

Towards an Intersectional Approach to Bill C-5 – An Act to amend the Judges Act and the Criminal Code

Submission to the Standing Committee on Justice and Human Rights

April 2020

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About YWCA Canada

YWCA Canada is a leading voice for women, girls, Two-Spirit and gender diverse people. For 150 years, we've been at the forefront of a movement: to fight gender-based violence, build affordable housing and advocate for workplace equity. We work to advance gender equity by responding to urgent needs in communities, through national advocacy and grassroots initiatives. Local YWCAs invest over \$258 million annually to support over 330,000 individuals across the nation. Today, we engage young leaders, diverse communities, and corporate partners to achieve our vision of a safe and equitable Canada for all.

Background and Context Setting

YWCA Canada welcomes the opportunity to provide input into 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**.

YWCA Canada applauds the Government of Canada's recent initiatives to more comprehensively investigate and address gender-based violence in Canada, such as the gender-responsive changes to the Divorce Act brought by Bill C-78 in 2019,¹ the 2017 Federal Strategy to Address Gender-Based Violence,² and the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG).³ We were pleased to see an explicit commitment to advancing a National Action Plan on Gender-Based Violence and addressing sexual assault myths and stereotypes included in the mandate letters of several Ministers, including the Minister of Justice and Attorney General as well as the Minister for Women and Gender Equality and Rural Economic Development. It is clear that eliminating gender-based violence and protecting the rights of women, girls, and gender diverse people is a government priority.

Addressing sexual assault is an urgent societal issue. According to the General Social Survey on Canadians' Safety in 2014, there were 636 000 self-reported incidents of sexual assault in Canada.⁴ In other words, there were 22 incidents of sexual assault for every 1000 Canadians aged 15 and older. We know, however, that the actual number is much higher because gender-based violence is often underreported.

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¹ National Association for Women and the Law (NAWL). (2019, June 22). After decades of waiting, women's organizations celebrate changes to the Divorce Act. Retrieved from: <https://nawl.ca/after-waiting-decades-womens-rights-organizations-celebrate-changes-to-the-divorce-act/>

² Status of Women Canada. (2018). It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence. Retrieved from: <https://cfc-swc.gc.ca/violence/knowledge-connaissance/fs-fi-5-en.html>

³ National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). Reclaiming Power and Place – The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Retrieved from: <https://www.mmiwg-ffada.ca/final-report/>

⁴ Conroy, S., & Cotter, A. (2017, July 11). Self-reported sexual assault in Canada, 2014. Statistics Canada. Retrieved from: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14842-eng.htm>

communities, and corporate partners to achieve our vision of a safe and equitable Canada for all.

With 32 Member Associations in 9 provinces and 2 territories, YWCA Canada is uniquely positioned to comment on how such a change in legislation could have an impact on various communities across the country. Through our Pan-Canadian approach to advancing gender equality, we can share insights on how such experiences of reporting sexual assault are shaped by cultural, economic, geographic, linguistic and racial diversity. Furthermore, as the nation's largest and oldest organization committed to advancing gender equality, we can share promising practices our Member Associations are spearheading across the country that are making a positive impact for survivors of sexual assault.

Unpacking Systemic Gender-Based Violence in Canada

Building Survivors' Trust in Canadian Institutions

Gender-based violence does not just happen behind closed doors - Canadian institutions also perpetuate and reinforce sexual violence. From the police station to the courthouse, gender-based violence does not stop after the incident. The experiences of survivors continue to be doubted, dismissed, and re-victimized. A study of the RCMP's sexual assault claims proceedings found that one in five reports are dismissed as 'unfounded', which is double the rate of other kinds of crime. For every 1000 sexual assaults that take place in Canada, only three perpetrators are convicted.⁵

This systemic dismissal of sexual assault claims results in public distrust in the criminal justice system. It also deters those who have experienced gender-based violence from seeking justice in Canadian courts - 90% of sexual assault incidents in Canada go unreported to police.⁶ For many survivors, reporting the violence they experience is not even a thought that crosses their mind.

