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## Position Paper # 42

### Sex Education: A Useful Tool to Help Prevent Sexual Assault?

By Zain Abdulla

#### Introduction

Bill Cosby, Harvey Weinstein, Kevin Spacey, Louis C.K. All names that most of us will recognize, but not for good reason. October 2017 saw an avalanche of sexual assault and misconduct allegations against Hollywood mogul Harvey Weinstein. This explosion set the backdrop for the #TimesUp and #MeToo movements, which prompted people to come forward with their experiences of sexualized violence.

In Canada, the prominent 2016 case of Jian Ghomeshi and the earlier 1999 case of *R v Ewanchuk* form part of a larger discussion on important issues pertaining to sexual assault: consent and the treatment of survivors.

This paper will discuss sexual assault laws in Canada and suggest that sex education in schools can act as a significant deterrent of sexual assault.

#### What does the law say about sexual assault?

Canadian law employs a wide definition of sexual assault, encompassing all types of unwanted sexual activity such as groping, kissing, fondling, and rape. We have a fundamental understanding that consent is what makes any sort of sexual activity between people legal. Section 273.1(1) of the Canadian Criminal Code defines consent as “*the voluntary agreement (...) to engage in the sexual activity in question*”.<sup>1</sup> Thus, unless there is affirmative consent between the parties, the sexual activity is unlawful. In short, in the eyes of the law, only yes means yes.

Cases play an important role in shaping the law in Canada. In relation to sexual assault and consent, the 1999 case of *R v Ewanchuk* established that a defendant cannot rely on the argument that the complainant implicitly consented to the sexual activity in question. Steve Ewanchuk, 47, was charged with sexually assaulting a 17-year-old woman at a job interview in his trailer in Alberta. Ewanchuk's defence argued that there had been implied consent, as the woman did not shout or make any attempt to escape Ewanchuk, even though she verbally rejected his advances. The case resulted in an acquittal at trial, and the decision was upheld by Justice John McClung. This case was problematic as the Justice made reference to the woman's sexual history, lifestyle and garments,

lessening the criminal nature of Ewanchuk's actions and simultaneously highlighting the lack of gender sensitivity in the legal system. Eventually however, the Supreme Court overturned the ruling.<sup>2</sup>

A more contemporary high-profile sexual assault case was the trial of Jian Ghomeshi. A former TV and radio host, Ghomeshi was arrested in 2014 on charges of sexual assault. His trial began in early 2016, but he was ultimately acquitted. His acquittal was met with controversy, with the treatment of female witnesses criticized. In particular, Judge Horkins was criticized for victim blaming and for alluding to how women should or should not behave after an assault.<sup>3</sup>

It is not unusual for the comments and behaviours of judges to come under scrutiny, especially in sexual assault cases. Indeed, the Alexander Wagar case also saw comments made by Justice Robin Camp come under fire. In response to her testimony, Camp asked a 19-year-old Indigenous female complainant "*Why couldn't you just keep your knees together?*"<sup>4</sup> Wagar was acquitted in 2014 by Justice Camp. As a result of his grossly inappropriate remarks, a Judicial Council committee recommended Camp be removed, but he eventually resigned. A retrial was ordered, but Justice LeGrandeur acquitted Wagar a second time in 2017. A feminist coalition of organizations<sup>5</sup> intervened and expressed their discontent at Justice Camp's comments. A statement released in February 2017 on the website of West Coast LEAF reads: "*The Coalition stands with the complainant in the Wagar case. Regardless of the outcome in a sexual assault trial every complainant is entitled to a legal process that respects her dignity, and her right to a judicial process that is free from discrimination, flawed stereotypes and debunked rape myths.*"<sup>6</sup>

Owing its emergence in part to #MeToo, and in part to high profile sexual assault cases, #IBelieveSurvivors surfaced. It has arguably brought about a renewed social and cultural awakening – that of listening to the few women who report their experiences of sexualized violence. The October 2018 confirmation of Brett Kavanaugh to the Supreme Court of the United States, despite several allegations of sexual assault against him, has been the latest in a series of events that galvanized a focus on sexualized violence, now at a global all-time high. So, is there a way to prevent this violence?

## **Does sex-ed help prevent sexual violence?**

In Canada, 20% of women will be sexually assaulted in their lifetimes, a bleak statistic that has remained consistent for over three decades. In 2016, 93,000 Canadians reported instances of domestic violence, of which close to 80% of were women.<sup>7</sup> The statistics are clear: sexualized violence is an epidemic. While it is not a new phenomenon, the involvement of celebrity cases has forced society to restart these difficult conversations. An obvious question seems to be: why did we have to wait for the stories of famous individuals to kickstart a long overdue conversation? Whatever the answer, it is time for society to realize that we can and must do better. We must do better for all the brave women who came forward, and for all those who have lived their trauma in silence.

