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## A Road Map from Canada: Mandatory Sexual Assault Law Training for Judges

**Hon. Rona Ambrose**

The truth is that it should never have been this hard.

Sometimes in politics even the policies that enjoy broad-based support across party lines can face unforeseen challenges. Especially when those policies are designed to shine a light on shadowy areas of our institutions or challenge entrenched beliefs that some are not yet ready to reconcile.

This was the case with my Private Member's Bill C-337,<sup>1</sup> An Act to amend the Judges Act and the Criminal Code, more commonly known as the JUST Act. I first introduced it in 2017, when I was serving as the leader of the Official Opposition in the Canadian

House of Commons. It was a modest piece of legislation that was designed to increase confidence in one of our most prized institutions: our judiciary.

The JUST Act introduced mandatory sexual assault law training for Canadian judges at the federal level. It would ensure that education and training were provided to the leaders in our justice system who hold the most power—our judges—while also providing greater transparency around their rulings.

## About the Series

Gender-based violence (GBV) affects one in three women worldwide, making it an urgent and important policy challenge. Many countries around the world have passed laws intended to protect women from violence, yet violence persists. Over the past year, the COVID-19 pandemic has raised awareness of the perils women face from gender-based violence—what has come to be known as the “shadow pandemic”—but it has also aggravated risk factors while increasing barriers to protection, support, and justice.

This publication aims to focus on the intersection of gender-based violence and the rule of law by examining how legal frameworks, judicial system responses, and public policy contribute to the ways in which gender-based violence is—and is not—addressed around the world. Each piece addresses the complicated challenge of gender-based violence and the successes and failures of various public policy responses globally, and offers recommendations for a path forward.

## THE BILL

Canadian sexual assault law, while robust, is one of the most complex areas of law, and it requires specialized education. As such, mandatory training would focus on deconstructing rape myths and victim stereotypes, and it would shed new light on the impact trauma has on memory, among other things. The JUST Act followed the spirit of similar requirements already practiced in the United Kingdom, where judges must refresh their training every three years or they cannot preside over sexual assault trials.

Time and again errors in sexual assault law are made. In one month alone in 2019, the Supreme Court of Canada overturned two cases due to trial judges incorrectly applying sexual assault law specifically around consent and allowing rape myths and victim stereotypes into the courtroom.<sup>2</sup> In a two-year period, the province of Alberta saw four cases overturned for the same reasons.<sup>3</sup>

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Typically, errors in the courtroom are only brought to light when a journalist witnesses a trial or when an academic researcher digs into court transcripts (a costly and lengthy process). Not only is there little accountability for the ignorance of sexual assault law by some judges—there is even less transparency around how they render their decisions. The JUST Act intends to address both of those deficits.

It is estimated that 1 in 3 women<sup>4</sup> and 1 in 6 men<sup>5</sup> will experience sexual violence in their lifetime. For Indigenous women, the numbers are far worse; they are three times more likely to be sexually assaulted than non-Indigenous women.<sup>6</sup> Most of

these victims will remain silent. Ninety-five percent of women do not report these kinds of assaults,<sup>7</sup> and men and boys are even less likely to report them. When asked why, according to Justice Canada, two-thirds of victims say they have no faith in the courts.<sup>8</sup>

## THE JOURNEY

When I entered politics, I vowed to be a passionate advocate for women in Canada and around the world. When I became the leader of the Official Opposition, it was an opportunity to bring forward legislation that would correct the disparities in our courtrooms and encourage more victims to report.

I couldn't believe that rape myths and stereotypes plagued our courtrooms, that trial judges would say things like “Why didn't you just keep your legs closed?”<sup>9</sup> or “Clearly a drunk can consent.”<sup>10</sup>

I introduced Bill C-337 to help ensure that these kinds of things didn't happen again. Given the alarming statistics and the undeniable mountain of evidence in court transcripts, it never occurred to me or to the bill's advocates that it would have been such an arduous road.

