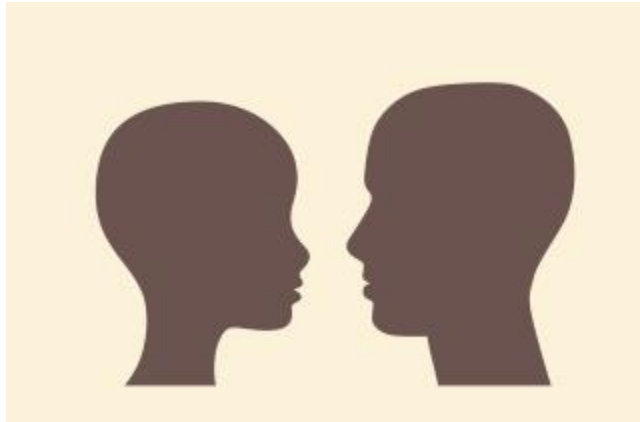


## Criminal



## Preconceived views on sex stereotypes affect male stripper case

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A male strip club, a group of women out for a birthday, a booth, bottle service, a lap dance and the VIP room. The decision released by the Court of Appeal in *R. v. Cepic* 2019 ONCA 541 is more like reading a tabloid at the grocery store that you can't put down.

The female complainant attended at the Foxxes Den, a male strip club, with seven girlfriends to celebrate a birthday. The female complainant paid for a lap dance at a cost of \$10. The appellant stated that it was a "typical dance" and that he did not expose his penis, although some male dancers did. The appellant states that he was aroused and that the complainant "did reach in there to touch it." However, the complainant denies this.

The appellant further states that he told the complainant that "if you want to see it, there is a VIP" room. The complainant paid \$5 for the appellant to perform a dance for her friend. She paid a further \$40 for a dance in the VIP. She had used her debit card at the bar to obtain cash.

In the VIP room, the dance included fellatio and vaginal intercourse. The appellant tells the applicant that he is going to climax and he claims that the appellant said "No, I have a boyfriend." The complainant

denies saying this. The appellant ejaculated on the floor, provided his business card to the complainant and then went to take a shower.

The complainant returns to the table with her friends and about 10 minutes later called her boyfriend to pick her up. She texted a friend out of concern of what to tell her boyfriend as well as concern that her father, a police officer “would hate me.” When the complainant’s boyfriend picked her up, she told him that she had been sexually assaulted. The incident was then reported to the police. The appellant was charged with one count of sexual assault.

The issue at trial was consent. Although all the evidence heard at trial is not included in the Court of Appeal’s decision, the facts as outlined suggest that it is highly unlikely that one could prove beyond a reasonable doubt that the appellant was guilty of sexual assault without making various assumptions.

The trial judge found the appellant guilty beyond a reasonable doubt of sexual assault and sentenced him to two years less a day in jail.

The trial judge found the appellant to provide self-serving evidence and found it “implausible” that the complainant would touch the appellant’s penis when this was her first lap dance and her first time at a strip club.

The trial judge also found it “completely implausible and nonsensical” that the complainant would say that she had a boyfriend immediately before the appellant ejaculated. The trial judge did not accept that the position during sex could have been as a result of consensual sex. The trial judge found that the complainant was both “reliable and credible.”

The fact that the trial judge uses language like “implausible” and “nonsensical” in her decision on more than one occasion is concerning, particularly in this context. To suggest that because a young woman had not been to a strip club and had not had a lap dance previously would translate into her not touching a man’s penis is what is “nonsensical.”

Apparently, the trial judge failed to consider the charged environment created by a group of women celebrating a birthday, with alcohol and at a strip club.

Instead the trial judge finds that the man must have been the one at fault for the sexual actions that occurred because the trial judge believed “that this young woman was stunned and confused by the situation she found herself in and [the appellant] took advantage of that confusion.”

The Court of Appeal relies on *R. v. D.D.* 2000 SCC 43 at para. 65; *R. v. A.R.J.D.* 2018 SCC 6, at para. 2 which states that “It is an error of law to rely on pre-conceived views about how sexual assault victims would behave” and also relies on *R. v. A.B.A* [2019] O.J. No. 833 in stating that “The use of a common-sense approach to credibility assessment is fraught with danger for it can ‘mask reliance on stereotypical assumptions.’ ”

Stereotypes and bias have no business in the courtroom as they cause flawed analysis and problematic decisions. Cases should be based on evidence and facts. Despite this being a criminal case, the same

holds true for civil cases.

In this case, the Court of Appeal allowed the appeal from the conviction entered on March 29, 2018, by Justice Anne E. London-Weinstein.

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