



On Trial

Sexual History Evidence

S 276 & sexual assault since Seaboyer

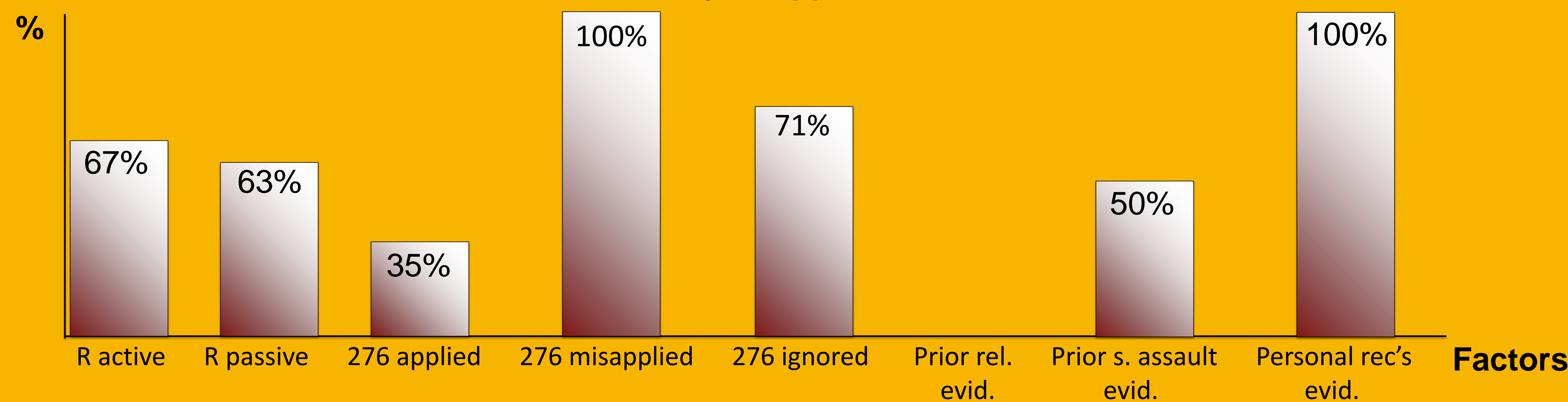
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Seaboyer (1991) put an end to the rape shield laws that had previously barred the use of complainants' sexual history evidence in court. In their stead, the court mandated a *delicate* balancing of interests:

- the accused
 - full answer & defence
- 7 the complainant
 - privacy
 - debunk rape myths
 - encourage reporting

22 years later, the appellate courts in Canada have yet to strike this balance:

Rates of Admissibility in Appellate Courts



Developments

- Rape myths discredited
- All forms of sexual histories protected
- Court bears duty to ensure proper application of S 276

Setbacks

- Court supplies advantageous use of evidence
- Court ignores S 276 when inconvenient
- Incorrect decisions remain binding
- Marginalized women denied S 276 protection
- Crown's increasing passivity in recent years

*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.***