It is highly unusual in the Canadian parliamentary system to attain all-party support for legislation; it is even more unusual for the support to fall behind a private member's bill, let alone one sponsored by the leader of the Official Opposition.

But my bill had the unanimous support of all parties. I worked closely with members across party lines—everyone wanted to see this done.

And then it sat in the Senate. It sat there for so long I had left the House of Commons and moved into the private sector while waiting for the bill to be passed. I expected it would be. After all, it is customary for the Senate to prioritize passing

legislation that has the full weight of the House of Commons behind it.

Suffice it to say, that is not what happened.

## HOW IT GOT DONE

I refused to let a small group of senators derail the will of the House of Commons and deny legislation that was desperately needed. I spent the next several years building a team and working with anyone who was willing to support the bill. I traveled to different provinces, advocating and working with multiple jurisdictions. Prince Edward Island became the first Canadian province to bring in similar legislation at the provincial level, and other provinces are currently working toward the same goal.

We set up a website and initiated public petitions and letter writing campaigns. We worked alongside an army of advocates active on social media, including powerful allies like the prime minister, the leaders of all federal political parties, and the (former) national chief of the Assembly of First Nations. We aligned with leading advocacy agencies and legal scholars and made sure to listen to victims at every turn.

We followed court cases and called out the judges and lawyers who perpetuated the imbalances in our courtrooms. I repeatedly called on the Canadian Judicial Council, National Judicial Institute, and the Supreme Court of Canada to get behind the bill. Many Canadian journalists followed the bill, wrote about it, and set aside space in their publications and time on the air for radio and television interviews with me and the advocates I worked with.

We pulled out all the stops.

## SUCCESS, FINALLY

In 2019 I was able to secure the support—once again—of all political party leaders who together committed that whoever won the federal election would reintroduce my bill as their own and see it passed into law. That was a pivotal moment on the journey.

Bill C-337 became Bill C-5<sup>11</sup> and finally Bill C-3. Each time it had the unanimous support of the House of Commons, and each time it faced dilution and delay by a small, powerful group of senators. Admittedly, I was frustrated at my final Senate committee appearance in 2021, where I admonished those responsible for the bill's delay. That said, I was happy to hear the words of Justice Adele Kent, the chief judicial officer of the National Judicial Institute, who noted that my original bill instigated “valuable” conversations between the judiciary, legislators, and victims' rights groups<sup>12</sup> in the past four years. Further, more robust and reoccurring training on gender-based and sexual violence was developed as a result.

Happily, Bill C-3 passed and is now enshrined in Canadian law.<sup>13</sup>

## THE PATH FORWARD

As we cast our gaze forward and look to other jurisdictions to enact similar reforms, let me mention three points of encouragement for those in other jurisdictions willing to lead on similar reforms:

First, expect adversity and opposition from unexpected places. Long-held, deeply ingrained unconscious biases still run deep. This can be more complicated when facing an institution such as the judiciary, which in the Canadian context has minimal transparency.

Second, find your allies within and outside of government. Policy influencers can help sway key

decision makers in private, public champions can help educate people about the issue, and media attention will reach the masses.

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## “Be resilient and press on.”

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Finally, and most important, do not give up. In our case, we had the unanimous support of the House of Commons and still faced an uphill struggle. Be resilient and press on.

Despite the many challenges and ultimate success of the JUST Act, in retrospect it is the in-between moments that might have had the most impact. Consider that for four years every time the bill was talked about it was an opportunity to educate those listening, watching, or reading about gender-based and sexual violence. In the end, more people were reached than would have been if we had not faced roadblocks.

When I introduced the JUST Act in 2017, I never anticipated the journey that would follow. I am forever grateful to all those who stood up for the legislation, and to all those who will stand up and take on the mission in other corners of the world. It is the duty of policymakers to help ensure that the legislation that governs our institutions treats people with dignity and fairness. Victims must have confidence in our institutions, or they will not come forward.

Best of luck on the journey ahead.

## NOTES

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