

**Brief on Bill C-5, An Act to amend the *Judges Act* and the *Criminal Code***

Prepared by the Ending Violence Association of Canada<sup>1</sup>  
for submission to the House of Commons Standing Committee on Justice and Human Rights

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## About the Ending Violence Association of Canada (EVA Canada)

The Ending Violence Association of Canada (EVA Canada)<sup>2</sup> is a national organization that works to address and respond to gender-based violence. EVA Canada strives to strengthen collaboration among national, provincial, and territorial organizations to build understanding about gender-based violence and advocate at the national level. With representation from sexual assault centres, sexual assault regional and provincial networks, and other organizations engaged in addressing sexual violence from all of the provinces and the Yukon, much of EVA Canada's work focuses on the issue of sexual violence. EVA Canada members have a long history of advocating for changes to strengthen the justice system's response to sexual assault and other forms of sexualized violence, providing education to various actors within the justice system related to the myths and stereotypes about sexual violence, and supporting survivors as they attempt to navigate a complex and difficult system.

## Introduction

EVA Canada members regularly hear from advocates, sexual assault crisis responders, and survivors about the challenges sexual assault survivors encounter within the justice system. For many survivors, being subjected to myths and stereotypes about sexual assault as they navigate the justice system amounts to a form of secondary victimization that can have profound and lasting impacts.<sup>3</sup> Examples of these myths and stereotypes being perpetuated by judges have been widely reported.<sup>4</sup> In research examining sexual assault survivors' choices to engage with the justice system, concern about the process, including the possibility of being subject to myths and stereotypes, is frequently cited as a reason for not reporting.<sup>5</sup> Not surprisingly, sexual assault and other forms of sexualized violence are underreported in comparison with other crimes. According the General Social Survey, in 2014 only 5% of sexual assaults are reported to the police.<sup>6</sup>

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<sup>2</sup> EVA Canada member organizations include the following: Ending Violence Association of BC; Association of Alberta Sexual Assault Services; Sexual Assault Services of Saskatchewan; Ending Violence Across Manitoba; Ontario Network of Sexual Assault/Domestic Violence Treatment Centres; Ontario Association of Interval and Transition Houses; Ontario Coalition of Rape Crisis Centres; Association Québécoise Plaidoyer-Victimes; Avalon Sexual Assault Centre; Sexual Violence New Brunswick; Prince Edward Island Rape and Sexual Assault Centre; Newfoundland and Labrador Sexual Assault Crisis and Prevention Centre; Yukon Status of Women Council.

<sup>3</sup> See for example Campbell, R. & Raja, S. (1999). Secondary victimization of rape victims: Insights from mental health professionals who treat survivors of violence. *Violence and Victims* 14(3): 261-75; Johnson, H. (2017). Why Doesn't She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police. *Canadian Journal of Women and the Law* 29(1): 36-59; Prochuk, A. (2018). *We are here: Women's experiences to the barriers of reporting sexual assault*. Vancouver, BC: West Coast LEAF. <http://www.westcoastleaf.org/wp-content/uploads/2018/10/West-Coast-Leaf-dismantling-web-final.pdf>

<sup>4</sup> Craig, E. (2018). *Putting trials on trial: Sexual assault and the failure of the legal profession*. Montreal & Kingston: McGill-Queen's University Press.

<sup>5</sup> Prochuk, A. (2018). *We are here: Women's experiences of the barriers to reporting sexual assault*. Vancouver, BC: West Coast LEAF. <http://www.westcoastleaf.org/wp-content/uploads/2018/10/West-Coast-Leaf-dismantling-web-final.pdf>

<sup>6</sup> Statistics Canada (November 23, 2015). Criminal victimization in Canada, 2014. *Juristat*. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14241-eng.htm>

More recently, refusal to accept inaccurate beliefs and attitudes about sexual assault has resulted in a cultural shift in understanding about sexual violence sparked in part by various high-profile cases and the MeToo movement. Accompanying this shift in public sentiment and awareness has been an increase in sexual assault reports to police in Canada. In 2018, for instance, the Crime Severity Index (CSI) survey reported a 15% increase in sexual assaults reported to the police in 2018 compared to 2017.<sup>7</sup> One possible explanation for this increase is a growing willingness on the part of survivors to engage with the justice system given the broader shift in awareness about sexual assault that may cause them to believe that “things have changed”.<sup>8</sup> In this context, judicial education on sexual assault and social context proposed in Bill C-5 is particularly important if we are to continue to strengthen the justice system. Bill C-5 comes at a crucial time when sexual assault survivors are increasingly willing to engage with the justice system, and it is imperative that the system, including the judiciary, is prepared to respond appropriately.

