

# CRIMINALIZATION AND PROSECUTION OF RAPE IN CANADA

## SUBMISSION TO THE UN SPECIAL RAPporteur ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES

Amnesty International presents the attached responses to the questionnaire on criminalization and prosecution of rape in Canada. This submission has been prepared in response to the call for contributions issued by the United Nations (UN) Special Rapporteur on violence against women, its causes and consequences ahead of her upcoming report on rape as a grave and systematic human rights violation and a form of gender-based violence against women.

### Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

Canada does not use a separate rape classification—the relevant criminal code provisions defining assault and sexual assault are reproduced below.

### Criminal Code

#### 265.

#### 265(1) Assault

A person commits an **assault** when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- (b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or
- (c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

#### 265(2) Application

This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.

#### 265(3) Consent

For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

- (a) the application of force to the complainant or to a person other than the complainant;
- (b) threats or fear of the application of force to the complainant or to a person other than the complainant;

(c) fraud; or

(d) the exercise of authority.

#### **265(4) Accused's belief as to consent**

Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

#### **271. Sexual assault**

Everyone who commits a sexual assault is guilty of

(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

#### **272.**

##### **272(1) Sexual assault with a weapon, threats to a third party or causing bodily harm**

Every person commits an offence who, in committing a sexual assault,

(a) carries, uses or threatens to use a weapon or an imitation of a weapon;

(b) threatens to cause bodily harm to a person other than the complainant;

(c) causes bodily harm to the complainant;

(c.1) chokes, suffocates or strangles the complainant; or

(d) is a party to the offence with any other person.

##### **272(2) Punishment**

Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years;

(a.2) if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and

(b) in any other case, to imprisonment for a term not exceeding fourteen years.

### **272(3) Subsequent offences**

In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

- (a) an offence under this section;
- (b) an offence under subsection 85(1) or (2) or section 244 or 244.2; or
- (c) an offence under section 220, 236, 239 or 273, subsection 279(1) or section 279.1, 344 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### **272(4) Sequence of convictions only**

For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

## **273.**

### **273(1) Aggravated sexual assault**

Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.

### **273(2) Aggravated sexual assault**

Every person who commits an aggravated sexual assault is guilty of an indictable offence and liable

(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of

(i) in the case of a first offence, five years, and

(ii) in the case of a second or subsequent offence, seven years;

(a.1) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years;

(a.2) if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and

(b) in any other case, to imprisonment for life.

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#### **273.1**

##### **273.1(1) Meaning of "consent"**

Subject to subsection (2) and subsection 265(3), "**consent**" means, for the purposes of sections 271, 272 and 273, the voluntary agreement of the complainant to engage in the sexual activity in question.

##### **273.1(1.1) Consent**

Consent must be present at the time the sexual activity in question takes place.

##### **273.1(1.2) Question of law**

The question of whether no consent is obtained under subsection 265(3) or subsection (2) or (3) is a question of law.

##### **273.1(2) No consent obtained**

For the purpose of subsection (1), no consent is obtained if

- (a) the agreement is expressed by the words or conduct of a person other than the complainant;
  - (a.1) the complainant is unconscious;
- (b) the complainant is incapable of consenting to the activity for any reason other than the one referred to in paragraph (a.1);
- (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;
- (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or
- (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

##### **273.1(3) Subsection (2) not limiting**

Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.

##### **273.2 Where belief in consent not a defence**

It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

- (a) the accused's belief arose from
  - (i) the accused's self-induced intoxication,
  - (ii) the accused's recklessness or wilful blindness, or
  - (iii) any circumstance referred to in subsection 265(3) or 273.1(2) or (3) in which no consent is obtained;
- (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or

(c) there is no evidence that the complainant's voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.

### **278. Spouse may be charged**

A husband or wife may be charged with an offence under section 271, 272 or 273 in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.

2. Based on the wording of those provisions, is the provided definition of rape<sup>1</sup>:
  - a. Gender specific, covering women only. NO
  - b. Gender neutral, covering all persons. YES
  - c. Based on the lack of consent of victim. YES
  - d. Based on the use of force or threat. YES<sup>2</sup>
  - e. Some combination of the above. YES
  - f. Does it cover only vaginal rape? NO
  - g. Does it cover all forms of penetration? YES. If yes, please specify.

The Criminal Code provision regarding sexual assault does not specify the form of penetration required as there is not a provision for rape separate from the provision that covers any form of sexual assault. Any form of penetration could be sufficient for a charge under the sexual assault provisions.

- h. Is marital rape in this provision explicitly included? YES<sup>3</sup>
  - i. Is the law silent on marital rape? NO
  - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES<sup>4</sup>
  - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? NO
3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.  
NO.
4. What is the legal age for sexual consent?