While ending sexualized violence is a daunting task, there seems to be consensus amongst experts that sex education in schools, emphasizing the importance of respectful sexual behaviour, is a good place to start. "*High-profile sexual assault cases like the Ghomeshi case, along with the significant rates of sexual violence in our communities and on campuses, clearly suggest that more needs to be done, and more needs to be done at an earlier stage,*" suggests Sandeep Prasad, Executive Director of Action Canada For Sexual Health and Rights.<sup>8</sup>

Research carried out by the US Safe Dates programme, which seeks to prevent dating abuse, suggests that having recurring discussions with children on issues pertaining to power, abuse, gender equality,

and consent can decrease rates of sexual violence.<sup>9</sup> Further, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) aligns itself with the view that “*Comprehensive sexuality education (CSE) which is both inclusive and non-stigmatizing, and promotes gender equality and the rights of young people, plays a key role in the battle against sexual and gender-based violence*”, according to Joanna Herat, a Senior Programme Specialist in Health Education at UNESCO.<sup>10</sup>

The conversation about sex education has been particularly contentious across Canada. In Ontario, repealing and reworking the 2015 comprehensive sex-ed curriculum was one of Premier Doug Ford’s campaign promises made to conservative Ontarians. In July 2018, Lisa Thompson, Education Minister, announced the revival of the backwards 1998 sex-ed programme.<sup>11</sup> This is problematic because the old curriculum seems akin to an alternative universe where the factors of consent, race, the Internet, gender identity, and sexual orientation do not exist. It is also void of a human rights-based framework and acknowledgment of the harmful nature of stereotypes.<sup>12</sup>

British Columbia is another province facing a backlash due to its own sex-education programme, specifically, the policy on sexual orientation and gender identity, otherwise known as *SOGI* and the new *SOGI 123* teaching model. Two years ago, the Ministry of Education made it mandatory for all schools to integrate sexual orientation and gender identity into anti-bullying policies and curriculums, aiming to decrease the discrimination against LGBTQI+ students.<sup>13</sup> The new *SOGI 123* teaching model has been met with a wave of conservative protests, ultimately claiming that the free speech, parental rights, and religious freedom of some are being erased by recognizing the human rights of others.<sup>14</sup> These rallies, disturbingly similar to the rhetoric in Ontario, are tainted by misinformation aiming to abolish the programme in schools. This is worrisome because it poses a significant threat to the safety, health, and inclusion of LGBTQI+ youth. In response, a student-led campaign called *Sex Ed is our Right* has emerged to send a message of resistance.<sup>15</sup>

Overall, the return to the 1998 curriculum in Ontario and the movement to roll-back *SOGI 123* in BC have created a troublesome climate for anti-violence initiatives in Canada. They stand in stark contrast to the #MeToo movement and should be seen as significant steps in the wrong direction.

## Conclusion

Comprehensive sex education is a vital part of the equation if, as a society, we are going to succeed in fundamentally changing our attitudes and mindsets towards sexualized violence. Sex education will not end misogyny or abuses of power, but in the words of Tarana Burke, founder of #MeToo: “*We need to start earlier to proactively discuss the entire spectrum of violence and help shift the culture, so we are preventing another generation of children from having to say, ‘me too’. We have an incredible opportunity to do that with comprehensive sexuality education. Let’s not waste it.*”<sup>16</sup>

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<sup>1</sup> Legal Education and Action Fund. “The Law of Consent in Sexual Assault.” 6 Mar. 2017. [www.leaf.ca/the-law-of-consent-in-sexual-assault/](http://www.leaf.ca/the-law-of-consent-in-sexual-assault/)

<sup>2</sup> *R. v. Ewanchuk* [1999] 1SCR330, 1999 CanLII711 (SCC) <https://www.canlii.org/en/ca/scc/doc/1999/1999canlii711/1999canlii711.html>

<sup>3</sup> Kingston, Anne. “Jian Ghomeshi's #MeToo Moment: It's All about Him.” *Macleans.ca*, 16 Sept. 2018, [www.macleans.ca/opinion/jian-ghomeshis-metoo-moment-its-all-about-him/](http://www.macleans.ca/opinion/jian-ghomeshis-metoo-moment-its-all-about-him/)