For these and a number of additional reasons outlined below, EVA Canada offers its support of Bill C-5.

However, drawing on the expertise of sexual assault advocates, front-line workers, and those with lived experience of sexual violence from across the country, EVA Canada also offers the following considerations and recommendations to further strengthen Bill C-5.

### **Considerations**

- The importance of education and specialized training about sexual violence and trauma for educators, administrators, first responders, police, medical personnel, social workers and others who may encounter survivors of sexual violence is widely recognized.<sup>9</sup> This type of training has been demonstrated to be effective in improving response within a number of different settings.<sup>10</sup> Within the context of the justice system, sexual violence advocates and organizations across Canada have worked collaboratively with municipal, provincial and territorial police, the RCMP, and Crown Prosecutors to develop and provide training on such topics as sexual assault myths and stereotypes, the neurobiology of trauma, and other facets

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<sup>7</sup> Statistics Canada (July 22, 2019). Police-reported crime statistics in Canada, 2018. *Juristat* <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2019001/article/00013-eng.pdf?st=kyqY2tjm>

<sup>8</sup> Johnson, H. (2017). Why Doesn't She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police. *Canadian Journal of Women and the Law* 29(1): 36-59.

<sup>9</sup> For example, in its *Collaborative Framework for Collaborative Police Response on Sexual Violence*, the Canadian Association of Chiefs of Police and the Ontario Association of Chiefs of Police identify “training and education of all partners” as one of five leading practices in investigation guidelines for Canadian Police Services (p. 12). [https://cacp.ca/crime-prevention-committee-activities.html?asst\\_id=2059](https://cacp.ca/crime-prevention-committee-activities.html?asst_id=2059)

<sup>10</sup> Du Mont, J., Kosa, S.D., & Macdonald, S. (2018). Development and evaluation of sexual assault training for emergency department staff in Ontario, Canada. *Nurse Education Today* 70: 124-129; Kinney, L., Bradley, P., Bruns, E. J., Dantzer, J. (2008). Sexual assault training of law enforcement officers. *Women & Criminal Justice* 18(3): 81-100.

of sexual violence response.<sup>11</sup> Judicial education on sexual assault is another step in building consistent understanding and awareness about sexual assault at all levels of the justice system.

- Findings from the National Inquiry into Missing and Murdered Indigenous Women and Girls revealed that sexual violence is pervasive in the lives of Indigenous women and girls. According to the 2014 General Social Survey, the rate of self-reported sexual assault against Indigenous women was three times greater than that of non-Indigenous women.<sup>12</sup> In addition, the National Inquiry found persistent discrimination against Indigenous people within the justice system. For Indigenous survivors of sexualized violence in particular, the National Inquiry found that “the current laws and criminal justice system responses to sexualized violence and intimate partner violence are failing to protect Indigenous women, girls, and 2SLGBTQQIA people.”<sup>13</sup> For these reasons, the National Inquiry’s Calls for Justice 9 and 10.1.i. call on the justice system to require training that will strengthen understanding of the systemic oppression First Nations, Métis, and Inuit women, girls, and 2SLGBTQQIA people experience, including how this oppression may intersect with sexual assault myths and stereotypes.<sup>14</sup> Judicial education on sexual assault and social context proposed in Bill C-5 that includes a consideration of the distinct histories and experiences of First Nations, Métis, and Inuit women, girls, and 2SLGBTQQIA people within the justice system demonstrates a commitment on the part of the government and the judiciary to act on the National Inquiry’s findings and Calls for Justice, as well as a broader commitment to reconciliation with Indigenous Peoples.
- Survivors of sexual violence often face additional barriers when accessing and navigating the justice system as a result of marginalization due to ability, race, language, gender identity and expression, trans and homophobia, poverty, and other structural factors. For example, despite being twice as likely as women with no disabilities to have experienced sexual assault in the last year,<sup>15</sup> women with disabilities often face profound challenges within the justice system that are rooted in persistent stereotypes, such as the belief that women with disabilities are asexual and thus cannot be sexually assaulted.<sup>16</sup> Judicial education on sexual

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<sup>11</sup> For example, Sexual Violence New Brunswick developed and piloted a training in collaboration with Crown Prosecutors in Fredericton, New Brunswick that examined myths and stereotypes, *Improving Outcomes: Trauma Informed Sexual Assault Response Training for the Criminal Justice System*.

