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BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Speech by:
The Honourable Bev Busson

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Hon. Bev Busson: Honourable senators, I rise today in support of Bill C-3, An Act to amend the Judges Act and the Criminal Code. This proposed law is short — barely four pages long — but that should not lead anyone to underestimate its importance and significance. I don't have to remind you, colleagues, that this bill is the result of a very stubborn parliamentary process. Bill C-3 is currently before this chamber, and has been named and renamed several times — at least three.

It has also shown its importance in other ways. It originated as a private member's bill in the other place but was then adopted by another political party as a government bill to keep it alive. It has survived both dissolution and prorogation.

When the former Conservative member of Parliament the Honourable Rona Ambrose first introduced her private member's bill in February 2017, she was reacting to a series of controversial statements about sexual assault made by sitting judges in their courtrooms. I believe an overwhelming majority of judges would not have made such statements, but the situation questions how any judge could behave in such a way, exhibiting such an utter lack of understanding of the complex social and legal context of sexual assault.

This was and remains a disturbing issue today. Rona Ambrose not only identified this problem, but acted. She did not just talk; she walked the proverbial walk. She deserves our collective recognition for doing so.

We should also recognize the Honourable David Lametti, Minister of Justice and Attorney General of Canada, who took the orphaned private member's bill under his charge and has doggedly pursued it as Government Business through two successive parliamentary sessions.

The philosopher Elbert Hubbard once said, "There is no failure except in no longer trying . . ." In this sense, the journey of Bill C-3 has already been a legislative success. My honourable colleagues, we now need to continue trying and therefore not fail to pass this important legislative contribution to ensuring that victims of sexual assault can have better confidence in the system.

Our justice system is complex, with different actors each responsible for distinct functions and activities. All contribute to the outcome in their own way. The police investigate and gather evidence and offer support to victims and witnesses. The lawyers for the Crown and the defence carry the process forward, along

with the judges themselves, who weigh the evidence and decide the truth. We cannot ignore the work done by the various external counsellors, advocates and other experts, who, in most instances, have taken the responsibility to train and educate themselves about sexual assault for some time now.

In the police force that I know best, the RCMP, training has been ongoing for decades to ensure that sexual assault cases are investigated with the sensitivity and focus they require to complete a successful investigation, by bringing the perpetrator to justice and, at the same time, to better support the victims of such heinous crimes.

I know that other police forces do the same thing. In 2014, it is believed that approximately 635,000 incidents of sexual assault took place in Canada, of which an estimated 90% were not reported to the police. Of the reported cases, about 87% of the victims were women. Police recognize that these statistics have remained virtually unchanged during the previous decade, while the rates of other types of crime have been decreasing.

More importantly, there was a recognition that victims, for a variety of reasons, did not feel confident in reporting such crimes to the police. In reaction to this and other data, police training for the interviewing of victims, both adults and children, and the requisite investigational techniques have quickly evolved into a field of expertise with specialized training required.

In the case of lawyers, most Canadian law schools have been integrating course work and training related to sexual assault law into their curriculum for years. For example, the Allard School of Law at the University of British Columbia, my alma mater, offers a second-year law course called "Women, Law and Social Change." Osgoode Hall Law School has, for a number of years, offered the specialized "Feminist Advocacy: Ending Violence Against Women Clinical Program."

Other law schools across the country have aligned their curricula to this difficult topic, bringing a focused and critical lens to the abhorrent practice of treating victims of this horrible crime like they are responsible for their own sexual violation. Unfortunately, we still see the evidence of ignorance at best and misogyny at worst within the judicial system as it deals with sexual assault and intimate partner violence.

As a result, and given the requirement in section 3 of the Judges Act for a minimum of 10 years at the bar, we may be approaching a point where the cohort of new judges under consideration for federal appointment will include increasing numbers of those who have already been exposed to modern and current sexual assault law and precedent and its ethical and social implications. One hopes that they will be properly sensitized to the issues and presumably be open to ongoing training.

