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CIVIL SEXUAL ASSAULT AND PERSONAL INJURY

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Improving the Legal Experience of Sexual Assault Survivors

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Loretta is one of the few lawyers in Ontario who has substantial experience in dealing with abuse and harassment in civil lawsuits and employment cases. She understands and cares about abuse survivors, recognizing that coming forward, being heard and acknowledged as well as gaining a sense of justice and closure, in addition to the amount of a settlement, are what matter to her clients.

The recent allegations against Harvey Weinstein and subsequent explosion of sexual assault allegations in the United States has brought the issue of sexual assault front and center. Here in Canada the way police and judges respond to sexual assault cases is also coming to the fore. We may see some significant changes in the way sexual assault cases are investigated and tried as a result of a recent Globe and Mail investigation into how police handle sexual assault complaints, a recent lawsuit regarding same, legislative changes being proposed in response to judicial comments in sexual assault trials, as well as a new RCMP initiative.

In early 2017 the Globe and Mail ran a story about the alarming rate of sexual assault complaints deemed to be "unfounded" by Canadian police forces. The Globe analyzed data from more than 870 police forces and found that out of 5 sexual assault allegations in Canada is dismissed as baseless and thus "unfounded". This rate is nearly twice as high as the rate at which physical assault allegations are dismissed as unfounded and dramatically higher than the rates for other types of crimes. These numbers are particularly alarming in view of the fact that Statistics Canada estimates that approximately only 1 in 10 sexual assault survivors report the event to police and the fact that only half of laid charges make it to trial, and of those, half end in no conviction. In response to the Globe article, several police forces

have begun reviewing cases previously deemed unfounded.

In March 2017, law student and sexual assault complainant Ava Williams sued the London (ON) Police Service ("LPS") alleging breaches of the Canadian Charter of Rights and Freedoms ("The Charter"). Ms. Williams says that she was sexually assaulted by another student while at an undergraduate party in 2010 . She reported the incident to police immediately, but the investigating detective at the police station declared her claim "unfounded." She claims that the police discriminated against her based on her gender contrary to her s. 15 equality rights under the Charter by relying on stereotypes about gender and sexual violence including:

- "women who consume alcohol are more likely to consent to sex"

- "women often lie about rape as a consequence of post-sex regret"

- "women who engage in consensual kissing are more likely to consent to oral sex or sexual intercourse with men they just met"

Ms. Williams is asking the court to implement the "Philadelphia Model" to oversee the LPS's handling of sexual assault allegations in the future. The Philadelphia Model establishes an external review board, now widely recognized as an accountability best practice, to review how police forces handle and pursue sexual assault cases. Ms. Williams also seeks acknowledgment of wrongdoing on behalf of all sexual assault complainants who had their allegations deemed unfounded by the LPS between 2010 (the year of Ms. Williams's assault) and 2017. Ms. Williams' case could significantly change the way Canadian police respond to sexual assault complaints.

There have been several recent sexual assault trials where judges have been criticized for their remarks in court. In a case involving a teenage victim who was sexually assaulted by a taxi driver, a Quebec judge commented on her weight and suggested she enjoyed getting attention from a "handsome older man". He also commented on her appearance saying she was "a bit overweight, but she has a pretty face". In another case, an Alberta judge asked a sexual assault complainant why she couldn't keep her knees together. The judge resigned following a decision by the Judicial Committee that he be removed from the bench. Another judge in Alberta elected early retirement after concerns were raised about a case in which he interpreted the victim's submission as consent.

An Ontario bill proposed by Local MP Laurie Scott to require mandatory sexual assault training for judges has received support from all parties. Private Members Bill 120, the Mandatory Sexual Assault Law Training for Judicial Officers was supported through its second reading on Thursday November 16, 2017 . It will now go before the Standing Committee on Justice Policy before going back the legislature for a final vote. This bill proposes amendments to the *Courts of Justice Act* and the *Justices of the Peace Act* to provide that candidates shall not be considered for appointment as a judge or justice of the peace unless he or she has completed "recent and comprehensive education in sexual assault law that includes instruction in evidentiary

prohibitions, principles of consent and the conduct of sexual assault proceedings, as well as education regarding myths and stereotypes associated with sexual assault complainants".

There is a similar bill for federal judges: Bill C-377, *Judicial Accountability Through Sexual Assault Law Training Act* which amends the *Judges Act* and the *Criminal Code of Canada*. Bill C-377 passed second reading on October 26, 2017. This bill would amend the *Judges Act* to provide that judges are required to have education in sexual assault that has been developed in consultation with sexual assault survivors, as well as with groups and organizations that support them, and that includes instruction in evidentiary prohibitions, principles of consent and the conduct of sexual assault proceedings, as well as education regarding myths and stereotypes associated with sexual assault complainants and social content education. Bill C-377 also provides for amendments to the *Criminal Code* to require judges to give reasons in sexual assault cases. These federal and provincial bills are aimed at training judges to ensure that inappropriate comments such as the ones in the cases referred to above, do not happen again.

The RCMP is also in the preliminary stages of looking into how third party reporting ("3PR") could be implemented. 3PR allows survivors to report sexual assaults to a community based organization and remain anonymous, without going to the police. 3PR currently exists in B.C. and the Yukon. Once the sexual assault survivor reports to the organization, the organization shares the information with the police on a "no-name" basis. The purpose of the system is to address barriers to victims coming forward. According to Statistics Canada, less than 5% of sexual assaults (other than spousal assault) get reported to police. The benefits of 3PR include survivor getting emotional and practical help to help them recover from the experience. The police can then enter the information into a database to help identify trends, patterns and alert other forces regarding similar cases. Also, police can go back to the community organization and ask to speak to the victim. Sexual abuse survivors may be more willing to formally report to the police if they know that the police are taking the matter seriously. Not being believed is one of the main barriers to reporting sexual assaults.

It remains to be seen whether these legislative changes, cases and potential alternative for making reports will actually change the way police and Courts deal with sexual assault cases. For a while now, I have been advocating for better training for police officers. Of course, it is not only police and judges who are guilty of relying on stereotypes about gender and sexual assault. For things to really change, public education (starting a young age) is needed including lessons about consent, sexual assault and gender stereotypes.