

# A progressive new law on rape?

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by Peter Elsworth

On May 1 the Minister of Justice introduced Bill C-52, an Act to amend the Criminal Code. This Act, as stated in Ron Basford's press release, should lead to a "major overhaul of the Criminal Code provisions dealing with rape, and particularly to underline the violent nature of the offence of rape in order to minimize the stigma and trauma experienced by rape victims and to encourage the reporting to police of incidents involving rape."

Rape is legally defined as the sexual violation of a woman without her consent by a man who is not her husband. Because of serious problems the judiciary has encountered in attempting to deal with the crime of rape, and in response to a strong and articulate women's lobby, Bill C-52 proposes to remove the offences of rape and attempted rape from the Criminal Code. The Bill aims to eliminate the mythology surrounding rape, concentrating instead on the violent nature of the assault.

## Popular myths

Popular myths surrounding rape have a long history. But such a fact should not constitute any defence of them, especially since much "scientific" reinforcement depends solely on the work of Freud and his disciples; for example, his system of nomenclature which gives dominance to the male. One such explanation of why men rape women is based on the structure of the mammalian genitalia, and the corresponding sexual roles men and women play in society. Men, the argument goes, not only have some primordial right to force their sexual attentions upon women, but women actually seek this aggressive form of attention. In a nutshell: women are, supposedly, passively eager to be raped.

The shadowy presence of this myth in the courtrooms of Canada and the United States has proved itself to be most troublesome to the judiciary. The concrete problems are twofold. First, because of the nature of the crime, victims of rape are unwilling, because of fear or embarrassment, to report the incident to the police, and to then follow the case in court. To be sexually assaulted is trauma enough; to then face a legal system that sees in every rape case a repetition of Eve's seduction of Adam is, for many women, too much to ask.

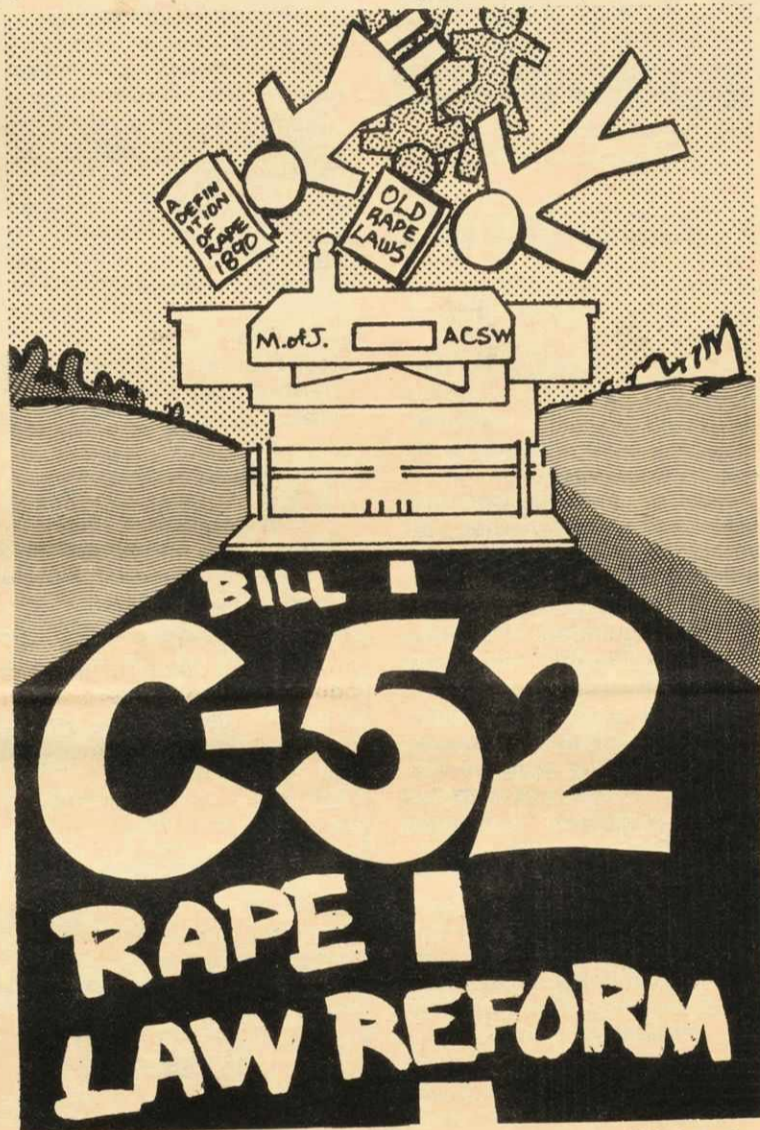
The actual rape trial is made more harrowing by the requirement that various aspects of the crime be corroborated by evidence other than the victim's testimony.

