

# #VoteWithSurvivors

*Intersectional & systemic violence has shaped our world in many ways  
now it is time to vote with survivors*

## **Recommendation #3: Commit to mandating that federally-appointed judges complete sexualized violence, social context and sensitivity training.**

- Survivors of violence experience many barriers to reporting, resulting in sexual assault remaining an under-reported, investigated and prosecuted crime in Canada. Only five per cent of victims report sexual assault to police, according to 2014 data (1).
- Even though the rates of violent crime are falling, the number of reported sexual assaults remains steady (2).
- Despite the high numbers of sexualized violence and harassment against women and girls within the legal system, judges are not mandated to receive social context training or sexualized violence education and sensitivity training.
- Currently, the non-mandatory sexualized violence training offered to judges by the National Judicial Institute is not developed by or in consultation with survivors of sexualized violence or those who work in the field of sexualized violence and remains optional for judges.

Two-thirds of women who identify as survivors of violence do not have confidence in the Canadian justice system.

## **BACKGROUND**

One of the most significant barriers to reporting sexualized violence is the problematic treatment of survivors by actors within the criminal justice system. This treatment takes many forms, including failure to communicate clearly and consistently with complainants; insensitive remarks; and the perpetuation of myths and stereotypes about sexual assault (3). In particular, survivors' mistreatment by judges continues to be an issue in both Federal and Provincial courts. Discrimination within the courtroom has historically created barriers to reporting as well as feelings of re-traumatization, particularly for Indigenous women, transgender, and queer individuals, women of colour, Black women, immigrant women, and women with disabilities. To further compound this, economic discrimination and inequality often affect access to justice for these individuals. When criminal justice system actors apply racist or ethnocentric filters to their interactions with sexual assault complainants, significant unfairness can result, with court regulations and procedures lacking culturally safe or meaningful mechanisms for complainants to access.

Although they are required to be impartial, judges are not immune from such problematic reasoning or from legal errors based on sexual assault myths. A wide range of stereotypical expectations about how the 'ideal victim' should act before, during, and after assault persist in courts. Claire L'Heureux-Dubé, former justice of the Supreme Court of Canada, has identified a list of rape myths and stereotypes that skew the legal treatment of sexual assault claimants and therefore conviction rates. Some of those myths include: rapists are strangers, women are less credible witnesses if they have had prior sexual relationships, women who are sexually assaulted will struggle against their attacker, women mean "yes" even when they say "no"; women who are raped deserve it "because of their conduct, dress, and demeanor" (4).

This particularly affects women of colour. As a recent example of this is the egregious conduct of former judge Robin Camp, who asked an Indigenous survivor of violence why she couldn't "just keep [her] knees together," implying that she should have been able to prevent the attack, and stated, "She knew she was drunk [...] Is not an onus on her to be more careful," among many other deeply problematic remarks demonstrate the necessity of this training (5). As judges are vested with tremendous authority in the legal system and in society, their reliance on such myths about sexual assault can reinforce and normalize discriminatory attitudes that are already culturally prevalent.



There are at least 10 cases winding their way through Canada's court systems in 2019 that demonstrate how some judges continue to rely on stereotypes and rape myths when informing their decisions, or make significant mistakes on issues of consent. As a result, cases can drag on for years to be heard at Court of Appeal or even at the Supreme Court (6). Over the last 30 years, there have been some significant changes made to Canada's judicial response to sexual assault; however, sexualized violence remains a structural crime against women because discriminatory attitudes persist, and the implication for women is that "criminal justice processing of these cases continue to minimize women's experiences, exonerate violent men, and distort public understanding of this crime" (7).

In the face of this, Rona Ambrose, as interim Conservative Party leader, put forward a private member's bill in 2017 that would have made it mandatory for federally-appointed judges to receive specific training on sexual assault law. Despite having gained all-party support, the bill died in June 2019 after being stalled in the Senate for more than two years. The legislation would require the Canadian Judicial Council to develop mandatory courses in consultation with sexual assault survivors and supporting organizations, and increase transparency through annual reporting on what training was offered, the number of judges who attended, and the number of sexual assault cases heard by judges who've never received training in that area of law.

This has received pushback from some, including Supreme Court Chief Justice Richard Wagner, the highest ranking judge in Canada, who stated that while he thinks Ambrose's bill was designed to help judges avoid taking "an inappropriate course" in court, they don't need mandatory training in sexual assault law. Others state that it threatens their independence as judges (8). However, as students, we understand the importance of ongoing learning and critical examinations of social constructs and do not see this as an impediment to justice. Rather, it is an invitation for members of the legal system to subvert ingrained ideologies that result in biased decisions, making room for informed, empathetic decisions on matters that deeply impact the lives of survivors and create pathways to justice. Decisions that do not challenge the status quo are decisions to uphold the status quo.

## SFCC'S RECOMMENDATIONS

In order to increase access to justice for survivors of sexualized violence by giving them access to fair and impartial interactions with the criminal justice system, SFCC is calling on the Federal government to:

1. Work with local experts in sexualized violence to develop a training curriculum for judges on social context, sexualized violence, and sensitivity training that includes culturally- responsive and non-heteronormative understandings of violence; and
2. Mandate all federally-appointed judges receive this training prior to serving, as well as provide ongoing opportunities for increased understanding of consent, anti-racism, and anti-violence work.

## CONCLUSION

The Canadian legal system has long upheld colonial and patriarchal ideologies of law and consent that have marginalized and re-traumatized survivors of violence. Implications of mandatory training for judges would be far-reaching within the legal system and the lives of survivors. This type of shift, if undertaken meaningfully, would be a step in redefining justice for survivors.

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