The legal age for sexual consent in Canada is 16 years. There are exceptions based on the age of the complainant for charges under s.271. If the complainant is 12 years or more but under 14 years, it is a defense the complainant

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<sup>1</sup> There is no definition of rape specifically in the Canadian Criminal Code because rape is not defined as a separate offense; it falls under the sexual assault provision which includes any form of sexual assault. The questions below are answered based on the sexual assault provisions.

<sup>2</sup> Use or force of threat is one criteria that would meet the definition of sexual assault but is not necessary for a finding of sexual assault (e.g. there could be a finding of sexual assault if there is fraud vitiating consent)

<sup>3</sup> S.278 of the Criminal Code specifically identifies spouses can be charged under the sexual assault provisions.

<sup>4</sup> Marital rape is included under the general provisions (but it is also specifically noted in s.278 that spouses can be charged under the general provisions).

consented if the accused is less than two years older than the complainant and is not in a position of trust or authority or in a relationship of dependency or exploitative of the complainant (s.150.1(2) Criminal Code). If the complainant is 14 years or more but under 16 years, it is a defense the complainant consented if the accused is less than five years older than the complainant and is not in a position of trust or authority or in a relationship of dependency or exploitative of the complainant (s.150.1(2.1) Criminal Code).

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

NO.

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Again, note that rape has been removed as a specified offence in the Canadian Criminal Code. The current legislation has three categories of sexual assault (sexual assault, sexual assault with a weapon or causing bodily harm and aggravated sexual assault). These different levels of sexual assault have different maximum penalties. For level 1 sexual assault (s.271), if punished as an indictable offence is liable to imprisonment for not more than 10 years (unless the complainant is under 16 years, then not more than 14 years with a minimum of 1-year imprisonment). If punished as a summary conviction, then maximum imprisonment is 18 months (or if complainant is under 16 years, imprisonment of maximum two years less a day and minimum of six months).

For sexual assault with a weapon, threats to a third party or causing bodily harm (s.272), the maximum imprisonment is 14 years with minimum imprisonment defined for certain criteria (e.g. if firearm used minimum imprisonment of 4 years). If the complainant is under 16 years, then the minimum imprisonment becomes 5 years with the possibility for life imprisonment.

For aggravated sexual assault (s.273) the maximum imprisonment is for life. Minimum imprisonments are defined based on criteria such as the use of a firearm which has a 4-year minimum or if the complainant is under 16 years there is a 5-year minimum imprisonment.

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Under s. 737 of the Criminal Code, if a perpetrator is convicted, the court shall consider making a restitution order under s.738 or s.739. Victims can complete a form to seek restitution; victims will need to establish their losses and damages in an amount that can be readily ascertained. Orders of restitution can be made in cases of bodily or psychological harm (s.738(1)(b)). It should be noted that although legislation provides the possibility of restitution, in many cases of sexual violence, the requirement for a restitution order that pecuniary damages be "readily ascertainable" (S. 737.1) results in few reported cases including restitution orders and if included the order is often for small amounts (see "Looking the Gift Horse in the Mouth: An Examination of the Canadian Approach to Restitution in Cases of Sexual Violence", 20 Canadian Criminal Law Review 209). Additionally, some provinces in Canada have set up crime victim compensation programs that can provide financial assistance. Requirements for eligibility and compensation available varies among the provincial systems.

### **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

S.718.2 of the Criminal Code identifies a series of aggravating circumstances that can increase a sentence (note: these are applicable for sentencing any crime, not limited to sentencing for sexual assault). Aggravating circumstances which could be relevant to sentencing rape cases:

(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,

(ii) evidence that the offender, in committing the offence, **abused the offender's intimate partner** or a member of the victim or the offender's family,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, **abused a position of trust or authority** in relation to the victim,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

a. Is rape by more than one perpetrator an aggravating circumstance? YES

Committing a sexual assault where the offender is a party to the offence with any other person brings the offence under sexual assault level 2 (s. 272) which can carry a more severe penalty than sexual assault under s.271. Case law also indicates rape by more than one perpetrator is treated significantly more severely (see Canadian Encyclopedia Digest (online), *Sentencing*, "Quantum of Sentence: Sexual Offences: Sexual Assault" (III.3.(a)) at §330).

b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES

c. Is rape by spouse or intimate partner an aggravating circumstance? YES

9. Does the law foresee mitigating circumstances for the purposes of punishment? YES If yes, please specify.

The Criminal Code does not explicitly list examples of mitigating circumstances as it does for aggravating circumstances, however s.718.2 does mention that relevant mitigating circumstances should be considered in sentencing. In Canadian case law, sentencing for sexual assaults have considered mitigating factors such as a guilty plea, genuine remorse by the offender, relative youth of the accused and the potential for rehabilitation (see Canadian Encyclopedia Digest (online), *Sentencing*, "Quantum of Sentence: Sexual Offences: Sexual Assault" (III.3.(a)) at §326).