<sup>12</sup> Department of Justice Canada. (July, 2017). *Just Facts: Victimization of Indigenous Women and Girls*. <https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/docs/july05.pdf>

<sup>13</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Murdered and Missing Indigenous Women and Girls*. (2019). Volume 1a, p. 690. [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)

<sup>14</sup> *Reclaiming Power and Place: The Final Report of the National Inquiry into Murdered and Missing Indigenous Women and Girls*. (2019). Volume 1b, p. 190, 193. [https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1b.pdf](https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1b.pdf)

<sup>15</sup> Statistics Canada. (2018). Violent Victimization of Women with Disabilities, 2014. *Juristat*. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54910-eng.htm>

<sup>16</sup> Disabled Women’s Network of Canada (DAWN). (2019). *More than a footnote: A research report on women and girls with disabilities in Canada*. Montréal: DAWN. [https://dawnCanada.net/media/uploads/page\\_data/page-64/more\\_than\\_a\\_footnote\\_research\\_report.pdf](https://dawnCanada.net/media/uploads/page_data/page-64/more_than_a_footnote_research_report.pdf). p. 172.

violence that reflects an intersectional and evolving understanding of social context is necessary to ensuring the most marginalized survivors have equitable access to the justice system.

- Over a six-year period between 2009 and 2014, only 12% of police-reported sexual assault cases led to a criminal conviction, and 7% resulted in a custody sentence.<sup>17</sup> While low conviction rates are troubling, this problem is often compounded for survivors by a lack of clarity about the reasons for there not being a conviction. Clear communication throughout all phases of the justice process that demonstrates awareness of the impacts of trauma and does not reinforce myths and stereotypes about sexual assault are key factors in decreasing additional harm and distress experienced by survivors in their interactions with police, lawyers, and judges. Ensuring that written decisions in sexual assault cases are made available and accessible is another strategy that supports survivors and increases confidence in the justice system. Not only does the availability of written decisions strengthen transparency and accountability, it also demonstrates a commitment to trauma-informed practice.

## **Recommendations**

The Ending Violence Association of Canada fully endorses the recommendations provided in the briefs submitted by the Women’s Legal & Education Action Fund (LEAF), the Office of the Federal Ombudsman for Victims of Crime (OFOVC), and the National Association of Women and the Law (NAWL),<sup>18</sup> and the presentations made by the Disabled Women’s Network of Canada (DAWN), Canadian Centre for Gender and Sexual Diversity, and the Kawartha Sexual Assault Centre.

We believe the considerations and recommendations put forward by these organizations and offices strengthen the proposed legislation in ways that will ensure that Bill C-5 works to support a judicial response to sexual assault that reflects an intersectional, trauma-informed, and violence-specific understanding.

In particular, we would like to underline our support for recommendations for revisions to the Bill in the following areas:

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<sup>17</sup> Statistics Canada. (2017). From arrest to conviction: Court outcomes of police-reported sexual assaults in Canada, 2009-2014. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54870-eng.htm>

<sup>18</sup> LEAF (Women’s Legal Education and Action Fund). *Bill C-5: An Act to amend the Judges Act and the Criminal Code*. March 23, 2020. <https://www.leaf.ca/wp-content/uploads/2020/03/2020-03-23-FINAL-LEAF-Written-Submissions-re-Bill-C-5-.pdf>; NAWL (National Association of Women and the Law). April 13, 2020. *Brief on Bill C-5: An Act to amend the Judges Act and the Criminal Code*. <https://www.leaf.ca/wp-content/uploads/2020/03/2020-03-23-FINAL-LEAF-Written-Submissions-re-Bill-C-5-.pdf>; OFOVC (Office of the Federal Ombudsman for Victims of Crime). *Submission to the House of Commons’ Standing Committee on Justice and Human Rights: Study on Bill C-5, An Act to amend the Judges Act and the Criminal Code*. March 27, 2020. <https://www.victimfirst.gc.ca/vv/BC5-BC5/index.html>.

