

THE DISCRIMINATORY USE OF THE “KGB PROCEDURE” BY POLICE AGAINST WOMEN IN CANADA

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TOPIC AND IMPORTANCE

Sometimes, during a police investigation, police officers may receive a statement from a witness that can be used as evidence in a crime—but what happens when that witness might be an unreliable one? In *R v. KGB*, the Supreme Court of Canada laid out the necessary steps that must be taken to allow the use of police statements of “presumptively untrustworthy witnesses.” To be used in court, the statement must be videotaped, taken under oath, and the witness must be warned of the lengthy prison sentences they might face if they’re caught lying. This “*KGB* protocol” was created to make certain out-of-court statements still admissible in court, especially in cases where the witness might later change their story at trial.

Originally, the types of witnesses that the *KGB* procedure targeted were accomplices, other people accused of the crime in question, or those with a history of dishonesty within the criminal justice system. However, post-*KGB*, the protocol has often been imposed on another group of witnesses: women who allege sexual or gender-based violence. In analyzing case law, the rules of evidence, and Crown prosecution standards, this article suggests that the use of *KGB* procedure on these women is unwarranted in the majority of cases—and, if anything, merely perpetuates myths about sexual assault while creating an incredibly hostile environment for those alleging sexual violence.

MAIN ARGUMENTS

First, this article argues that the *KGB* protocol should not be used in most sexual assault investigations, as doing so departs from the Supreme Court’s intention in *KGB*. The *KGB* procedure was originally intended to be imposed on witnesses who police suspected may pose a higher risk of dishonesty, not on individuals reporting crimes committed against them. By imposing the *KGB* protocol during interviews with sexual assault complainants, the police perpetuate the discriminatory stereotype that women are inclined to lie about sexual assault. In doing so,

they also alienate and re-traumatize victims who already face significant barriers in the criminal justice system.

Additionally, the article points out that, according to the case law, prosecutors rarely use an adult sexual assault complainant's police statement in court. As a result, it is often clear ahead of the interview when using the *KGB* procedure might be justifiable and non-discriminatory—circumstances that are quite rare in the context of a sexual assault complainant.

Finally, the article argues that Canadian courts should strongly discourage the police from using the *KGB* protocol on sexual assault complainants unnecessarily. It suggests that, thus far, judges have not only failed to provide direction regarding the pointlessness and discriminatory harms that result from the misapplication of the *KGB* procedure, but have at times also perpetuated the problem by interchangeably referring to sexual assault complainants' police statements generally as "*KGB* statements."

CONCLUSION AND ADDITIONAL CONSIDERATIONS

The Supreme Court did not intend for the *KGB* protocol to be used on women reporting sexual assaults to the police. Treating sexual assault complainants as though they might be more dishonest both departs from the Court's intention in *KGB* and simultaneously perpetuates dangerous rape myths, creating barriers for sexual assault survivors seeking justice.