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- <sup>4</sup> *R. v. Wagar*. Transcript of Trial Proceedings, June 5, 6, 10, August 1, 6 and September 9, 2014. [https://www.cjc-ccm.gc.ca/cmslib/general/Camp\\_Docs/2016-09-08%20Exhibts%20-%20Agreed%20Statement%20of%20Facts.pdf](https://www.cjc-ccm.gc.ca/cmslib/general/Camp_Docs/2016-09-08%20Exhibts%20-%20Agreed%20Statement%20of%20Facts.pdf)
- <sup>5</sup> Including: Avalon Sexual Assault Centre, Ending Violence Association of British Columbia, the Institute for the Advancement of Aboriginal Women, the Metropolitan Action Committee on Violence Against Women and Children, the Women’s Legal Education and Action Fund, and West Coast Women’s Legal Education and Action Fund.
- <sup>6</sup> West Coast LEAF. “RELEASE: Feminist Coalition Responds to Verdict in Wagar Retrial for Sexual Assault.” 1 Feb. 2017. [www.westcoastleaf.org/our-publications/release-feminist-coalition-responds-verdict-wagar-retrial-sexual-assault/](http://www.westcoastleaf.org/our-publications/release-feminist-coalition-responds-verdict-wagar-retrial-sexual-assault/)
- <sup>7</sup> Lindeman, Tracey. “Why Sex Ed Plays a Role in the Fight against Sexual Violence.” *Ottawa Citizen*, Ottawa Citizen, 20 Sept. 2018, [ottawacitizen.com/news/local-news/how-does-sex-ed-prevent-sexual-violence-later-in-life](http://ottawacitizen.com/news/local-news/how-does-sex-ed-prevent-sexual-violence-later-in-life)
- <sup>8</sup> Action Canada for Sexual Health and Rights. “Comprehensive Sexuality Education Archives.” [www.actioncanadashr.org/tag/comprehensive-sexuality-education/](http://www.actioncanadashr.org/tag/comprehensive-sexuality-education/)
- <sup>9</sup> *Ibid.* Lindeman.
- <sup>10</sup> UNESCO. “Comprehensive Sexuality Education Combats Violence against Women and Girls.” 16 Feb. 2016. [en.unesco.org/news/comprehensive-sexuality-education-combats-violence-against-women-and-girls](http://en.unesco.org/news/comprehensive-sexuality-education-combats-violence-against-women-and-girls)
- <sup>11</sup> Scotti, Monique. “From Sex-Ed to a Carbon Tax: Here’s Where Doug Ford Stands on Big Issues.” *Global News*, 12 Mar. 2018, [globalnews.ca/news/4077129/doug-ford-policy-platform-big-issues/](http://globalnews.ca/news/4077129/doug-ford-policy-platform-big-issues/)
- <sup>12</sup> Contenta, Sandro. “The Naked Truth about How the Repealed Sex Ed Program Compares to the 1998 One That Replaces It.” *The Star*, 12 July 2018. [www.thestar.com/news/canada/2018/07/12/scrapping-the-new-sex-ed-curriculum-a-giant-leap-backwards-experts-say.html](http://www.thestar.com/news/canada/2018/07/12/scrapping-the-new-sex-ed-curriculum-a-giant-leap-backwards-experts-say.html)
- <sup>13</sup> Nair, Roshini. “School Board Trustees Opposed to SOGI Have Little Power to Change It | CBC News.” *CBCnews*, CBC/Radio Canada, 7 Oct. 2018, [www.cbc.ca/news/canada/british-columbia/school-board-trustees-opposed-to-sogi-have-little-power-to-change-it-1.4852805](http://www.cbc.ca/news/canada/british-columbia/school-board-trustees-opposed-to-sogi-have-little-power-to-change-it-1.4852805)
- <sup>14</sup> Prasad, Sandeep. “Lobbyists Are Trying To Rob A Generation Of Their Right To Sex-Ed.” *HuffPost Canada*, HuffPost Canada, 18 Oct. 2018, [www.huffingtonpost.ca/sandeep-prasad/sex-ed-curriculum-ontario-bc\\_a\\_23565076/](http://www.huffingtonpost.ca/sandeep-prasad/sex-ed-curriculum-ontario-bc_a_23565076/)
- <sup>15</sup> YouthCo. “Sex Ed Is Our Right.” 6 Sept. 2018, pp. 1–17. <http://www.youthco.org/youthleadershipinsexed>
- <sup>16</sup> Eisenstein, Zach. “We’re Starting to Make the Link between Sexual Assault and Sex Ed. But We Need to Do Better.” *Medium*, April 11, 2018. [medium.com/@siecus/were-starting-to-make-the-link-between-sexual-assault-and-sex-education-but-we-need-to-do-better-afb900ccf278](https://medium.com/@siecus/were-starting-to-make-the-link-between-sexual-assault-and-sex-education-but-we-need-to-do-better-afb900ccf278)