



“Dedicated to Justice” • «Au service de la justice»

April 1, 2016

The Right Honourable Justin Trudeau, Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister:

The Canadian Resource Centre for Victims of Crime (CRCVC) is concerned about the archaic and patriarchal model of prosecuting sexual assault in our adversarial criminal justice system. Statistics tell us the system is broken - 460,000 sexual assaults take place in Canada every year. Out of every 1,000 assaults, 33 are reported to police, 12 result in charges, 6 are prosecuted and 3 lead to conviction. That is a 0.3% rate of conviction (Stats Canada). "If any public service entity had a failure rate of 99.7%, all the architects would be gone and it would be redesigned from the ground up," said David Butt, criminal lawyer.

We know from our support work with survivors and reports in the media that courts are still engaging in victim-blaming. The actions of victims (particularly women) are questioned, especially if there is post-incident contact with an accused. As lawyer Paula Todd recently pointed out, "What if a merchant keeps his shop open after a violent robbery, or a real estate agent keeps showing houses despite an attack. Did those crimes never occur, either?" Most sexual assault cases involve parties who are known to each other as either acquaintances or partners (few stranger sexual assaults occur in Canada). We know there are many legitimate reasons a victim might remain in contact with the perpetrator following an assault.

As lawyer Gillian Hnatiw has stated, "Violence against women is not about the behaviour of the women. It is not about how they cope with the assault or the details they commit to memory in the aftermath. It's not about whether they see their abusers again or send flowers any more than it is about what they wore or how much they had to drink."

We are concerned by the rape myths and stereotypes perpetuated in our courtrooms; including how the accusers must behave in a way that others perceive as "consistent" with how a victim "should" behave. To be a credible victim now in Canada is to be a perfect victim. A victim must go to the police right away, and not to the media. A victim who breaks off all contact immediately after the assault is perfect.

We observe that women are treated and judged far differently than men in similar circumstances. Women are seen as "colluding" if there is a group of victims who come forward and seek support from each other. Yet, a group of NHL players who successfully advocated to see their abuser, Graham James, behind bars, were not judged in this manner.



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Women are often questioned by judges for coming forward years later. Some are seen as seeking fame or revenge. Other survivors are criticized for being too angry towards the perpetrator, while some, whose memory fails due to trauma, are criticized for not remembering every detail of the assault. These are all antiquated beliefs about how raped women should behave; yet we still note them being raised in judgements.

We need to revision the entire justice system so that those who are harmed by sexual violence are not re-victimized in our courts. While Ontario will launch a \$2.8-million pilot program this spring granting survivors of sexual violence access to free legal advice, these clinics are only available to those living in Toronto, Ottawa and Thunder Bay. The victim must allege they have been sexually assaulted, be 16 or older and can apply for up to four hours of independent legal counsel. While it is a good first step, to offer legal advice and support, it should be expanded quickly and nationally.

We suggest an alternate system that will feel restorative for victims. The adversarial system doesn't allow for victims to heal. Survivors must be empowered to participate fully, on terms equal (but not necessarily identical) to those upon which accused persons participate in our justice system. For example, accused persons are entitled to vigorous legal representation. A sexual-assault complainant should be guaranteed the same representation and protection. But currently, if the victim shows up with her own lawyer, the response of the system is suspicious and even overtly hostile. Crown attorneys will not openly share witness statements with the counsel representing the complainant.

Complainants must be offered a real choice about what sorts of justice services are available to them. While some wish to pursue traditional criminal prosecution, others may prefer to have the state carry forward a civil suit only. Other survivors may prefer a more restorative approach. Truth-and-reconciliation processes have played a positive role in addressing historical victimization on a broader, societal scale (for example, in South Africa and here in Canada). There is no reason we cannot thoughtfully adopt similar practices for individuals.

Our hope is to improve the Canadian criminal justice system response to persons harmed by sexual violence and look forward to working with your officials in achieving this goal.

Sincerely,

Heidi Illingworth
Executive Director

Cc The Honourable Jody Wilson-Raybould, P.C., M.P., Minister of Justice & Attorney
General