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**Submission to the House of Commons' Standing
Committee on the Status of Women:
Study of Bill C-337, *An Act to amend the Judges Act and
the Criminal Code (sexual assault)***

Submitted by: Ms. Sue O'Sullivan, Ombudsman
Office of the Federal Ombudsman for Victims of Crime
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CONTEXT

The General Social Survey (GSS) on Victimization asks Canadians aged 15 and over to self-report on victimization. In 2014, despite being the most serious of the offences measured¹, sexual assault was the offence *least* likely to be reported to the police, with only one in twenty reported. Based on the available research, there are many reasons why victims don't report sexual assault, such as shame or self-blame, feeling there would be insufficient evidence, fear that others would find out about the victimization, fear of retaliation from the perpetrator, and not wanting to bring dishonour to one's family. Amongst the reasons that consistently emerge is also a lack of faith in, or fear of, the criminal justice system itself²: victims don't feel they can trust the system to treat them with dignity, fairness and respect.

As Canadians, we have seen the headlines and heard the stories – victims being interrogated about their past, having their character and behaviour called into question, or worse being asked why they didn't do more to stop the assault. Often victims recount experiences of feeling blamed, judged, interrogated and dismissed. While these cases may not necessarily represent the norm, they are the ones people remember, and the ones that may come to mind if they find themselves in the unfortunate position of deciding whether or not to come forward.

My Office often hears from victims who felt that going through the criminal justice system has caused them even more suffering and pain. While some progress has been made, it's fair to say that to some victims, the criminal justice system can seem intimidating and hostile.

POSITION

There is a clear benefit to ensuring that judges are well informed not only about the law as it pertains to sexual assault, but also about the *impacts* on the victims and how those affect decision making, behaviour, ability to recall detail, and more.

For that reason, I support the intent of Bill C-337. I am heartened to see the support for this Bill, and the recognition that – from a victims' lens – the system urgently needs to be fixed.

¹ The GSS on Victimization measures eight offence types: assault, sexual assault, robbery, theft of personal property, breaking and entering, motor vehicle theft, theft of household property and vandalism.

² See, example: Lindsay, M. 2014. *A Survey of Survivors of Sexual Violence in Three Canadian Cities*. Ottawa: Research and Statistics Division, Department of Justice Canada. http://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_19/rr13_19.pdf. The study, which involved 114 interviews with female survivors of sexual violence in three Canadian provinces, 86 of whom who had experienced adult sexual assault, found that lack of confidence in the criminal justice system was one of the most common reasons (provided by 34 percent) for not reporting a sexual assault.

RECOMMENDATIONS

While I support the Bill, I also see opportunities to strengthen it to better reflect the complex realities unique to the issue of sexual assault and to be more effective overall for victims and survivors. Below are my recommendations for amending the Bill for the Committee's consideration. These fall into two main categories:

1. Training development
2. Training content

Training Development

The development of the training is critical to its overall success. Training must be done in conjunction with experts and key stakeholders to ensure it is trauma-informed and relevant. I therefore recommend that the legislation specify that training be:

- ***Developed by specialized experts and in collaboration with victims***
Trauma is complex, and training should be developed by those with expertise in the field. In addition, judges need to understand the victims' perspectives and the impact of the criminal justice system on survivors of sexual assault. Victim advocates should be consulted in the development of the training so as to ensure an accurate perspective. Consultation with lawyers and law enforcement would also add value by helping to identify knowledge gaps or barriers.
- ***Culturally informed and relevant***
In order to be effective, training should foster sensitization to the unique needs of vulnerable and marginalized populations. Some groups face disproportionately higher rates of sexual violence and/or specific barriers in seeking help from law enforcement agencies and the justice system, for example, those from northern, rural or remote communities, trafficked women and girls, LGBTQ2 people, Indigenous women, immigrant and refugee women, and women with disabilities.

Training content

Overall, training should foster a deeper acceptance and understanding of the complexities of trauma associated with sexual assault, as well as inform the judiciary on how to better support victims. As part of this, I recommend that the Bill specify that training must recognize, and include, the following:

- ***The intersectionality of sexual assault and other issues, such as domestic violence***

Many victims of sexual assault experience the assault in the context of family violence. Ensuring the judiciary is trained on the intersection between these issues will assist in better understanding the context and impacts of the crime.

