revive their relationship.[62]

The narrative of post-break-up false accusations can also be found in the case law beyond *JW* and *JH*. In *R v Leary*, the accused asserted that the complainant's account was the fruit of emotional deception as the accused had "treated her unfairly or broke[n] her heart".[63] He added that he was not relying on the myth that scorned women will fabricate sexual assault claims and pointed to a conversation in which he had declared not wanting a relationship as evidence supporting his argument.[64] The court rejected the claim of fabricated allegation in forceful terms. It stated, "[t]his argument is entirely without merit. The myth and stereotype that women falsely claim to have been sexually assaulted…to exact revenge on their sexual partners, is not impermissible because it arises out of insufficient evidence. Rather, this myth and stereotype is an impermissible inference based on widely-held ideas and beliefs that are not empirically true."[65]

The break-up context is thus one area where judicial decisions pushed back against narratives that are rooted in myths and

---

[61] "Red Flags: Recognizing False Accusations In Sexual Offence Allegations", *Daryl Royer Criminal Law* (16 February 2024), online: <darylrover.ca> [perma.cc/3D44-6CN9] [Royer, "Red Flags"]. On the jealousy over new relationships see also Susan Karpa, "Sexual Assault and Other Sexual Offences", *Susan Karpa Criminal Defence Lawyer* (last visited 12 June 2026) online: <susankarpa.com> [perma.cc/DWC2-AU9V].

[62] Weisberg Law, "Previously Defended Cases", *supra* note 49.

[63] 2024 BCSC 2103 at para 93. Legal arguments also relied on myths and incorrect legal interpretations, including that a victim would resist sexual assault and that the absence of verbal objection constitutes consent (*ibid* at paras 91–92).

[64] *Ibid* at para 93.

[65] *Ibid* at para 94. See also *R v Lavalley*, 2018 BCPC 282 at para 53 on the scorned women myth.

stereotypes of distrust and vengeful complainants. While the definition of myths and stereotypes from *Leary* found support in other decisions, *Kruk* and *JW* (two recent decisions of higher authority) held that where there is an evidentiary foundation for a motive to lie that otherwise happens to coincidence with myths and stereotypes, it is admissible.[66] *JW* and *Kruk* provided some nuance to *Leary*, but the law maintains that impermissible reasoning captures the ideas that false accusations are more likely in sexual assault or that scorned women will falsely complain.[67] It is uncertain whether the conversation between the accused and the complainant in *Leary* would provide an evidentiary basis strong enough to show that the accused relied on a permissible line of reasoning. Contrary to the example from *JW* (i.e., the complainant testified to avoidance but there is evidence to the contrary), the evidence here only consisted of an uncontested discussion in which the accused declared not wanting a relationship. This appears as a tenuous foundation to draw conclusions.

In addition to vendettas and broken hearts, the data on negative feelings included attacks on reputation.[68] One firm listed individuals who should be wary of their sexual activities due to the likelihood of false accusations against persons of good societal standing or positions of authority: "Canada has seen many high-profile sexual assault cases in the past decade, including a former CBC Radio host and priests who allegedly sexually assaulted minors in their care. Those in a position of authority need to be vigilant as they sometimes are easy targets of false sexual abuse allegations."[69] This same firm alluded to professional status or interaction with the youth as two contexts requiring more

[66] *Kruk*, *supra* note 7 at paras 37, 65; *R v JW*, *supra* note 36 at paras 21, 23–27, 30–31.

[67] *Kruk*, *supra* note 7 at para 36.

[68] See e.g. Royer, "Red Flags", *supra* note 61; "Sexual Assault Investigations in High School", *Donich Law* (last visited 12 June 2026), online: <mydefence.ca> [perma.cc/NJ64-EXTV?type=standard]; "Main Reasons of False Sexual Assault", *supra* note 60.

[69] Dostaler, "What happens if you are falsely accused", *supra* note 1.

caution.[70] False claims against public personalities could also resonate with the "drawing attention or sympathy" category (discussed in more detail below).

B. *Drawing Attention or Sympathy*

Defence firms' websites also referred to the 'attention or sympathy-seeking' complainant. In addition to claims against public personalities (mentioned above), the data pointed to some circumstances or arguments relevant to this narrative: children may want to attract sympathy;[71] attention-seeking complainants may hope for media or community attention;[72] pathological liars may engage in attention-seeking behaviours–hereby connecting this phenomenon to mental health (discussed below);[73] and complainants may seek access to resources available to crime victims.[74] Drawing attention from victim services could also be coded as a financial or personal gain (discussed below).

The case law provided some commentary on the ideas of attention- and sympathy-seeking behaviours. For example, *R v Nyandwi* examined this motivation in a case where the Crown admitted the complainant had made four false claims of sexual assault.[75] The police notes, entered on the record, revealed that police believed the complainant wanted to access funds on two occasions and that she once admitted to falsely claiming sexual assault as she needed money to get an apartment.[76] The court ruled that the complainant was not credible. It nevertheless convicted the accused, as he had denied sexual intercourse but forensic evidence confirmed sexual activity between the accused and the

---

70 *Ibid*.

71 "Defending Allegations of Child Abuse", *Mickelson, Whysall & Moore Law Group* (4 May 2022), online: <criminallawyervancouver.com> [perma.cc/N8HK-69DH].

72 Slaferek Law, "Clear Your Name", *supra* note 48.

73 The Criminal Law Team, "Sexual Assault", *supra* note 60.

74 Akram Law, "How a Calgary Lawyer can Defend", *supra* note 48.

75 2014 ABPC 186 at para 28.

76 *Ibid* at para 29.

complainant.[77] This case exhibits an interesting overlap between narratives that are deemed "suspicious" and guilt. Without forensic evidence, the case would most likely have been resolved by an acquittal due to the complainant's credibility and the admission of prior motivated false accusations.[78] This highlights the complexity of false accusations and the importance of exhaustive investigation even in the presence of so-called "suspicious" narratives.

R v Lukasik shows that investigations are relevant not only to protect victims of sexual violence but also to avoid miscarriages of justice. The case involved charges of public mischief and perjury. The only comment pertaining to the rationale for the false accuser's behaviour was that she was feeling inadequate and was dealing with this feeling by putting herself in situations where she could be the centre of attention.[79] The Alberta Court of Appeal recognized the unusual circumstances of the case in its appeal of the sentence but did not expand on said circumstances.[80] They were rather described in a subsequent malicious prosecution and defamation decision. The interaction between Ms. Lukasik and Mr. Canada (who was initially charged with sexual assault) stemmed from an altercation surrounding a minor car accident.[81] Ms. Lukasik, who was sitting in one of the cars, started screaming "rape" and tore her clothes off. When the police arrived on the scene, they "took the statement from a naked woman seriously and immediately handcuffed the plaintiff."[82] A few months after the events, the police had still not investigated further into the alleged sexual assault.[83] Although the

77 *Ibid* at para 107. The decision also discussed the HIV positive status of the accused, but the latter is not relevant to the issue of false accusations.

78 *Ibid* at para 107.

79 *R v Lukasik*, *supra* note 23 at para 5.

80 *Ibid*.

81 *Canada v Lukasik,* 1985 CanLII 1146 (AB KB) at paras 2–3.

82 *Ibid* at para 6.

83 *Ibid* at para 12.

merit of the accusation differs from *Nyandwi*, the need for exhaustive and reliable evidence does not.[84]

C. *Leverage in Family Proceedings and Related Legal Disputes*

Websites often referred to false complaints arising in the context of child custody disputes, parental separation, or family law proceedings.[85] The data alluded to other circumstances that are somewhat related to this category: one firm referred to false accusations as a means to gain an advantage in parallel legal proceedings without specific mention of family law disputes,[86] one

---

84 For another example of a case where false accusations to gain attention emerged, see *Wood v Kennedy*, 1998 CanLII 14927 (ON CTGD). This is not a criminal decision.