- **Extend requirements for and availability of judicial education on sexual assault to include all judges in keeping with the following recommendations:**
  - *Recommendation 1, OFOVC:* Recognize the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Recommendation 10.1.i: New federally appointed judges receive mandatory education and sitting judges receive continuing education on gender-based violence, sexual assault law and social context in order to maintain public confidence in the administration of justice in Canada.
  - *Recommendation 2, OFOVC:* Ensure the CJC and NJI make the gender-based violence, sexual assault and social context education developed as part of this Bill available to provincial and territorial justices.<sup>19</sup>
- **Ensure the involvement and meaningful consultation of specialized experts, front-line workers, survivors, and organizations that reflect a diversity of backgrounds and experiences in the development of judicial education on sexual assault and social context in keeping with the following recommendations:**
  - *Recommendation 3c, OFOVC:* Have the CJC and NJI develop judicial education that recognizes (c) Knowledge gleaned from specialized experts, frontline workers and survivors.<sup>20</sup>
  - *Recommendation 3b, LEAF:* Consultation should include those with direct experiences of oppression.<sup>21</sup>
  - *Recommendation 4, NAWL:* Consultation and Specific Content, including the following amendment:

Seminars related to sexual assault law

(3) The Council shall ensure that seminars on matters related to sexual assault law established under paragraph (2)(b)

(a) are developed after consultation with persons, groups or organizations, particularly with women who have relevant first-hand information related to the social context of sexual assault, and the criminal justice response to sexual assault, such as sexual assault survivors and groups and organizations that support them, that the Council considers appropriate.<sup>22</sup>
- **Ensure judicial education include training related to the impacts of trauma, including the neurobiology of trauma, the intersectionality of sexual assault with other issues, and cultural competency training in keeping with the following recommendations:**

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<sup>19</sup> OFOVC, *Submission*.

<sup>20</sup> OFOVC, *Submission*.

<sup>21</sup> LEAF, *Bill C-5*, p. 6

<sup>22</sup> NAWL, *Brief on Bill C-5*, p. 7.

- *Recommendation 3 a,b,c,e, OFOVC:* Have the CJC and NJI develop judicial education that recognizes a) the holistic nature of trauma; b) the intersectionality of sexual assault with other issues, such as domestic violence; c) new forms of sexual violence, like cyber violence; e) cultural competence and relevance.<sup>23</sup>
- *Recommendation 3c, LEAF:* Training should include social science evidence on the impact of trauma<sup>24</sup>
- *Recommendation 3, NAWL:* Matters related to sexual assault law and social context, including the following amendment:

3(b) undertakes to participate in continuing education on matters related to:

- the law of sexual assault;
- the social context of sexual assault and the criminal justice response to it; and
- the judicial skills required to impartially preside over sexual assault trials.

including by attending seminars established under paragraph 60(2)(b).<sup>25</sup>

- **Clarify the definition of “social context” (Section 2) to ensure judicial education about sexual assault reflects the complexity and evolving nature of this concept in keeping with the following recommendations:**
  - *Recommendation 3a, LEAF:* “Social context” should be expressly defined as factors contributing to systemic inequality, including but not limited to colonialism, misogyny, sexism, racism, ableism, homophobia, and transphobia.<sup>26</sup>
- **Ensure the availability and accessibility of written reasons for decisions in sexual assault cases (Section 4) in keeping with the following recommendations:**
  - *Recommendation 4, OFOVC:* Provide a judge’s reasons for decisions to victims/survivors in plain language (as legal terminology and jargon are often incomprehensible to non-practitioners) and translated into the victim’s/survivor’s first language, if necessary, also at no cost.<sup>27</sup>
  - *Recommendation 3d, LEAF:* If written reasons are not available, the transcript of the decision should be made publicly available.<sup>28</sup>

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<sup>23</sup> OFOVC, *Submission*.

<sup>24</sup> LEAF, *Bill C-5*, p. 6.

<sup>25</sup> NAWL, p. 6

<sup>26</sup> LEAF, *Bill C-5*, p. 5.

<sup>27</sup> OFOVC, *Submission*.

<sup>28</sup> LEAF, *Bill C-5*, 7.

## **Conclusion**

EVA Canada continues to hear regularly about the concerns and challenges survivors of sexual assault face within the justice system; in some cases, these challenges include additional harm as a result of a lack of understanding about sexual assault and the perpetuation of harmful and inaccurate myths and stereotypes. Bill C-5 and its focus on judicial education on sexual assault is an integral step toward improving the justice system's response to sexual violence and implementing systemic changes that can address these concerns and challenges.

Through its work with survivors and advocates, EVA Canada recognizes that Bill C-5 is only one step in strengthening responses to sexual violence. For the full effectiveness of the changes proposed in Bill C-5 to be felt, its implementation must be accompanied by additional measures that will support a national, coordinated response to sexual violence capable of addressing the many additional barriers survivors face in accessing justice following sexual assault. These additional measures include sustained and adequate funding for community-based sexual assault centres that provide counselling and mental health support to survivors; access to legal representation; adequate social supports to address the other impacts of sexual violence, such as job loss, homelessness, and disability; and ongoing education for all actors within the justice system.