- ***The neurobiology of trauma***

As reported in the Committee's study on Violence Against Young Women and Girls, the judiciary should receive trauma-informed training on gender-based violence. Trauma is complex, and the impacts of sexual assault must be clearly understood before a judge can reasonably consider a victim's behaviour within the context of a case.

- ***New forms of sexual violence, like cyber violence***

While we are still grappling with basic myths and stereotypes, the world is quickly evolving around us. Cyber sexual violence is an emerging issue that needs to be considered and included when discussing victimization³. Failing to consider and include this issue may undermine the Bill's intentions by compromising its effectiveness in today's digital world.

CONSIDERATIONS

In addition to my recommendations above, I would also like to provide the following points for the Committee's consideration:

- ***The value of reviewing existing best practices in the development of both the legislation and the subsequent training***

Other jurisdictions, such as Massachusetts⁴ in the United States and England and Wales⁵, have already implemented training for their judiciary (as well as others in the criminal justice system) on sexual assault, and efforts are underway in other jurisdictions to study how best to approach such training. Based on my informal discussion with experts from those jurisdictions, I would suggest that there are early lessons learned from which Canada could potentially benefit.

³ Standing Committee on Status of Women (FEWO) study report on Violence Against Young Women and Girls: Witnesses suggested that law enforcement officers and members of the judiciary should receive digital literacy training, so they are aware of the complexities of this type of crime.

⁴ The General Laws of Massachusetts require that training on the issue of domestic violence and sexual violence be provided to all appropriate court personnel throughout the commonwealth, including but not limited to judges, clerks of the court, and others.

⁵ In England and Wales, a "ticketing" system has been introduced such that Crown court judges are required to complete a specialist training course before they are permitted to sit on sexual violence cases.

- ***The need to train judges with respect to victim issues and legislation more broadly***

Sexual assault survivors have unique needs, however generally speaking our Office hears from many victims who feel disrespected by the criminal justice system. A broad-reaching training module on victims' needs for information, consideration, participation and support should be part of the judiciary training and extended out to all those working in the system.

Additionally, with the introduction of the first-ever stand-alone victim legislation, training on the *Canadian Victims Bill of Rights* (CVBR) should be included, so as to ensure that judges are respecting and protecting victims' rights as they apply to the court process.

- ***The potential impacts of requiring written reasons be given***

Clearly, ensuring that new legislation does not cause further delays in the criminal justice system is important – something that should be considered with respect to the requirement for a written decision. Assuming that the requirement would not cause further delays, there are clear benefits to requiring written decisions for victims of crime. Victims want to be aware and informed, and having a written decision pertaining to their case can assist in this. Even when victims are present to hear the information and decisions, they can be overwhelmed or triggered by the presence of the offender and may not be able to retain information effectively. This information should therefore be made available to victims at no cost. Furthermore, transparency with this type of information could assist organizations looking to enhance the criminal justice system for victims by helping them to analyze patterns, gaps or barriers in the system. This transparency should also be expected to result in better accountability and may reduce error.

- ***The need to ensure the sensitization of all those working in the criminal justice system***

All participants in the criminal justice system contribute to the overall experience of a victim, and to the outcome of a particular case. For example, an ongoing challenge relates to instances where lawyers introduce evidence that should be excluded under Canada's rape shield laws and/or lines of questioning that perpetuate rape myths in the courtroom. In order for victims to have confidence in the criminal justice system, we need to ultimately ensure that survivors are treated with dignity and respect by all participants in the criminal justice system.

CONCLUSION

Bill C-337 aims to address an important issue that impacts victims of crime by sensitizing the judiciary on the topic of sexual assault. I support this effort, and broadly the Bill. I would, however, encourage the committee to consider my recommendations that the Bill specify aspects related to the development and content of the training. This can be done through practical inclusions, such as requiring the training to address the intersectionality of sexual assault and issues such as domestic violence, as well as including emerging issues such as cyber violence which, if left outside of the scope of the training, could result in a significant gap moving forward.

OFFICE OF THE FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME

The Office of the Federal Ombudsman for Victims of Crime helps victims to address their needs, promotes their interests and makes recommendations to the federal government on issues that affect victims. For more information visit:

www.victimsfirst.gc.ca