85 Farid Zamani, "Defend Against False Accusations with A Toronto Sexual Assault Lawyer", *Zamani Law* (3 June 2024), online: <zamani-law.com> [perma.cc/T7T2-ZU4R] [Zamani, "Defend Against False Accusations"]; "Sexual Assault Charges in Canada (Section 271 of the Criminal Code)", *Toronto Assault Lawyer* (last visited 12 June 2026), online: <torontoassaultlawyer.ca> [perma.cc/34MX-ZWGB] [Toronto Assault Lawyer, "Sexual Assault Charges"]; Toronto Assault Lawyer, "Domestic Sexual Assault", *supra* note 51; Royer, "Red Flags", *supra* note 61; "A Detailed Look at False Sexual Assault Allegations", *Wyman & Williamson* (3 August 2023), online: <albertalegal.ca> [perma.cc/9CJN-R6LR] [Wyman & Williamson, "False Sexual Assault Allegations"]; "What to do if you have been charged with sexual assault", *Dunn & Associates* (9 May 2024), online: <dunnandassociates.ca> [perma.cc/F77Y-MYZK] ; "Falsely accused of sexual assault and charged by the police in Ontario, Canada", *The Law Offices of Mark Zinck* (last visited 12 June 2026), online: <accused.ca> [perma.cc/2LBY-5ENK] [Zinck, "Falsely accused"]; "Sexual Assault Lawyer Toronto", *PCS Law* (last visited 12 June 2026). online: <pcslaw.ca> [perma.cc/UFT2-Z6Q9] [PCS Law, "Sexual Assault Lawyer"]; "Defending Against Sexual Assault Allegations From A Former Partner", *Daryl Royer Criminal Law* (15 November 2024), online: <darylrover.ca> [perma.cc/78C4-NFYH]; Roulston, "Billionaire", *supra* note 1; "How to Defend Yourself Against Sexual Assault Charged in Canada" *Pyzer Criminal Lawyers* (last modified 12 June 2026), online: <torontodefencelawyers.com> [perma.cc/BDK8-BV8R] [Pyzer Criminal Lawyers, "How to Defend Yourself"]; Akram Law, "How a Calgary Lawyer can Defend", *supra* note 48.

86 "The Complexities of False Accusations in Relationships", *Wyman &*

expressed that false accusations will generally be from complainants or their daughters,[87] and another mentioned that estranged spouses may falsely accuse their former spouse of child molestation.[88] This last firm described one of their successful defences in a case of coaching and fabrication in the custody context. It explained its theory as follows: "[the accused]'s wife wanted [him] removed from the house because the separation proceedings were taking too long, so she fabricated allegations".[89] This argument is similar to the perspective of another firm that described a case in which a wife would have brought allegations of sexual assault to the police upon receiving notice of divorce and offered to drop the charges if her husband would come back.[90]

Criminal trials are not immune to such arguments. In *R v BP*, the accused was charged with several offences, including the sexual assault of his former spouse.[91] The defence argued that "that the allegations were fabricated by [the spouse] to gain an advantage in court proceedings regarding the parenting of the couple's children."[92] The judge ruled that the complainant was credible and reliable, did not accept that the complainant was trying to attack the accused's reputation, and instead concluded that the accused was trying to paint the complainant as a "villain".[93] In *R v AS*, the

---

Williamson (24 January 2024), online: <criminallawyercalgary.ca> [https://perma.cc/L3WA-P7G9] [Wyman & Williamson, "Complexities"].

87 Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85. The firm does not explain why false accusations by daughters are an issue.

88 "Sex Offences: 'Special Considerations'", *Sean Fagan Criminal Defence* (last visited 12 June 2026), online: <seanfagan.ca> [perma.cc/9X5K-59RS].

89 "Regina v. D.T. [Provincial Court of Alberta– October 2016] – Sexual Assault", *Sean Fagan Criminal Defence* (last visited 12 June 2026), online: <seanfagan.ca> [perma.cc/KV44-5647].

90 Weisberg Law, "Previously Defended Cases" *supra* note 49. The category of negative feelings also included this data.

91 2024 NLCA 14.

92 *Ibid* at para 2; *R v BP*, 2024 NLSC 48 at para 2 [*R v BP* NLSC].

93 *R v BP* NLSC, *supra* note 92 at para 30 (citing Transcript, page 215, line 6 to page 216, line 15). The Superior Court ruled that despite an error from the trial judge, she had correctly rejected the theory of complaints to get benefits in a custody case (*ibid* at para 106).

defence alleged that the complainant falsely alleged sexual assault to obtain custody of their children in the event that their relationship, which had already experienced significant challenges, ended. The Court of Appeal sent the matter back to trial due to a misapprehension of the evidence and the use of prior consistent statements as corroborative of the complainant's version of events.[94] In *R v JW*, discussed earlier, Justice Paciocco indicated that the time of disclosure was not necessarily impermissible reasoning based on a stereotype, as it occurred simultaneously with family law proceedings and as the complainant had made prior inconsistent statements in which she disclosed that no criminal behaviour had happened.[95] Once again, *JW* stands for the proposition that reasoning which could otherwise be based on myths and stereotypes will be permissible when it is drawn from evidence rather than generalized conceptions of how a 'reasonable' or 'real' victim would react. This reasoning, however, is dangerous if interpreted to mean that all reports that occur simultaneously to a family law dispute provide an evidentiary foundation.

Other cases exemplify how arguments on fabricated claims interfere with other areas of criminal law and may be relevant to different parts of criminal law proceedings. In *R v JLM*, the court concluded that a *Vetrovec* warning–a warning provided when special consideration is required because the evidence originates from a disreputable witness–was required due to the timing of the disclosure of abuse and the credibility of the complainant, who had filed false evidence deliberately.[96] The sexual assault disclosure coincided with proceedings about the couple's child custody. In the absence of corroboration, the court acquitted the accused.[97]

In *R v RMD*, the accused sought to cross-examine the complainant on a possible fabrication motive (i.e., gaining advantage in a legal dispute).[98] While the Crown argued that such

---

94 *R v AS*, *supra* note 32 at paras 3, 57.

95 *R v JW*, *supra* note 36 at para 44.

96 2011 CanLII 56549 (ONSC).

97 *Ibid*.

98 2022 ABKB 851.

cross-examination would reinforce myths and stereotypes about sexual violence, the Alberta King's Bench allowed the cross-examination since it did not engage s. 276 of the *Criminal Code*, which only limits questioning on past sexual history.[99] The court included the following comment in its analysis: "It is not fanciful that someone might lie about an assault", before adding that it could take "judicial notice that it is not unheard of for a party involved in family law litigation to lie or exaggerate about violence having been committed against them to gain an advantage in parenting matters or property matters."[100] Respectfully, both statements go against recent criminal law jurisprudence that false reports are not more likely to occur in sexual assault cases.[101] They also go against the requirement for an evidentiary foundation.

Claims expressing general distrust of complainants going through legal disputes can reinforce damaging narratives and depict individuals going through divorces or custody battles as inherently less worthy of belief. Contrary to cases like *RMD*, the British Columbia Court of Appeal—in *KMN v SZM*, a family law decision—reported that a judge should not rely on "myths or stereotypes about intimate partner violence to influence his reasoning process, including a belief that women commonly raise allegations of violence post-separation and in the context of family law litigation for the specific purpose of gaining an upper hand."[102] The Court of Appeal in *KMN* responded to the possibility of false allegations by

---

99 *Ibid* at para 43.

100 Ibid at para 45.

101 See e.g. *Kruk*, *supra* note 7 at paras 35–37.

102 2024 BCCA 70 at para 84 (see also paras 109–27). For specific discussions of false accusations of violence (including sexual violence) in family law cases, see Jennifer Koshan, "The Myth of False Allegations of Intimate Partner Violence", *ABlawg* (8 November 2023), online: <ablawg.ca> [perma.cc/8G2A-L78S]; Jennifer Koshan, "Challenging Myths and Stereotypes in Domestic Violence Cases" (2023) 35:1 Can J Fam L 33 [Koshan, "Challenging Myths and Stereotypes"]. On the British Columbia Court of Appeal, see Deanne Sowter & Jennifer Koshan, "BC Court of Appeal Recognizes the Myth of False Allegations of Intimate Partner Violence", *ABlawg* (22 April 2024), online: <ablawg.ca> [perma.cc/9ATF-ZTCS].

stating that credibility and reliability are to be assessed by the judge on a case-by-case basis, a departure from an approach implying that false allegations are a frequent concern in custody proceedings.[103] While this is not a criminal law decision, it is sensitive to the importance of protecting both complainants and accused rather than engaging in blanket myths and stereotypical reasoning. A case-by-case sensitive approach allows to take allegations seriously while dismissing cases that are not supported by an evidentiary foundation. This does not mean that criminal allegations in the absence of a wrongful conviction are not stressful or that false accusations can never happen,[104] but rather call for contextualization and empathy so as not to fall into discriminatory reasoning.