⁵ Johnson, H. (2012). Limits of a criminal justice response: Trends in police and court processing of sexual assault. *Sexual Assault in Canada: Law, Legal Practice and Women's Activism*. 613-634.

⁶ Conroy, S., & Cotter, A. (2017, July 11). Self-reported sexual assault in Canada, 2014. Statistics Canada. Retrieved from: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14842-eng.htm>

We need to shift the focus of the judicial system from blaming and stigmatizing survivors to protecting and supporting them. Survivors deserve dignity, fairness, and respect from our justice system.

Promoting an Intersectional Approach in Bill C-5

Gender-based violence can be exacerbated by other systemic oppressions, such as racism, poverty, ableism, colonialism, homophobia, and transphobia. Reports by the Government of Canada found that, in particular, young women, Indigenous women, women with disabilities and members of LGBTQ2S+ communities are at increased risk of being victimized.^{7,8,9,10,11,12} Victims whose identities put them at increased risk of institutional violence and criminalization such as (e.g. sex workers, Black and Indigenous women, women with precarious status), know that reporting the violence they experience to law enforcement can put them in danger.

Once a sexual assault claim is filed, additional stereotypes based on marginalized identities also negatively impact how a survivor's case is processed, pursued, and judged. A YWCA Metro Vancouver and West Coast LEAF project¹³ in 2018 found that women with marginalized identities are more likely to have their cases viewed with suspicion, such as single mothers, racialized women, and low income women. Too often, survivors with disabilities see their disabilities used against them¹⁴ in Canadian courts. In essence,

⁷ Hutchins, Hope (February 2013). "Measuring violence against women: Statistical trends: Section 2: Risk factors for violence against women." Juristat. Statistics Canada Catalogue no. 85-002-X. Retrieved from: <http://www.statcan.gc.ca/pub/85-002-x/2013001/article/11766/11766-2-eng.htm#a20>

⁸ Statistics Canada, Women and the Criminal Justice System, Women in Canada (June 2017)

⁹ Boyce, Jill (June 2016). "Victimization of Aboriginal people in Canada, 2014" Juristat. Statistics Canada Catalogue no. 85-002-X. Retrieved from: <http://www.statcan.gc.ca/pub/85-002-x/2016001/article/14631-eng.htm#r13>

¹⁰ Perreault, Samuel (November 2015). "Criminal victimization in Canada, 2014." Juristat. Statistics Canada Catalogue no. 85-002-X. Retrieved from: <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14241-eng.htm#a12>

¹¹ Wathen, C. Nadine, Jennifer C. D. MacGregor, and Barbara J. MacQuarrie (2015). "The Impact of Domestic Violence in the Workplace: Results From a Pan-Canadian Survey." *Journal of Occupational & Environmental Medicine*, 57(7), e65- e71. Retrieved from: http://journals.lww.com/joem/fulltext/2015/07000/The_Impact_of_Domestic_Violence_in_the_Workplace_.19.aspx

¹² Odette, F. and Rajan, D. (November 2013). Violence Against Women with DisAbilities and Deaf Women: An Overview. Learning Network Brief (12). London, Ontario: Learning Network, Centre for Research and Education on Violence Against Women and Children. Retrieved from: <http://www.vawlearningnetwork.ca/violence-against-women-disabilities-and-deaf-women-overview>

¹³ Prochuk, A. (2018, November). We are here: Women's Experiences of the Barriers to Reporting Sexual Assault. West Coast LEAF & YWCA Metro Vancouver. Retrieved from: <http://www.westcoastleaf.org/wp-content/uploads/2018/10/West-Coast-Leaf-dismantling-web-final.pdf>

¹⁴ CanLII. R. v. Slatter, 2019 ONCA 807. Retrieved from: <https://www.canlii.org/en/on/onca/doc/2019/2019onca807/2019onca807.html?autocompleteStr=R%20v%20slatter&autocompletePos=1>

expert opinions frequently portray disabled victims as having ‘childlike levels’ of intelligence and communication to undermine their credibility.

