

'Stealthling' is unwanted sexual contact: O'Connor

By Jennifer Pritchett, Associate Editor



Education is key to inform the public that an emerging trend called “stealthling” — the removal of a condom during sex without consent — is ethically wrong and could lead to a civil lawsuit, says Toronto civil litigator [Sarah O'Connor](#).

“The current legal landscape doesn't reflect that nonconsensual condom removal is unethical,” she tells [AdvocateDaily.com](#). “We need to educate people that you can't do this.”

O'Connor, principal of [O'Connor Richardson Professional Corporation](#), weighs in on the issue following a [Global News](#) article on stealthling. The practice is described in a [recent report published in the Columbia Journal of Gender and Law](#) by Alexandra Brodsky who suggests “a new tort for 'stealthling' is necessary both to provide victims with a more viable cause of action and to reflect better the harms wrought by nonconsensual condom removal.”

“Nonconsensual condom removal during sexual intercourse exposes victims to physical risks of pregnancy and disease and, interviews make clear, is experienced by many as a grave violation of dignity and autonomy,” Brodsky writes in her report.

Sexologist Jessica O'Reilly, creator of the Sexual Pro Webinar Series, tells Global News that stealthling is actually sexual assault.

“Especially upon reviewing stories from victims who report feeling violated and liken their feelings to experiences of sexual and emotional violation,” she tells the news network.

O'Connor agrees.

“In stealthling, a woman has not given her consent to sex without a condom — she wasn't given a choice,” she says. “It's unwanted sexual contact.”

O'Connor also says it's unfortunate that proving consent wasn't given would likely be difficult for a woman bringing forward allegations in a criminal court.

“A woman has a hard enough time proving sexual assault as it is and that makes it hard for many to come forward,” she says. “It would be more challenging if a woman said, ‘Yes, I agreed. This was consensual sex until he took the condom off and that's when it became rape.’”

A civil case would likely be easier to prove, O'Connor says. For one, the standard of proof for a civil case is on a balance of probabilities as opposed to beyond a reasonable doubt for a criminal matter, she explains.

“Stealthling is different from a condom breaking. This is an act of removal so the intent is there,” she says. “If the man takes the condom off and the woman gets an STD, a case can be made for her to receive damages for that STD because she only consented to intercourse with a condom.”

O'Connor compares it to the legal issues raised when someone fails to reveal their HIV status, for which a tort exists in Canada.

“If you've misled your sexual partner about your health status and you are HIV-positive or have an STD, that's civil battery,” she says. “Stealthling may be a subset of that.”

O'Connor points to a Swiss case in which a man was convicted of rape after he removed a condom during sex without his partner's knowledge.

The landmark case in Lausanne, Switzerland determined that sex without a condom is rape if the use of one was expected, reports the [Independent](#) newspaper.

The 47-year-old man received a 12-month suspended sentence, the article says.

There haven't been any cases involving stealthling in the United States or Canada yet, and until that happens, the legal issues will remain unsettled, O'Connor says.

“I think the civil courts may, at least for now, be a better place to get justice for stealthling in Canada,” she says. “It's easier to prove civil battery than sexual assault. The tort already exists. People have been awarded damages for partners failing to disclose their health issues such as HIV.”