D. *Personal and Financial Gains*

When examining the data from defence counsel, personal or financial gains emerged as another possible rationale for false accusations.[105] Given that the section above analyzed the alleged use of allegations to obtain an advantage in legal disputes, the following paragraphs focus on other types of gains. Some firms stated that false accusations may happen when a partner or acquaintance possesses a lot of assets as a form of extortion or to obtain possession of the family residence.[106] One blog post also referred to

---

103 *KMN v SZM*, *supra* note 102 at para 126. The British Columbia Court of Appeal did not take issue with the Ontario Court of Appeal's comment in *Ahluwalia v Ahluwalia*, 2023 ONCA 476 at para 120 that strategic claims may happen on occasion. It was, however, cautious to translate this possibility into generalized suspicion.

104 See e.g. *R v FZ*, 2023 ONSC 3159 in which a judge dismissed charges because he did not believe the complainant's version and noted that the criminal allegations had been used to obtain "maximal support" from the accused in the separation litigation (*ibid* at para 65).

105 This idea of financial incentive expands beyond sexual violence. Koshan, "Challenging Myths and Stereotypes", *supra* note 102 at 43–44, identified the quest for financial gain as a myth and stereotype in domestic violence claims.

106 Zinck, "Falsely accused", *supra* note 85; Toronto Assault Lawyer, "Sexual Assault Charges", *supra* note 85; Toronto Assault Lawyer, "Domestic Sexual Assault", *supra* note 51; Royer, "Red Flags", *supra* note 61.

money as a motivation for false accusations of historical sexual assault.[107] Relatedly, other data cautioned that complainants may engage in blackmailing practices.[108]

Legal argumentation before courts also relied on this narrative. In *Bartholomew*, defence counsel argued that many motives for fabricating may never be revealed, including financial gain.[109] The court then "asked if there was a financial motive in this case, [a question to which] defence counsel responded: 'Well, I don't know Your Honour, which is really my point.'"[110] The absence of evidence of a motive to lie, as outlined by *Gerrard*, is not as important in assessing the complainant's credibility because it means there is no evidence either way. Moreover, the accused should not be tasked with proving that the complainant had a motive.[111] Consequently, raising hypothetical motives is problematic for defence counsel in a myriad of ways: (1) the accused is not required to show the absence of motive. However, pointing out hypothetical motives to fabricate not contained in the record can help the complainant's credibility in a limited way, and (2) general assertions of false accusations for which there is no case-specific evidence could fall into the myth that sexual assault claims are more likely to be fabricated. Pointing to unsupported theories thus seems to be detrimental to both the accused and the complainants.

The data from firms' websites further identified four contexts in which false accusations for personal or financial gain may arise. First, one firm indicated that false allegations could occur in the context of "extramarital affairs as a ploy to extract money from the accused".[112] This could be connected to the negative emotions or vindictive narrative described above, thus, showing a potential for

---

107 Roulston, "Billionaire" *supra* note 1.

108 Zamani, "Defend Against False Accusations", *supra* note 85.

109 *R v Bartholomew*, *supra* note 32 at paras 15, 26.

110 *Ibid* at para 15.

111 *R v Gerrard* SCC, *supra* note 29 at para 4.

112 "Charged with sexual assault? Here's what you need to know", *Saini Law* (last visited 12 June 2026), online: <Saini-law.com> [perma.cc/LE6F-EM5K].

overlap between the different so-called 'suspicious' labels. It could also be referring to individuals preying on married people to then extort them. The firm did not provide any example permitting to ascertain the circumstances from which they drew their conclusion.

Second, two websites specifically mentioned the increasing prevalence of sugar babies accusing their sugar daddies.[113] For more context, in 2021, Srushti Upadhyay defined the parties in a sugar arrangement as follows: "'sugar daddy' and 'sugar momma' generally describe older and wealthy men and women, respectively, who lavish gifts on younger men and women in exchange for their company and/or sexual favours. The term sugar baby refers to a younger person who receives the gifts."[114] At the time of writing, there was no empirical study detailing the accusations of sugar daddies.

Third, civil proceedings and compensation were the subject of some consideration by defence counsel. For example, a firm described claims in the quest for personal gain as follows: "Accusers who make false rape reports are similar in personality to individuals that purposely slip and fall in a public place to file a lawsuit. This type of false rape accuser often claims a sexual assault on government property or by a government employee."[115] While the exact meaning of the firm's insights is not unpacked, it could imply financial gain through litigation. This is consistent with other firms arguing that false accusers may be motivated by lawsuit settlements or other types of compensation, including civil court awards after a finding of guilt.[116] Indeed, one firm reporting on its successful cases hinted to a case in which the complainant's allegations originated in a desire to control the family's money.[117] Similarly, in a military

---

113 Zinck, "Falsely accused", *supra* note 85; Toronto Assault Lawyer, "Sexual Assault Charges", *supra* note 85.

114 Srushti Upadhyay, "Sugaring: Understanding the World of Sugar Daddies and Sugar Babies" (2021) 58:6 J Sex Research 775 at 775.

115 Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85.

116 Akram Law, "How a Calgary Lawyer can Defend", *supra* note 48; Toronto Assault Lawyer, "Domestic Sexual Assault", *supra* note 51.

117 "What to Do if You've Been Falsely Accused of Sexual Assault?", *Donich Law*

justice case, the defence argued that compensation (through class actions or other legal means) could be a motive to lie. The military judge refused to admit questioning on financial means, a conclusion maintained on appeal.[118]

Fourth, a website focusing on child abuse highlighted that there are many reasons why a child may lie, including to obtain something they want. This firm identified living with a specific parent as a gain that could motivate a child.[119] While the narrative is not identical, *R v SG* showed some similarity to this firm's insight.[120] In this case, the defence claimed that the complainant wanted to prevent her mother from having a boyfriend. The judge authorized cross-examination on a prior complaint against another of the boyfriends of the mother.[121] The lesson from these very few cases (which is consistent for all narratives discussed so far) is that courts have, in most instances, pushed back on arguments that happen to align with myths and stereotypes unless there is evidence to sustain a fabrication claim. However, two outstanding issues remain. The nature of the evidentiary foundation remains unclear, which risks reintroducing discriminatory lines of reasoning too hastily, and the list of discriminatory reasonings identified by courts is neither static nor exhaustive.

E. *Alibis*

The data also noted that false accusations could stem from a desire to avoid consequences or hide specific circumstances. One post held that complainants may not want to divulge where they were or what they were doing.[122] One data entry included stealing, cheating or abusive acts as examples of behaviours one could want

---

(last visited 12 June 2026), online: <mydefence.ca> [perma.cc/6NF4-ZAT8?type=standard] [Donich Law, "What to Do"].

118 *R v Turner*, 2023 CMAC 6 at paras 21–30. The Court added that in the alternative, it had no impact on the verdict (*ibid* at para 30).

119 "Defending Allegations of Child Abuse", *supra* note 71. See also Donich Law, "What to Do", *supra* note 117.

120 *R v SG*, 2007 CanLII 14331 (ONSC).

121 *Ibid* at paras 18, 36.

122 Akram Law, "How a Calgary Lawyer can Defend", *supra* note 48.

to hide.[123] A third one identified the impulse to cover up an affair as a motivation to accuse somebody falsely,[124] and a fourth highlighted that youth may try to avoid consequences of sexual activity or disobeying authority.[125] These motivations are all grouped under the term 'alibi'.