The training envisaged in Bill C-3 is another step towards the ultimate goal that all judges currently serving are educated and are aware of the biases that unfortunately still exist in our society.

The investigators and the law schools forming the next generation of lawyers are paying ever-greater attention to understanding sexual assault and violence as an important factor in carrying out their respective responsibilities. This begs the question: If these integral parts of the justice system are receiving training and are being better educated, why, then, should not the other principal actor — the judiciary — do the same?

One of the effects of Bill C-3 will be to ensure that all parts of our legal system are working from a basis of shared knowledge and understanding. The victims of sexual assault deserve nothing less.

There are few crimes where the victim is actually put in the position of being judged. For example, it is unheard of for someone who is robbed in a dark alley to be subjected to criticism or be personally admonished for being out after dark or having their wallet or purse with them. Indeed, victims of sexual assault are often treated much worse during court proceedings than the perpetrators themselves, who often don't even have to take the stand.

To put a personal spin on this, as a young female member of the RCMP working major crimes, I was assigned more than my fair share of investigations relating to sexual assaults of both adults and children. I have held the hands of numerous women in hospital while they were subjected to the added intrusion of a "rape kit" while at the same time trying to recover from the initial violation of a sexual assault. I would encourage them to continue, all the time knowing that it was going to get even tougher.

I have urged and supported women and children, through their parents, to agree to carry on with a charge, only to watch them be taken apart by defence counsel or a judge, causing more harm to the individual than they had already been subjected to, making them even more frail.

I can assure you, honourable senators, that the police officers who work on these difficult cases and support the victims, sometimes through months and years of delays, are personally as devastated and frustrated as other victim advocates by the kind of abusive remarks and even adverse judgment of an ill-informed judge — the kind that spurred Rona Ambrose to action.

It is undeniable that judicial independence is one of the core foundational principles of our constitutional democracy. The rights of victims — or, for that matter, the accused — are not protected without it. In considering Bill C-3, this truth has been the most important consideration. I am satisfied that the government, in proposing this bill, has shown itself appropriately attuned to the importance of judicial independence.

As the Parliamentary Secretary to the Minister of Justice and Attorney General of Canada, Arif Virani, succinctly summarized while speaking on behalf of the government in the other place, "Judicial independence is sacrosanct in any westernized democracy."

The amended final version of the proposed bill before us asks in the conditional tense that the Canadian Judicial Council should consult with outside expert groups whom the council considers appropriate in developing the content of continuing education seminars on sexual assault. It should include the content described in the new section 60(3)(b) of the Judges Act: "... where the Council finds appropriate ..."

In other words, the Canadian Judicial Council is in the driver's seat and actually holds the steering wheel on this matter. This fully respects the concept of judicial independence. As Mr. Virani again confirmed:

Bill C-3 and its predecessor, Bill C-5, were carefully drafted to ensure ultimate judicial control over judicial education.

Bill C-3 is, of course, not perfect. It does not apply to judges appointed by the provinces, for example, but it is a significant step to real justice. It is intended to fix a problem in a practical way while being respectful of the Charter of Rights and Freedoms, the role of independent judges, and ultimately, the rights of victims to be spared these archaic beliefs, biases, concepts and moral judgments.

The time for this solution and for Bill C-3 has come. It is my hope that its successful adoption will encourage more of the provinces to enact their own legislation regarding the appointment of judges by requiring corresponding training that mirrors the intent we are debating today. Even more importantly, honourable senators, this legislation will encourage more victims of sexual assault to come forward without fear and claim their right to justice.

Please, let's not hesitate, when we have come so far, to make this long-awaited bill a reality. I echo the plea of the former interim Leader of the Conservative Party of Canada and long-serving cabinet minister in the government of Prime Minister Stephen Harper, the Honourable Rona Ambrose, when she appeared in committee on March 31, please do not amend, but pass this important legislation.

Thank you. *Meegwetch.*