While the odds are already stacked against any survivor in the criminal justice system, survivors from marginalized communities face even more biases and barriers to a fair trial. Dispelling myths that face women and gender diverse people with multiple marginalized identities as part of the judges’ training is a critical component in making the Canadian justice system work for all survivors.

Trauma-Informed Training

Sexual assault and other forms of gender-based violence are traumatic experiences. Trauma has a neurobiological impact, affecting both the body and mind of the victim. For survivors, the trauma and shock of experiencing sexual violence can impact decision-making, response behaviour, memory, their ability to retell the incident¹⁵, amongst other factors. Victims who experience ongoing abuse might develop survival mechanisms in response, such as minimizing, denying, or ‘normalizing’ the violence.¹⁶ Although all of these impacts are normal responses to a traumatic event, survivors’ accounts might appear inconsistent, incomplete, or unreasonable to judges without a trauma-informed lens.

Recalling or retelling one’s traumatic experience of sexual violence is difficult in any context. In a public courthouse, however, many factors make this process much harder for victims: from the lack of clarity regarding trial processes, to the physical setup of courts that isolates victims, to the stigmatization and misinformation about sexual violence victims reinforced by criminal justice professionals. Furthermore, the so-called ‘ideal victim’¹⁷ - someone who resists sexual assault and comes with a linear, consistent, and complete testimony - remains, in the eyes of many criminal justice professionals, the only

¹⁵ Haskell, L., & Randall, M. (2019). The Impact of Trauma on Adult Sexual Assault Victims. Report submitted to Justice Canada. Retrieved from: https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf

¹⁶ Kritiansson, V., & Whitman-Barr, C. (2015). Integrating a Trauma-Informed Response in Violence Against Women and Human Trafficking Prosecutions. *Aequitas*, 2015(13), 1-7. Retrieved from: <https://aequitasresource.org/wp-content/uploads/2018/09/Integrating-A-Trauma-Informed-Response-In-VAW-and-HT-Strategies.pdf>

¹⁷ Gotell, L. (2008). Rethinking Affirmative Consent in Canadian Sexual Assault Law: Neoliberal Sexual Subjects and Risky Women. *Akron Law Review*, 41(4). 3. Retrieved from: <https://ideaexchange.uakron.edu/akronlawreview/vol41/iss4/3/>

victims worthy of justice. These expectations are unreasonable and ignore the wealth of research on trauma and its neurobiological impacts.

A judges' training rooted in a trauma-informed approach¹⁸ would include the recognition of a victim's history of trauma and abuse, as well as the variety of impacts trauma can have in victimization. Another trauma-informed best practice is demonstrating empathy and emotional competency during the trial: that is, connecting with and understanding another's experience, and being able to use social skills to "recognize, interpret, and respond constructively to emotions in yourself and others".¹⁹ These skills allow judges to approach survivors with compassion and lead to a more supportive environment for survivors in the courthouse.

In brief, a trauma-informed approach helps ensure that a) judges understand survivors' behaviour in response to sexual violence, and b) survivors are better equipped to share their testimony. In addition to improving justice in sexual assault cases, trauma-informed conduct by judges can help avoid re-traumatizing²⁰ victims in the courthouse.

New and Emerging Forms of Gendered Violence

In an increasingly digital world, we know that gender-based violence is also occurring in online and digital spaces. Women are 27 times more likely²¹ to be abused online compared to men. A United Nations study found that women aged 18 to 24 are at heightened risk for cyberviolence²² and the most likely demographic to experience

¹⁸ Kritiansson, V., & Whitman-Barr, C. (2015). Integrating a Trauma-Informed Response in Violence Against Women and Human Trafficking Prosecutions. *Aequitas*, 2015(13), 1-7. Retrieved from: <https://aequitasresource.org/wp-content/uploads/2018/09/Integrating-A-Trauma-Informed-Response-In-VAW-and-HT-Strategies.pdf>