This alibi narrative finds ample support in legal argumentation, particularly in cases where the defence argues the complainant is trying to hide sexual activity. In the case of *R v RV*, the respondent argued that a new trial was required to develop his theory that (1) the complainant had engaged in other activity that could have caused her pregnancy and (2) that pregnancy was not conclusive of sexual assault.[126] Counsel for RV suggested that "[a]fraid of the potential repercussions once her family found out she was pregnant, the complainant fabricated the story".[127] The defence also proposed that the complainant wanted to dissimulate the pregnancy and sexual activity leading to it so as not to lose face in front of her family.[128] The Court did not order a new trial as the respondent had the opportunity to test the evidence presented against him by cross-examining the complainant on her understanding of virginity and sexual activity capable of causing pregnancy.[129] The Court added that nothing on record could provide evidence of a sexual partner or sexual activity that could have led to the pregnancy outside of the events leading to the charge.[130]

---

123 Royer, "Red Flags", *supra* note 61.

124 Zinck, "Falsely accused", *supra* note 85.

125 "Main Reasons of False Sexual Assault", *supra* note 60. The idea of missing a curfew was raised in the case of *R v Rattan*, 1988 CanLII 3098 (BC CA) at para 15. The evidence as to a possible prior false accusation was not admissible.

126 2019 SCC 41 at para 89.

127 *Ibid* at para 89.

128 *Ibid* at para 97 (the complainant stated she had thought about the behaviour suggested by counsel).

129 *Ibid* at paras 90–92.

130 *Ibid* at para 96. Analogously to *R v RV*, *supra* note 126, the defence in *R v*

Aside from pregnancy, the case law displayed alibi arguments focusing on attempts at concealing cheating. For instance, in *R v JC*, the defence submitted that the judge erred by rejecting the argument that the complainant was motivated to lie to hide her cheating on the grounds that it amounted to a stereotype. The defence rather argued the evidence supported this narrative.[131] The Ontario Court of Appeal agreed with the defence as the evidence showed that the relationship of the complainant and her boyfriend was punctuated with challenges, that he was "angry with the situation" and unhappy with her when she revealed the sexual activity with the accused, and that he had incited the complainant to contact the police.[132] The Court also took issue with the judge's inferences from the fact that the complainant endured the criminal trial, thereby underlining that the criminal process must balance competing interests while maintaining the presumption of innocence of the accused.[133] In *Esquivel-Benitez*, the Court ruled that the trial judge erred in dismissing some evidence. This included evidence that the complainant's husband surprised her with the accused, became violent, asked repeatedly whether she had been abused, and that after repeated requests the complainant disclosed she had been sexually assaulted. The Court held that while the trial judge could accept the evidence that the complainant's response to her husband depended on factors other than fabrication, the judge also had to consider whether the evidence showed a motive to fabricate.[134]

R v SL showcased a different iteration of the alibi narrative: hiding consensual sexual activity to explain a sexually transmitted disease diagnosis.[135] In this case, the defence sought to cross-

---

Ignacio alleged the fear of pregnancy as a motive to fabricate the claim of sexual assault and explain any possible pregnancy to her parents without being blamed for her sexual activity (*R v Ignacio*, *supra* note 32 at paras 2223 (citing the trial judge's decision)).

[131] *R v JC*, supra note 37 at para 5.

[132] *Ibid* at paras 78, 81.

[133] *Ibid* at paras 87–89.

[134] *R v Esquivel-Benitez*, *supra* note 35 at paras 11–15.

[135] 2018 ABQB 889.

examine a 13-year-old complainant on her past sexual history given that she had disclosed she was sexually active and had been diagnosed with a sexually transmitted disease after the alleged sexual assault.[136] The court allowed cross-examination on possible fabrication using an argument akin to the one pleaded in *RV*: "whether the rationale for that accusation was to prevent her mother from finding out that she was involved with another man."[137]

Defence counsel have resorted to the alibi narrative in many additional circumstances. *R v IDK* involved an application to cross-examine the complainant and other witnesses on "[w]hether the complainant made false allegations in the past concerning sexual assaults to avoid consequences when she got in trouble."[138] This issue arose as the accused argued that the mother and grandmother of the complainant had alleged sexual assault in the past for that very reason.[139] The accused added, "on the day that the complainant made the current accusation, [the complainant] had gotten into trouble at school" and that this was part of an ongoing pattern that could be proven by cross-examining the complainant, her mother, and her grandmother.[140] This case is relevant for alibis and other motivations cited heretofore. Indeed, the trial judge expressed that the complainant could have used false allegations to "avoid getting into trouble or to *elicit support and sympathy*".[141] In *R v Oldfield*, the defence sought to introduce text messages that could have pointed to the complainant's wish to maintain a friendship

---

136 *Ibid* at paras 37–38.

137 *Ibid* at para 39. See also *R v PB*, 2024 SKCA 77 at para 11, aff'd 2025 SCC 8, in which the complainant denied falsely claiming sexual assault to hide consensual sexual activity with the boyfriend of a friend.

138 2022 ABPC 226.

139 *Ibid* at para 13.

140 *Ibid* at paras 14, 18. The rules of cross-examination under s 276 are outside the scope of this paper. The case law in this area is voluminous. For an early and influential decision discussion, see e.g. *R v Riley*, 1992 CanLII 7448 (ONCA), leave to appeal to SCC refused, 23386 (25 January 1993). See also *R v Klassen*, 2015 SKQB 8 at paras 18–43 for a review of the law in this area.

141 *R v IDK*, *supra* note 141 at para 25 [emphasis added].

with a former girlfriend of the accused.[142] The trial judge admitted part of the texts to show the complainant's concerns that her friend would find that she had been hanging out with her former boyfriend in her absence.[143] The judge also admitted texts that could have pointed to negative feelings towards the accused.[144] However, the judge ruled that the defence was unable to show that the complainant's concerns about her friendship or her feelings towards the accused were sufficient to cause her to fabricate a claim, before reiterating that relying on the idea that sexual assault is more likely to yield false accusations is a myth.[145] The Court of Appeal dismissed the appeal.[146]

Most of the cases discussed in this section centred around young complainants.[147] This situation is consistent with some firms' narratives who explicitly identified teenagers as the most frequent false accusers.[148] While the coherence between the data and the case law is unsurprising given that defence counsel may report similar arguments on their websites and before courts, part of the literature supports the claim that youth may falsely accuse individuals.[149]

---

142 *Supra* note 32 at paras 8–14, 74.

143 *Ibid* at para 18.

144 *Ibid* at para 19.

145 *Ibid* at para 52 (citing the trial judge's reasons).

146 *Ibid* at paras 67–80, 92–94.

147 See also *R v Hicks*, 2009 CanLII 7171 (ONSC). This is a case in which the complainant pleaded guilty to public mischief for a false accusation when she was 13 years old. The Crown sought an order that evidence related to such conduct was collateral.

148 Wyman & Williamson, "Complexities", *supra* note 86; Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85.

149 Some literature supports the claim that youth may falsely accuse individuals. See Matthew Barry Johnson & Janquel D Acevedo, "Wrongful Conviction in Texas: 'Sex Assaults', False Guilty Pleas, Stranger Rape with Misidentification, and Drug Offenses" (2024) 5:1 Wrongful Conviction L Rev 27 at 35–36, 39; Mireille Cyr, "False Allegations of Child Sexual Abuse", *Institut national de santé publique du Québec* (last modified 4 January 2024), online: <inspq.qc.ca> [perma.cc/W4A9-GW5G]; Matthew Barry Johnson, *Wrongful Conviction in Sexual Assault: Stranger Rape, Acquaintance Rape, and Intra-familial Child Sexual Assault* (Oxford: Oxford University Press, 2021)

However, this must be contrasted with the Supreme Court frequent messaging on the importance of protecting children against sexual harm.[150] Such narratives should also avoid treating young complainants as less worthy of belief because of their age, which adds explicitly to the first category of myths and stereotypes identified by *Kruk*. Justice Martin specifically stressed that "treating the testimony of very young complainants with inherent suspicion" is a discriminatory reasoning about credibility that no longer has its place in Canadian courts.[151]

Reported cases of alibi do not exclusively involve young complainants. In *R v Bishop*, a woman in her forties alleged abduction and sexual assault so that she could provide her family with an explanation accounting for the injuries she inflicted on herself when attempting suicide.[152] The court ruled that mental health and the suicide attempt "precipitated the subsequent false complaint."[153] This case is also a good example of how the narratives analyzed so far are often intertwined.

