

# Amending the **CRIMINAL CODE** for Sexual Offences

(Bill C-51; clauses 21–25)

## RIGHTS OF THE ACCUSED

- ★ Right to silence
- ★ Presumption of innocence



## RIGHTS OF THE VICTIM

- ★ Right to privacy
- ★ Access to justice

# 1

## Laws Shielding Against Rape Myths

It is **prohibited** to reason that because of a person's sexual history they were more likely to have consented to sex, or they are less credible as witnesses. Bill C-51 extends this prohibition on '*sexual activity evidence*' to include any communication that is sexual in nature or purpose (e.g., *sexting*). ■

# 2

## 'Sexual Activity Evidence' Held by the Accused

If an accused wants to use communications as evidence, it must first be approved by a judge at an admissibility hearing. This is controversial because it demands the accused present evidence, which goes against their **RIGHT TO SILENCE**. The implication is that an accused must "show their hand," which unfairly advantages the Crown; also, by requiring that the accused provide evidence, the burden of proving its case moves away from the Crown, risking the accused's **PRESUMPTION OF INNOCENCE**. ■

# 3

## Balancing the Rights of Both Sides

Bill C-51 is a response to amend both the Criminal Code and the judicial relationship with victims of sexual offences. The bill adds protections to victims' **PRIVACY** (who are not always willing participants in the legal process); the admissibility hearing also offers new **AUTONOMY**. The rights of

“*There is no other crime where 95% of victims do not report*”

the accused are equally important to uphold to avoid what is considered the gravest injustice of legal process—a wrongful conviction. To the extent that

victims' access to justice does not diminish the accused's rights, these changes properly align with the **TRUTH-SEEKING FUNCTION** of the court. ■

# JUDICIAL ACCOUNTABILITY through Sexual Assault Law Training

(Bill C-337)

PUBLIC CONFIDENCE  
IN THE ADMINISTRATION  
OF JUSTICE



ACCESS TO JUSTICE  
FOR VICTIMS

1

## Revictimization by the Justice System

Relative to how often offences occur, no other crime is prosecuted so rarely as sexual assault. A significant barrier to **ACCESSING JUSTICE** is how victims fear they will be treated in court, with stigma, privacy concerns, and emotional trauma cited as contributors to the ‘revictimization’ of sexual assault victims by the criminal justice system. Current events (e.g., *Justice Camp Inquiry, 2016*) have shown that even judges may misunderstand sexual assault. ■

2

## Judicial Response: Preventative Education

Issues involved in sexual assault cases are complex and are often incorrectly understood because of pre-existing beliefs. Judges are not expected to know all aspects of all areas of law; but by demanding that only judges trained in sexual assault law reside over these cases, revictimization can be minimized. Bill C-337 proposes **mandatory training in sexual assault law** for all judiciary. Because any new judge can be assigned to a court or type of law that they have no experience in, ensuring that *everyone* is properly trained is essential to successfully using education as a preventative measure. ■

3

## Expected Outcomes

This bill would add ‘sexual assault law’ to the curriculum for all current and prospective judges so that when a judge resides over a sexual assault case, they will be equipped to proceed with the case—and the law—in a fair and just manner. The public expects judges to know the law, and to be able to administer the law fairly and with compassion; the hope is that this bill will increase **PUBLIC CONFIDENCE** in the judiciary’s ability to do so. ■