

Ruling that woman must pay man she accused of rape stands

NEWS Sep 29, 2017 by [Nicole O'Reilly](#) The Hamilton Spectator



This case also "feeds into the stereotype of the jilted girlfriend," says Lenore Lukasik-Foss, director of the Sexual Assault Centre Hamilton Area (SACHA). "It plays into well-worn stereotypes of revenge-seeking women." - GETTY IMAGES

A woman ordered to pay nearly \$24,000 to the man she accused of sexual assault has lost her appeal.

The woman's lawyer, Jonathan Collings, had **appealed the Welland small claims court ruling**, in part, because he accused the deputy judge of relying on "sexual stereotypes."

Deputy Judge David Black found the woman was unreliable and that she falsely accused her ex-boyfriend as revenge for perceived infidelity. She was ordered to pay \$23,842 — a decision that has drawn **sharp criticism** from sexual assault survivor advocates who argued it will discourage victims from reporting to police. Collings had asked for the case to be dismissed.

However, Ontario Superior Court Justice James Ramsay dismissed the appeal, arguing the deputy judge was "entitled" to believe him over her and that the 2016 decision was not "improper."

"I agree that (to) resort to any gender related misconceptions would have been erroneous, but I do not think that the judge made any such resort," Ramsay's written decision said.

The original ruling is based on "the contradictions in her own statements," he said.

Collings declined to comment further, adding that he's not retained on the matter anymore, and is unaware of any plans to appeal further.

The woman cannot be named because of a publication ban. The Spectator has chosen to also not name the man, who has declined to speak with The Spectator.

The man, who represented himself at the hearing Sept. 8, argued the case has been a "nightmare." He was charged criminally, but that charge was withdrawn at the preliminary hearing.

Suzanne Mason, public education co-ordinator for the Niagara Sexual Assault Centre, attended part of the hearing and expressed shock at the decision.

"That is very scary that you can go to police, have them believe you, have charges laid (and still be sued)," she said.

The decision will have a "chilling effect" across Canada, where already only 5 per cent of victims report sexual assault, Mason said.

The alleged incident happened at his residence in March 2011 at the end of an on-again, off-again relationship. She found a stain on his bed, which she said was peach lipstick from another woman, and he said was peach jam. She argued he then raped her. He said the sex was consensual.

Black's decision relied on texts and emails sent from the woman to the man following the incident that he ruled appear to indicate she "felt positively about the encounter."

Later messages turned angry, with the woman accusing the man of cheating on her, before she went to police.

The deputy judge also relied on testimony from the woman's doctor who examined her the next day and said she did not see bruising, despite the woman telling court she was sore all over.

Experts point to a strong body of evidence that shows victims of sexual assault often don't remember things clearly, don't always seem upset and, when the attacker is someone who is known to them, may try to smooth things over.

Lenore Lukasik-Foss, director of the Sexual Assault Centre Hamilton Area (SACHA), said the decision is part of a concerning trend toward victim blaming and relying on stereotypes.

"There is always that worry around our judges not fully understanding the behaviour of survivors," she said. "It's not uncommon for them to make breakfast the next morning or email later."

This case also "feeds into the stereotype of the jilted girlfriend," she said. "It plays into well-worn stereotypes of revenge-seeking women."

In truth, there are no more false reports of sexual assault than any other crime, Lukasik-Foss said. It's the justice system that is "failing survivors."

noreilly@thespec.com

905-526-3199 | @NicoleatTheSpec



by [Nicole O'Reilly](#)

Nicole O'Reilly is a reporter with the Hamilton Spectator.

Email: noreilly@thespec.com [Twitter](#)

<https://www.thespec.com/news-story/7583687-ruling-that-woman-must-pay-man-she-accused-of-rape-stands/>