F. *False Memories*

A firm stated that memory deficit or confusion might lead to false recollections, albeit non-deliberate ones.[154] Other entries in

---

[Johnson, *Wrongful Conviction in Sexual Assault*]. The US National Registry of Exonerations reported that as of November 2016, perjury and false accusations were more likely to occur in children sexual abuse cases and homicides (see "Wrongfully Accused in NSW? Here's What you Need to Know", *Hannay Criminal Defence* (18 November 2025) under heading "When False Accusations do Occur", online: <hannaylawyers.com.au> [perma.cc/6PAX-BBWN]) (the original webpage at the US National Registry of Exonerations is no longer active but its findings have been reported by other sources, such as the one from Hannay Criminal Defence).

150 See e.g. *Kruk, supra* note 7 at para 54; *R v Friesen*, 2020 SCC 9; *Sheppard*, *supra* note 18; *Quebec (Attorney General) v Senneville,* 2025 SCC 33; *R v Bertrand Marchand*, 2023 SCC 26. See also *Criminal Code*, *supra* note 17, s 718.01; *R v WW*, 2025 SCC 37.

151 *Kruk*, *supra* note 7 at para 54 (citing *R v F (WJ)*, 1999 CanLII 667 (SCC)).

152 *Supra* note 23 at paras 4–6.

153 *Ibid* at para 10.

154 "Main Reasons of False Sexual Assault", *supra* note 60; Slaferek Law, "Clear

the data set included remarks about the specific issue of false memories. Three firms indicated that children may be prone to false memories and pointed to the influence of adults as a reason behind such misrecollections.[155] Historical sexual assault also received attention from law firms. A website explained that such misrecollections originate in psychotherapy techniques leading to the revival of false memories of historical sexual assault.[156] Another firm concurred with this preoccupation by underlining that memory issues–including false memories–are of specific concern for historical sexual assaults. It asserted, when discussing defences available in such cases, that "people's memories fade over time, and are often influenced by therapy sessions, substance abuse, and 'the blame game.'"[157] The literature also tied the phenomenon of false memories to misrecollection in cases of sexual assault, notably because of the trauma associated with such crimes.[158]

As for Canadian courts, they started to grapple with the risk associated with recovered memory in the 1990s in cases dealing with memories of historical sexual abuse.[159] In *R v DeJaeger*, the court explicitly connected false memories to historical events when stating, "[i]n the process of attempting to recover a memory that has been 'lost', it is possible to inadvertently create a false memory. The false memory of a historic event for some becomes a means of

---

Your Name", *supra* note 48; "High School", *supra* note 68; Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85.

155 Linh Pham, "How to Defend When Falsely Accused of Sexual Assault", *Merv Nidesh, KC & Linh Pham – Saskatchewan's Criminal Defence Team* (9 July 2024), online: <criminallawyersinsaskatchewan.ca> [perma.cc/6H9A-TT8H]; "Defending Allegations of Child Abuse", *supra* note 71; Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85.

156 "Main Reasons of False Sexual Assault", *supra* note 60. See also Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85.

157 The Criminal Law Team, "Sexual Assault", *supra* note 60. The complexity of obtaining evidence for historical events is discussed in *R v DeJaeger*, 2014 NUCJ 21 at paras 6–8. 11–17, 1048–55, as well as child memories at paras 18–21. This decision extensively dealt with recovered memories.

158 See e.g. Johnson, *Wrongful Conviction in Sexual Assault*, *supra* note 149 at 35.

159 *R v DeJaeger*, *supra* note 157 at paras 31–39 (on the early jurisprudence on recovered memories).

rationalizing pain and dysfunctional behavior in a life and lifestyle that is otherwise disordered and chaotic."[160]

Not all cases on memory pertain to historical sexual assault. In *R v A(J)*, the accused was charged with sexual assault.[161] He alleged that the sexual activity was consensual and that his ex-common law partner falsely accused him. The defence suggested that the complainant regretted the sexual activity after it happened, particularly as she was in a relationship with a new partner. In other words, "the false complaint was to serve as a cover for [her] infidelity if news of this affair leaked out to her new boyfriend".[162] The defence then claimed that gaps in the complainant's memory were evidence that the accusations had been fabricated.[163] The trial judge rejected the position and explained that trauma like the one experienced by a victim of sexual violence could certainly interfere with memory.[164] This is another example of defence counsel relying on multiple narratives in a single case.

Recent appellate and Supreme Court jurisprudence also addressed the issue of memory. In *R v PB*, the Saskatchewan Court of Appeal ruled that no corroboration was required for sexual assault as per s. 274 of the *Criminal Code*, even when a complainant admits to memory troubles. It explicitly stated: "A trier of fact is always required to consider the reliability of a witness's evidence carefully. This is so whether the evidence arises from a more typical memory process, or from 'flashbacks' or otherwise recovered memories. But a judicial requirement for corroboration cannot be introduced where the *Criminal Code* has specifically abolished it."[165]

---

160 *Ibid* at para 26.

161 2008 NUCJ 8.

162 *Ibid at* para 38.

163 *Ibid* at paras 42–44.

164 *Ibid* at para 46; *R v Leary*, *supra* note 63 at para 103 (similarly recognized the impact of trauma on some complainants' memory). For a recent academic discussion on memory and trauma, see Thor Paulson et al, "Toward a Trauma-Informed Approach to Evidence Law: Witness Credibility and Reliability" (2023) 101:3 Can Bar Rev 497.

165 *R v PB*, *supra* note 137at para 66. Section 274 of the *Criminal Code*, *supra* note 17, specifically stipulates that "no corroboration is required for a conviction

By the time the Supreme Court affirmed *PB*, *Kruk* had already labeled historical corroboration requirements as rules deeming complainants of sexual assault to be less worthy of belief.[166] It had also specified that courts have identified conclusions on credibility based on psychiatric treatment as a myth and stereotype.[167]

After *PB*, the Supreme Court in *Sheppard* reaffirmed that therapy sessions do not impact the complainant's credibility or reliability in the absence of any indication that the therapy altered their memory.[168] This last comment followed the Court's reminder that sexual offence case law should not rely on myths and stereotypes about complainants' credibility and should apply outside of recovered memories (see the section on 'mental health' below).[169] While memory was flagged as a potential issue in sexual assault proceedings, recent case law stands as a compelling reminder of new legal attitudes towards victims of sexual assault. It also aligns with the message conveyed by the courts: i.e., counsel should rely on evidence when advancing that the accusation is motivated.

G. *Mental Health*

Bishop, mentioned in the 'alibi' section, as well as the discussion on therapy in the previous section are germane segways to the next type of narrative: false accusations linked to mental health. Indeed, websites[170] and the case law have grappled with the interaction

---

and the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration."

166 *Kruk*, *supra* note 7 at paras 34–35.

167 *Ibid* at para 41.

168 *Sheppard,* supra note 18 at para 61.

169 *Ibid* at para 60.

170 Pham, *supra* note 155; Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85; "Sexual Assault Lawyer in Toronto", *Fedorowicz Criminal Law* (last visited 12 June 2026), online: <fedorowiczlaw.com> [perma.cc/5HS6-CVG9] [Fedorowicz Criminal Law]. The firm that expressed compulsive liars may want to seek attention also embraced a mental health narrative by suggesting that a pathology afflicts some complainants (The Criminal Law Team, "Sexual Assault", *supra* note 60).

between mental health and false accusations. While *Kruk* did not specifically list complainants with mental health issues as a category of people that have been treated with prejudicial attitudes in sexual assault law,[171] it did mention that psychiatric treatment does not translate into a lack of credibility.[172] This warning must be considered carefully, especially given that some indicated a link between perceptions of credibility and mental health by deeming some complainants less credible than others.[173]

The case law on public mischief suggested that mental health can contribute to some cases of false accusations. For instance, in *R v Ventras*, the accused made repeated calls to the police regarding the well-being of her son while he was residing with her ex-husband. She was charged with criminal harassment and public mischief for allegations of sexual assault implicating her ex-husband. On the public mischief count, the court found that there was no evidence of the specific nature of the allegations, of the falsity of the allegations, or of an intention to mislead the police, thus failing to prove many of the elements of the offence.[174] The court nevertheless briefly discussed the mental health of the accused while examining the evidence. Some of this evidence was drawn from the testimony of the complainant about his ex-wife's anxious behaviours.[175] In *R v Bridger*, a martial court case of false accusation,

---

[171] *Kruk*, *supra* note 7 at para 35 did however, mention disabilities, including by referring to mental health disabilities scholarship. The example of addiction is taken from the literature. See e.g. Melissa Shaefer Morabito, April Pattavina, &Linda M Williams, "It All Just Piles Up: Challenges to Victim Credibility Accumulate to Influence Sexual Assault Case Processing" (2019) 34:15 J Interpersonal Violence 3151 at 3157, 3162–65.