*Comment is an opinion column open to members of the University community who wish to present an informed opinion on a topic of their selection.*

Penetration, which currently forms the crux of the crime, is extremely difficult to prove. Most women douche immediately following rape, and according to "The Rights of Women" by Susan C. Ross, a significant number of rapists are ejaculatory impotents. Consequently, proof of penetration, the deposit of sperm, is often impossible. One consequence of this is the notion that only virgins can be raped, since it is comparatively easy to provide evidence of penetration in these cases.

Although it seems rational

of rape and attempted rape from the Criminal Code, and replace them with the offence of indecent assault. Indecent assault, which has been interpreted to mean touching or penetration of any orifice, would, it is proposed, be expanded to be applicable to both sexes. Indecent assault would also be considered to have taken place when a victim consents to indecent contact because the accused impersonated the victim's spouse, misrepresented the nature of the act, or threatened the victim with physical injury.



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considering the severity of the crime to imprison a rapist for a prolonged period, studies done in North America show that the myths surrounding rape render this rationale impotent. Instead, it was found that juries faced with the decision to imprison a young man for ten years for example, have acquitted the accused rather than bear the burden of punishing someone too severely for a transgression he may have been "enticed" to commit.

Evidence of force, such as bruises, would seem to serve as sufficient evidence, but in practice an alarming number of men, including judges, believe that women enjoy a little violence as part of normal sex, and thus refuse this as evidence of sex without consent.

A final aspect of this problem of corroboration concerns proving the identity of the assailant. The law generally requires that a third-party eyewitness be present at the rape, and that, of course, is quite rare.

The primary purpose of Bill C-52 is to remove the offences

of "aggravated indecent assault" that would apply in cases of severe physical or psychological damage, is proposed by the amendments of Bill C-52. The maximum penalty for indecent assault would be 14 years imprisonment, and for aggravated indecent assault, imprisonment for life.

After publication of the Bill, the Advisory Council on the Status of Women (ACSW) published a collection of background notes to the proposed amendments.

While praising many of the points made in the Bill, the

Council was critical of it for not being more sweeping in its reformatory intent, arguing for "an overall revision and rationalization of the Criminal Code with respect to sexual offences..." The ACSW consequently suggested "ways in which the proposed amendments could be modified or changed to enable them to meet the goals for which they were designed and to conform to ACSW recommendations in the area."

Among these recommendations was a request for a specific definition of the term 'indecent,' and a question as to whether the term 'sexual penetration' included the intrusion of any object, besides a penis, into the genital, oral or anal openings of the body. It also recommended that the differentiation of the two counts of indecent assault would include the circumstance of the crime as well as the effect. This would mean that where an armed indecent assault took place, it would be an offence of aggravated indecent assault even if psychological or physical damage did not ensue. This seems to raise a problem in terms of defining the meaning of 'armed'—would it be limited to firearms, or would it encompass other forms of weaponry—knives, fists (arms?). The ACSW recommended that maximum penalties be lessened for the reasons outlined above.

Although the Criminal Code was amended in 1975 to limit the right of cross examination of a complainant in a rape case, the ACSW recommends that this limit should be more clearly defined. Questions relating to the previous sexual conduct of a complainant should be only permitted when they are necessary to a "just determination of the guilt or innocence of the accused", and that questioning of the accused's previous sexual offences should be permitted on the same basis.

In addition, the ACSW recommends that the interspousal exemption and the restriction of sexual intercourse with the mentally handicapped should both be removed from the Criminal Code. It is, after all, possible for husbands to sexually abuse their wives, and the ACSW additionally argues that the mentally handicapped should not be denied the possibility of sexual expression.

With regard to procedure, the ACSW recommends that, when judges exclude the public from sexual assault proceedings, they should be

required to give reasons for the order. The present provision requires the judge to give reasons when such exclusion is denied. The desire here is to, allow access for members of the community to support, through their presence in the courtrooms, victims of sexual assaults.

Finally, the ACSW recommended that measures should be taken to inform victims of sexual offences of the availability of compensation. As well, the ACSW is calling for the establishment of "life crisis" centres and the development of educational programmes for people dealing with victims of sexual offences.

Bill C-52 has not yet been debated in Parliament. Hopefully the government's decision to hold off on a fall election will allow the Bill to be debated fully before the end of the year. It could be that many of the recommendations made by the ACSW, as well as those made by the Law Reform Commission, which is in the process of preparing a working paper on sexual offences generally, will be considered and incorporated into the Bill.

In any event, if the old myth of women wanting to be raped comes to be regarded as being a ridiculous Victorian legacy, Bill C-52 will have made its mark as a progressive step in the containment of this serious and brutal violation of individual rights.



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