¹⁹ Government of Canada. Department of Justice. (2019). The Impact of Trauma on Adult Sexual Assault Victims. Retrieved from: <https://www.justice.gc.ca/eng/rp-pr/jr/trauma/p5.html>

²⁰ Kritiansson, V., & Whitman-Barr, C. (2015). Integrating a Trauma-Informed Response in Violence Against Women and Human Trafficking Prosecutions. *Aequitas*, 2015(13), 1-7. Retrieved from: <https://aequitasresource.org/wp-content/uploads/2018/09/Integrating-A-Trauma-Informed-Response-In-VAW-and-HT-Strategies.pdf>

²¹ Liliefeldt, R. (2018, June 14). A cross-sectoral approach is needed to address harmful acts against women online. Cyberviolence is limiting their freedom and silencing their voices. Policy Options. Retrieved from: <https://policyoptions.irpp.org/magazines/june-2018/how-cyberviolence-is-threatening-and-silencing-women/>

²² UN Broadband Commission for Digital Development Working Group on Broadband and Gender. (2015). Cyber Violence Against Women and Girls – A World-Wide wake up Call. Retrieved from: https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2015/cyber_violence_gender%20report.pdf?v=1&d=20150924T154259

stalking and sexual harassment. Common forms of cyberviolence²³ include cyberstalking, cyberharassment, non-consensual distribution of sexual recordings and images, doxxing, and ‘sextortion.’

Cyberviolence is a serious issue that threatens the lives and rights of women, girls, and gender diverse people in Canada. Even while law enforcement is still grappling with basic sexual assault myths and stereotypes, women and gender diverse people are experiencing emerging - and perhaps more complex - forms of violence and the justice system must be able to address these new realities. Bill C-5’s proposed mandatory sexual assault sensitivity training should include training on online forms of gender-based violence as that can be an important contextual factor for consideration. As a result, judges can improve their understanding of the different ways people can be subjected to sexual violence, thus better enabling them to assess the situation and deliver a fair judgment.

Spotlight on Promising Practices by YWCA Canada Movement

For the last 150 years, YWCA Canada has been addressing gender-based violence through our public policy advocacy as well as through programming focused on raising awareness, training and prevention.

To prevent and eliminate cyberviolence against young women and girls, YWCA Canada initiated a multiyear, cross-sectoral national project - Project Shift²⁴ - funded by the Department of Women and Gender Equality (WAGE). Project Shift’s training included information on legal remedies when someone has experienced cyberviolence and how to gather evidence.

In many communities across the country, YWCAs are sometimes the first point of support for a survivor of sexual assault and our staff may accompany them through the legal process of reporting. They provide referrals to sexual assault crisis centres, counselling and legal aid. Through our Member Associations’ local action in 300 communities across the country, YWCA Canada has an important vantage point from which to identify

²³ House of Commons. (2017). Taking Action to End Violence Against Young Women and Girls in Canada. Report of the Standing Committee on the Status of Women. Retrieved from: <https://www.ourcommons.ca/Content/Committee/421/FEWO/Reports/RP8823562/feworp07/feworp07-e.pdf>

²⁴ YWCA Canada. (n.d). Project Shift. Creating a safer digital world for young women. Retrieved from: <http://projectshift.ca/>

systemic challenges that prevent survivors of sexual assault from being treated with the fairness, dignity and respect they deserve.

Our Member Associations lead promising work to address, eliminate and prevent gender-based violence such as sexual violence. Each of these initiatives embodies important principles that should be adopted in the training developed by the Canadian Judicial Council, such as being survivor-focused, trauma-informed and intersectional in its approach.

In some communities across the country, when a survivor goes to a local hospital after a sexual assault, there are only two options. They either have to complete a sexual assault kit right away, report to police and navigate the court system, or they decide to not report. If they do not report, they receive immediate medical treatment, but by not doing a sexual assault kit, they risk their ability to pursue charges later on. Survivors of sexual assault are asked to make this decision when they are in shock.