[172] *Ibid* at para 41. See also *Sheppard*, *supra* note 18 at 61; *R v JJ*, 2022 SCC 28 at para 132; *R v Mills*, 1999 CanLII 637 (SCC) at para 119.

[173] See e.g. Katherine M Cole, "She's Crazy (to Think We'll Believe Her): Credibility Discounting of Women with Mental Illness in the Era of #MeToo" (2020) 22:1 Geo J Gender & L 173; Morabito, Pattavina & Williams, *supra* note 171 at 3157, 3162–65. See also Dufraimont, "Myth, Inference and Evidence", *supra* note 22 at 333 (identified decreased credibility following consultations with mental health professionals as a myth based on *R v Mills*, *supra* note 172 at para 119).

[174] *R v Vrentas*, *supra* note 23.

[175] *Ibid* at paras 18, 21, 42. See also *R v Little*, *supra* note 23.

the court crafted the sentences by considering the circumstances of the offender, which included addictions and other mental health issues.[176] In *CF*, the complainant falsely accused an individual after a conflict related to rent payments.[177] The mental health of the accuser was alluded to but eventually dismissed as not having any relation to the accusation.[178]

As for any other narratives, the presence of mental health issues should not create a blanket suspicion. Relatedly, not only did *Kruk* reaffirm that mental health counselling is not a cause for concern with regard to credibility in the absence of other evidence,[179] this principle is also evident from s. 278.3(4)(b) of the *Criminal Code*. This provision pertains to the production of records related to a complainant or a witness and explicitly stipulates that "any one or more of the following assertions by the accused are not sufficient on their own to establish that the record is likely relevant to an issue at trial or to the competence of a witness to testify:…(b) that the record relates to medical or psychiatric treatment, therapy or counselling that the complainant or witness has received or is receiving".[180]

III. Myths and Stereotypes Related to Consent and the Nature of Sexual Assault or Proper Narratives?

A. *Misinterpretation of Consent or "Post-Sex Regret"*

The next two narratives are more closely related to myths and stereotypes related to the nature of consent and sexual assault. This is not to say that the types of myths and stereotypes cannot overlap, as the issue of intoxication will show.

Some law firms relied on the idea that complainants sometimes conflate the legal requirements of consent and their experience

[176] *R v Bridger*, *supra* note 23 at paras 11, 33.

[177] *R v Fordham*, *supra* note 23 at paras 6–8.

[178] *Ibid* at para 8.

[179] *Kruk*, *supra* at note 7 at para 41.

[180] *Criminal Code*, *supra* note 17, s 278.3(4).

(e.g., the person consented but did not interpret the law correctly), or feel post-sex regret after the sexual encounter.[181] The data defined post-sex regret as somebody feeling remorse, shame, or disappointment for providing consent.[182] This definition is not dissimilar to Glanville's example of the complainant "refus[ing] to admit that she consented to an act of which she is now ashamed".[183] These narratives appeared in legal argumentation, with some courts explicitly rejecting the narrative of post-sex regret and equating the latter to a myth and stereotype, just as they did for the break up context.[184] While consent is obviously important to prosecuting sexual assaults, one ought to be careful prior to engaging in the misinterpretation or post-sex regret narrative. It is true that evidence of a fabricated claim must be considered, but the analysis of consent narrative should also be sensitive to the place that myths and stereotypes have played in this area of the law.

As alluded to in the introduction of this paper, *Kruk* divided between two types of myths and stereotypes in sexual assault cases: those pertaining the nature of consent and sexual assault cases and those that can be attached to a complainants' credibility.[185] The law of sexual assault has historically struggled with a definition of consent that recognizes the equality and agency of women. Not only

---

181 See e.g. "Sexual Assault Lawyer in Toronto", *Zamani Law* (last visited 15 June 2026), online: <zamani-law.com> [perma.cc/26B9-YJM4] [Zamani Law, "Sexual Assault Lawyer"]; Zamani, "Defend Against False Accusations", *supra* note 85.

182 Karpa, *supra* note 61; "Main Reasons of False Sexual Assault", *supra* note 60; Pyzer Criminal Lawyers, "How to Defend Yourself", *supra* note 85; "Toronto Sexual Assault Lawyer", *Michael P Juskey Criminal Defence Lawyer* (last visited 15 June 2026), online: <mpjlaw.ca> [perma.cc/PN4J-2C6U]; Toronto Assault Lawyer, "Sexual Assault Charges", *supra* note 85.

183 Williams, *supra* note 2 at 662.

184 See *Leary, supra* note 63 at para 94; *R v Lavalley*, *supra* note 65 at para 53. See also *R v Mirzadegan,* 2018 ONSC 3449 at para 104, aff'd 2019 ONCA 864. The Appeal Court's decision rejected that the complainant felt "used and cheap" (stated in the appeal decision at para 104). Therefore, this might also be coded as a form of emotion (discussed in Part 2).

185 Koshan, "Myths, Stereotypes, and Substantive Equality", *supra* note 16 at 3–4.

was consent irrelevant for married couples until 1983,[186] many cases have shown that pre-existing relationships are used by lawyers to raise doubt about consent. Despite the limitations on introducing past sexual history under s. 276 of the *Criminal Code*, cases like *R v Goldfinch*, for example, have sought to provide 'context' for the events by detailing the nature of the complainant's relationship with the accused.[187] Ruthy Lazar wrote a compelling paper on the confusing nature of consent for legal actors in 2010. On this occasion, she interviewed Crown and defence lawyers and revealed that the idea of an ongoing consent in relationships had not been abolished with the arrival of s. 276. She thus showed the idea that the myth that some contexts are more likely to lead to consensual activity survived the enactment of the provision.[188]

In light of *Goldfinch* and the like, it is difficult to claim that such perceptions no longer exist. The nature of modern relationships can add to these 'consent' myths and stereotypes in two ways: (1) the 'new' spectrum of relationships can expand the type of contexts deemed 'more likely to lead to consensual activity' and (2) willingness to date outside of traditional relationships could lead to discriminatory reasonings by resurrecting the idea that sexually active women are more likely to consent. The Supreme Court recognized that some types of sexual violence might target women outside of traditional relationships.[189] Consequently, adequately protecting their sexual integrity by removing any preconceived and erroneous notion of consent is essential to preventing sexual violence.

This discussion on relationships and consent must be contrasted with two findings from the firms' websites. First, the data identified specific contexts in which "post-sex regret" could materialize. One firm identified encounters resulting from social media or dating apps as more likely to lead to misunderstandings

---

186 See e.g. *Kruk*, *supra* note 7 at para 33.

187 2019 SCC 38.

188 Lazar, *supra* note 8.

189 *R v Kirkpatrick*, 2022 SCC 33 at para 61.

or regrets.[190] This narrative found implicit support from another firm which labelled two summaries of cases in which their clients were acquitted with the etiquettes "Tinder gone wrong" and "Tinder date ends with sexual assault allegations".[191] Without suggesting that this is what happened in these cases, one possible explanation for this focus on Tinder is the suggestion that a woman using this type of application is more likely to consent to sexual activity because of the 'context' of the encounter. This would be an impermissible line of reasoning directly connected to the 'twin myth' reasoning. Indeed, it participates in the first category of myths and stereotypes identified by *Kruk*. As a reminder, Koshan defined this category as follows:

These ideas are tied to myths about consent, such as the myth that a complainant's passivity or failure to resist signifies her consent, and that complainants may say "no" when they actually mean "yes" (at para 36). *Sexually active women are also presumed to be more likely to consent, which has led to sexual history evidence being considered relevant at trial* (at para 36). In addition, a complainant's "immodest" attire and her failure to avoid the accused after the alleged sexual assault have been taken to indicate that she is likely to have consented to any sexual activity (at para 41).[192]

Second, other websites cautioned that intoxication might complicate consent during sexual activity and lead to misunderstandings.[193] The narrative of post-sex regret in case of intoxication found support in courts and, thus, expanded beyond defence counsel's websites. This is notably demonstrated by an excerpt from *NB* partly quoted by Elaine Craig in her study of capacity to consent: "A person's after the fact regret does not allow

---

190 Wyman & Williamson, "False Sexual Assault Allegations", *supra* note 85.

191 "Regina v TJK [Nov 17] – Tinder gone Wrong", *Sean Fagan Criminal Defence* (last visited 15 June 2026), online: <seanfagan.ca> [perma.cc/NW6J-A7BA]; "Tinder date ends with sexual assault allegations", *Sean Fagan Criminal Defence* (last visited 15 June 2026), online: <seanfagan.ca> [perma.cc/6QH7-FTK7].

192 Koshan, "Myths, Stereotypes, and Substantive Equality", *supra* note 16 at 4 (the paragraphs cited refer to *Kruk*, *supra* note 7) [emphasis added].

193 Akram Law, "How a Calgary Lawyer can Defend", *supra* note 48; Karpa, *supra* note 61; Pyzer Criminal Lawyers, "How to Defend Yourself", supra note 85.

them to convert an ill-considered, drunken choice on their part into a sexual assault by a defendant…One of the challenges is defining, in any particular case, the line between drunken imprudence and incapacity to consent."[194]

The literature suggested that discourses around intoxication can contribute to the labelling of some complainants as "bad victims": i.e., women engaged in risky behaviours are not ideal victims.[195] This could certainly align with myths and stereotypes treating some complainants as less worthy of belief. The next question is whether intoxication can be, in addition to a potential issue of credibility, connected to a misunderstanding of what consent means in law (and thus fit within the other category of myths and stereotypes outlined in *Kruk*).

Section 273.1(2)(b) stipulates that "no consent is obtained if…the complainant is incapable of consenting for any reason other than the one referred to in paragraph (a.1)"[196] (i.e., the complainant is not conscious).[197] Despite this wording, Craig suggested that courts have often conflated unconsciousness with incapacity.[198] She also claimed that failing to protect women who are severely intoxicated yet conscious is antithetical to the idea that intoxication to a certain point ought to cast doubt on capacity to consent.[199] Consequently, Craig argued that this amounts to an erroneous interpretation of what should be capacity to consent and thereby

---

[194] See e.g. *R v NB*, 2018 ONCJ 527 at para 30. See also Elaine Craig, "Sexual Assault and Intoxication: Defining (In)Capacity to Consent" (2020) 98:1 Can Bar Rev 70 at 88[Craig, "Sexual Assault and Intoxication"]. See note 91 for more examples.

[195] See e.g. Lise Gotell, "Rethinking Affirmative Consent in Canadian Sexual Assault Law: Neoliberal Sexual Subjects and Risky Women" (2008) 41:4 Akron L Rev 864. See also Randall, supra note 16; *R v JJ*, *supra* note 172 at para 132.

[196] *Criminal Code*, *supra* note 17.

[197] *Ibid*, s 273.1(2)(a.1).

[198] Craig, "Sexual Assault and Intoxication" *supra* note 194 at 78 (also noted that the reference to unconsciousness at s 273.1(a.1) "may, by emphasizing or singling out unconsciousness" create more confusion between incapacity short of unconsciousness and incapacity due to unconsciousness).

[199] *Ibid* at 91.

under-protects an already vulnerable group.[200] Such an error, she claimed, may stem from the stereotype that "drunk women will have sex with anyone,"[201] and other related reasoning associated with intoxicated women, including victim-blaming, likelihood of false claims, and lack of discernment in sexual activities.[202]

Since Craig wrote this argument, the Supreme Court in *GF* specified that capacity relates to the comprehension of four elements: the physical act, the sexual nature of the act, the identity of one's partner and the choice to decline participation in sexual activity.[203] While the decision does not guarantee that stereotypes relating to risky behaviours will be removed from everyone's mind, it does reaffirm that incapacity is not synonymous with unconsciousness. In other words, characterizing intoxication as leading to 'misunderstandings' from the complainant does not encapsulate that sexual activity requires the capacity to consent. This is not to say that "mere drunkenness" amounts to incapacity to consent[204] or that cases of intoxication are always straightforward. Indeed, Gotell wrote that "cases involving intoxication continue to be contentious as complainants are often unable to provide a complete account of what happened."[205]

Seventeen years after she published this paper, the Supreme Court of Canada continues to deal with capacity to consent in intoxication cases and did so most recently in *R v Rioux,* rendered in November 2025.[206] The Court restated that incapacity and unconsciousness are not synonymous as incapacity refers to a "broader residual category"[207] It also reaffirmed that consent requires an operating mind and the correlating elements from

---

200 On the sexual assault of intoxicated women, see Janine Benedet, "The Sexual Assault of Intoxicated Women" (2010) 22:2 CJWL 435.

201 Craig, "Sexual Assault and Intoxication", *supra* note 194 at 88.

202 *Ibid* at 106 (see also notes 161–63). See also *ibid* at 108; Randall, *supra* note 16 at 411, 413–14.

203 *R v GF*, 2021 SCC 20 at para 57.

204 *Ibid* at paras 88–89. See also *ibid* at paras 84–86.

205 Gotell, *supra* note 195 at 870.

206 *R v Rioux*, 2025 SCC 34.

207 *Ibid* at paras 63–65.

GF[208] Finally, the Court ruled that direct evidence from the complainant about her state of mind at the moment of the sexual act is not required. Non consent or incapacity to consent can be proven with circumstantial evidence.[209] This is particularly relevant for intoxicated complainants who may not be able to provide evidence about their state of mind due to incapacity.[210] Provided that courts follow the guidance of the Supreme Court in recent cases, the clear reminder that incapacity is not unconsciousness may appease some of the aforementioned scholarship's concerns. The reliance on circumstantial evidence may also serve to protect women who are incapable of consenting and yet are unable to provide evidence thus showing how the law has evolved to address memory issues and respond to Gotell's comments.[211] This is further example that a gap in memory should not be equated to fabrication or a lack of reliability,[212] but also that the narratives associated with false accusations rarely happen in silo.

Despite additional considerations in cases of intoxication, arguments related to misinterpretation of consent or post-sex regret ought to be carefully examined. While the defence could simply point out to the Crown not discharging their burden of proving beyond reasonable doubt that "the complainant did not have an operating mind capable of consenting", for instance, because of intoxication, "or did not agree to the sexual activity in question",[213] the way in which the misinterpretation or regret argument is presented could touch on the myths and stereotypes identified by *Kruk*, notably by suggesting that one who leads a risky behaviour

---

208 *Ibid* at paras 67–68.

209 *Ibid* at paras 50, 71–75, 77–98, 100–101.

210 *Ibid* at para 75.

211 *Ibid* at para 96.

212 *Ibid* at para 85.

213 *R v GF*, *supra* note 203 at para 47. Indeed, in cases of intoxication, the Supreme Court ruled, at para 24, that "where the complainant is incapable of consenting, there can be no finding of fact that the complainant voluntarily agreed to the sexual activity in question. In other words, the capacity to consent is a necessary—but not sufficient—precondition to the complainant's subjective consent". See also *ibid* at paras 43–45, 53, 55–58.

when engaging in casual dating or intoxication is more likely to consent (or is less credible). This narrative thus intertwines the different myths and stereotypes related to sexual assault.

B. *Mistaken Identification*

Finally, firm websites raised identification as a defence to sexual assault charges. This last narrative fits oddly with the two categories of myths and stereotypes discussed thus far. It nevertheless deserves consideration due to its inclusion in the data.