YWCA Lethbridge has created a safer third option. Through the YWCA Amethyst Project,²⁵ they work with survivors to validate their experiences and provide them control over what they want to do. The initiative allows survivors of sexual assault to obtain a rape kit, have access to community services for recovery and choose whether or not to pursue the matter within one year while evidence is preserved. This initiative allows survivors to center their own immediate needs before engaging in a challenging and complicated legal process.

In Alberta, **YWCA Banff** leads the Bow Valley Harmony Project,²⁶ which brings together service providers to end sexual assault and sexual harassment. They focus on prevention, awareness raising, training for service providers and community members and support for survivors such as developing resources and providing access to someone who can help them navigate the various medical and legal systems.

²⁵ YWCA Lethbridge & District. (n.d.). Amethyst Project. Retrieved from: <http://programs.ywcalethbridge.org/amethyst-project>

²⁶ YWCA Banff. (n.d.). Bow Valley Harmony Project. Retrieved from: <https://ywcabanff.ca/programs-services/bow-valley-harmony-project/>

Policy Recommendations

YWCA Canada makes the following recommendations and was informed by the National Association of Women and the Law's submission on the matter.

Recommendation #1: Pass Bill C-5.

Recommendation #2: Develop sexual assault training for judges after consultation with persons, groups or organizations, particularly with women at critical intersections, such as Black, Indigenous and racialized women, members of the LGBTQ2S+ community, women with disabilities, women with precarious status and migrant care workers, 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. Throughout said consultations, ensure persons, groups and organizations are compensated fairly for their engagement and labour.

Recommendation #3: Ensure that the judges' training is survivor-centric, prevention-based, trauma-informed and has an intersectional understanding of the contextual factors for diverse communities and marginalized groups. Additionally, include training content on new and emerging issues related to gender-based violence, such as cyberviolence.

Recommendation # 4: Ensure that seminars related to sexual assault law include instruction in evidentiary prohibitions, principles of consent and the conduct of sexual assault proceedings, as well as education regarding myths and stereotypes associated with sexual assault complainants.

Recommendation #5: In the annual report submitted by the Canadian Judicial Council to the Minister of Justice on the details of seminars offered to judges on sexual assault law, ensure that there is robust information on how such training was delivered through an intersectional gender-based lens. Furthermore, the Canadian Judicial Council should outline in their report the accountability and reporting mechanisms they have in place to track and monitor the acquisition of new knowledge, attitudes, beliefs and skills to address sexual assault myths and stereotypes.

Recommendation #6: In the Preamble of Bill C-5, clearly articulate the desire to introduce intersectional analysis as part of the sexual assault training. Proposed addition: 'Whereas Parliament values the use of intersectional analysis in understanding the impacts of sexual assault on survivors.'

Recommendation #7: That the Government of Canada, through the Department of Justice and in collaboration with the Royal Canadian Mounted Police use this training developed for judges to inform a mandatory educational curriculum on gender-based violence and sexual violence for all Royal Canadian Mounted Police and other federally-regulated law enforcement officers that is survivor-centric, respectful and trauma-informed.

Conclusion

Our work at YWCA Canada highlights the importance of advancing an intersectional feminist approach to policy development and legislation that is informed by the experiences of those most affected by the issue. That is why any efforts to address gender-based violence in all its forms must center the experiences of survivors first and foremost. Bill C-5 provides an important avenue of not only addressing sexual assault myths and stereotypes through training for judges but also consulting with survivors in an appropriate and robust manner on how best to structure training for sitting and new judges.

Bill C-5 is just one part of the broader effort to end gender-based violence in Canada - YWCA Canada looks forward to the Government of Canada's urgent action in developing and implementing a comprehensive National Action Plan to Address Gender-Based Violence, which we developed a blueprint for in 2015 in collaboration with other national feminist organizations.