It is essential to distinguish three arguments emerging from this assertion: (1) the Crown did not meet its burden to prove identification beyond a reasonable doubt,[214] (2) the complainant or the investigation identified the wrong person,[215] and (3) the false identification was a deliberate act of the complainant.[216] The first one applies to any criminal offence and is not specific to sexual

[214] For example, one firm explicitly refers to raising a reasonable doubt about the complainant's identification as a defence ("Sexual Offence Lawyer Toronto", *Costa Law Firm* (last visited 15 June 2026), online: <costalawfirm.ca> [perma.cc/P5AU-UME2]; whereas others state that a defence could involve challenging forensic evidence or any other evidence related to identification ("Sexual Assault Lawyers in Toronto & GTA", *Mass Tsang Barristers & Solicitors* (last visited 15 June 2026), online: <masstsang.com> [perma.cc/G2NQ-DSNJ]; "How a Sexual Assault Defence Lawyer Can Help Reduce or Dismiss Charges", *Slaferek Law* (17 January 2025), online: <slafereklaw.ca> [perma.cc/CU92-CE34].

[215] See e.g. "Charged with Sexual Assault?", *supra* note 112; Zamani Law, "Sexual Assault Lawyer", *supra* note 181; "Main Reasons of False Sexual Assault", *supra* note 60; "Defending Against False Allegations of Sexual Assault or Sexual Harassment", *Kruse Law* (last visited 15 June 2026), online: <kruselaw.ca> [perma.cc/WA28-UTJ6]; Pyzer Criminal Lawyers, "How to Defend Yourself", *supra* note 85; "Different Types of Sexual Assault Charges in Canada", *Pyzer Criminal Lawyers* (last modified 15 June 2026), online: <torontodefencelawyers.com> [perma.cc/8ZUW-7RCW]; "Toronto Sexual Assault Lawyers", *Weisberg Law* (last visited 15 June 2026), online: <Weisberg.ca> [perma.cc/HBA7-X24K].

[216] This third one can be tied to the negative feelings category. See e.g. "Saskatoon Sexual Assault & Rape Lawyer", *Merchant Law Group LLP* (last visited 15 June 2026), online: <merchantlaw.com> [perma.cc/P7CN-XRFX]; PCS Law, "Sexual Assault Lawyer", *supra* note 85.

assault or false accusations.[217] It does not necessarily convey that the complainant committed a deliberate error or that the defence uses myths and stereotypes to defend the accused. The second and third statements are more closely related to false accusations; the second one emphasizes inaccurate but unintentional identification and investigative errors, while the third focuses on malicious claims. The second argument thus expresses concerns about wrongful convictions resulting from state action or the complainant's unintentional error. For instance, one firm attributed false identification by the complainant to memory, lighting, biases, or suggestive questioning.[218]

Many data entries did not distinguish between the three arguments listed above. They only specified that an accused could raise the "it wasn't me" defense,[219] which renders any qualitative comment on the reasons for the mistaken or lack of identification challenging. The deliberate false accusations, however, could participate in any of the myths and stereotypes identified so far.

IV. CONCLUSION

This paper has shown that some narratives advanced by defence counsel may coincide with motivations in cases of public mischief, perjury, or sexual assault. The literature even confirmed many of the motivations or causes behind false accusations discussed on firms' websites and in legal arguments. For instance, Goodyear-Smith explains that false allegations of sexual violence can happen for a variety of rationales, including obtaining a material gain, seeking revenge, reacting to the news that a love interest is unrequited, creating alibis to explain an absence, unfaithfulness or

---

217 *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 11(d).

218 Fedorowicz Criminal Law, *supra* note 170. See also "Toronto Sexual Assault Lawyer", *David Genis Law* (last visited 15 June 2026), online: <davidgenis.ca> [perma.cc/T4SD-DBSD]; Wyman & Williamson, "Key Defences", *supra* note 48 (mentioning visibility and stress as causes of error).

219 See e.g. "Donich Law, "What to Do", *supra* note 117; "High School", *supra* note 68.

pregnancy, attracting private or public sympathy, intervening with political nominations,[220] and mental disorders.[221] Engle and O'Donohue, for instance, proposed eleven "pathways" to false allegations, which focused on mental health diagnoses but also included lying to obtain a conscious or unconscious gain, denying consent, experiencing false memories, and distorting the events due to intoxication.[222] In Canada, the *Institut national de santé publique du Québec* reviewed the literature on false allegations of child sexual abuse and revealed that memory, age (especially adolescence), separation, suggestibility, tunnel vision, and an environment prone to rumours could all be conducive to false accusations. However, it cautioned that these categories should be treated with caution and nuance.[223] O'Donohue et al. also referred to confabulation, misinterpretation of non-sexual contacts as sexual, child or parent pathologies, and personal motivation to explain false accusations of child abuse.[224]

While the categories from counsel resonated with some of the case law and the literature, over-reliance on such narratives without

---

220 *R v Nikal*, 1999 BCCA 362 relied on a similar narrative by alleging false accusations meant to interfere with band council politics. In *R v Heatherington*, 2005 ABCA 393 a municipal councillor was charged with public mischief. There is no mention that this was connected to her political career. See also "Heatherington faces resignation motion", *CBC News* (14 July 2003), online: <cbc.ca> [perma.cc/74TK-DPFU]. This is only one of the newspaper's accounts of a case that received wide coverage in Canadian and United States media.

221 Felicity Goodyear-Smith, "Who makes false allegations and why? The nature, motives, and mental health status of those who wrongly allege sexual assault" in John AM Gall & J Jason Payne-James, eds, *Current Practice in Forensic Medicine*, vol 3 (Hoboken, NJ: Wiley, 2022) at 22–27.

222 The mental health pathways included antisocial personality disorder, borderline personality disorder, histrionic personality disorder, delirium, psychotic disorder, dissociation, and intellectual disability (Jessica Engle &William O'Donohue, "Pathways to False Allegations of Sexual Assault" (2012) 12:2 J Forensic Psychology Practice 97.

223 Institut national de santé publique du Québec, *supra* note 149.

224 William T O'Donohue et al, "Psychological and Investigative Pathways to Untrue Allegations of Child Sexual Abuse" in William T O'Donohue & Matthew Fanetti, eds, *Forensic Interviews Regarding Child Sexual Abuse* (Cham, Switzerland: Springer, 2016).

supporting evidence reinforces myths and stereotypes about consent, sexual assault or credibility and may counter the messaging from cases like *Seaboyer* that false accusations are not more likely in cases of sexual assault. Courts have frequently stressed the importance of distancing the law from myths and stereotypes and called for evidence and case-by-case analysis to strike a balance between the accused's and complainants' interests. Indeed, although Canadian law clearly states that relying on a line of reasoning rooted in stereotypes or prejudices is an error of law, the situation is different if there is a case-specific evidentiary foundation for a narrative that would otherwise amount to a stereotype or myth. However, the case law is not always clear as to the type of evidence that must be tendered to demonstrate that the narrative is not purely stereotypical or relying on myths. It would also be unwise to claim that the case law has successfully identified all reasonings based on stereotypes or myths. The paper hopefully showed the courts' challenging task of seeking truth while avoiding myths and stereotypes-based reasoning and identified some oft-relied upon narratives, including negative feelings.

This paper also demonstrated that simultaneously protecting complainants and accused is an ambitious task. This being said, it converges on one lesson: raising awareness of the myths and stereotypes surrounding sexual assaults while promoting excellence in criminal investigations to obtain proper evidentiary foundation. This conclusion aligns with Chief Justice Fraser's comment in *R v Ambrose*: "[t]he answer…is not to overreact to false allegations of this kind but to judge every particular case on its own merits".[225] Such judicial writing effectively calls for a case-by-case basis rather than generalized distrust.[226] While *Ambrose* is now 25 years old, its message is still valuable to ensure protection of complainants and accused alike.

---

225 *Supra* note 23 at para 112 (in dissent).

226 This suggestion complies with the approach in *KMN v SZM*, *supra* note 102 (although the latter is a family law case).