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES. If so, at what stage and what are the consequences?

a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

According to the Canadian Victim Bill of Rights, every victim can request information about services and programs available to them, including restorative justice programs (S.6). Restorative justice programs include a variety of methods including victim-offender reconciliation or mediation programs, victim-impact panels, sentencing circles, healing circles, etc. Referral to Restorative Justice programs may occur before an offender is charged, after an offender is charged or before or after sentencing. A report by the Office of the Federal Ombudsman for Victims of Crime indicated that most restorative justice programs are not equipped to deal with sexual assault (see <https://www.victimfirst.gc.ca/res/pub/gfo-ore/RJ.html>). However, it is noted that some programs have invested resources in offering Restorative Justice programs in these cases. Therefore, while possible that reconciliation between the victim and perpetrator may be part of the legal response, particularly if the victim seeks out information about such programs, it is unlikely to be used in sexual assault cases.

If alternative measures such as Restorative Justice programs are used, that is not a bar to proceedings under the Criminal Code unless the court is satisfied the person totally complied with the terms of the alternative measure and dismisses the charge (or if partially complied with terms of alternative measure and prosecution of the charge would be unfair).

For restorative justice measures to be considered, certain criteria set out in S.717 of the Criminal Code, reproduced below, must be met.

**717(1) When alternative measures may be used**

Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:

- (a) the measures are part of a program of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the Lieutenant Governor in Council of a province;
- (b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;
- (c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;
- (d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;
- (e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;
- (f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and
- (g) the prosecution of the offence is not in any way barred at law.

**717(2) Restriction on use**

Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person

- (a) denies participation or involvement in the commission of the offence; or
- (b) expresses the wish to have any charge against the person dealt with by the court.

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

- a. if the perpetrator marries the victim of rape? NO
- b. if the perpetrator loses his "socially dangerous" character or reconciles with the victim? NO

**Prosecution**

- 12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES
- 13. Is rape reported to the police prosecuted ex parte (private prosecution)? NO
- 14. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women? YES
- 15. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children? YES
- 16. Please provide information on the statute of limitations for prosecuting rape.

There is no statute of limitations on bringing a criminal charge for sexual assault in Canada.

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES

As there is no statute of limitations on bringing a criminal charge for sexual assault, a child who was the victim of rape could report it after reaching adulthood.

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? NO  
If yes, please specify.

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES

## **276.**

### **276(1) Evidence of complainant's sexual activity**

In proceedings in respect of an offence under section 151, 152, 153, 153.1 or 155, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant

(a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or;

(b) is less worthy of belief.

### **276(2) Conditions for admissibility**

In proceedings in respect of an offence referred to in subsection (1), evidence shall not be adduced by or on behalf of the accused that the complainant has engaged in sexual activity other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person, unless the judge, provincial court judge or justice determines, in accordance with the procedures set out in sections 278.93 and 278.94, that the evidence

(a) is not being adduced for the purpose of supporting an inference described in subsection (1);

(b) is relevant to an issue at trial; and

(c) is of specific instances of sexual activity; and

(d) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

### **276(3) Factors that judge must consider**

In determining whether evidence is admissible under subsection (2), the judge, provincial court judge or justice shall take into account

(a) the interests of justice, including the right of the accused to make a full answer and defence;

(b) society's interest in encouraging the reporting of sexual assault offences;

(c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case;

(d) the need to remove from the fact-finding process any discriminatory belief or bias;

(e) the risk that the evidence may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;

(f) the potential prejudice to the complainant's personal dignity and right of privacy;

(g) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and

(h) any other factor that the judge, provincial court judge or justice considers relevant.

#### **276(4) Interpretation**

For the purpose of this section, "**sexual activity**" includes any communication made for a sexual purpose or whose content is of a sexual nature.

#### **277. Reputation evidence**

In proceedings in respect of an offence under section 151, 152, 153, 153.1 or 155, subsection 160(2) or (3) or section 170, 171, 172, 173, 271, 272 or 273, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES. If yes, please specify.

The Criminal Code has a number of provisions meant to avoid re-victimization during prosecution. For example, while a witness is testifying the court may order the exclusion of members of the public from the court room, the witness to testify behind a screen or other device that would allow the witness not to be seen by members of the public. Publication bans in cases of sexual assault may also be ordered. Relevant provisions are reproduced below.

#### **486(1) Exclusion of public**

Any proceedings against an accused shall be held in open court, but the presiding judge or justice may, on application of the prosecutor or a witness or on his or her own motion, order the exclusion of all or any members of the public from the court room for all or part of the proceedings, or order that the witness testify behind a screen or other device that would allow the witness not to be seen by members of the public, if the judge or justice is of the opinion that such an order is in the interest of public morals, the maintenance of order or the proper administration of justice or is necessary to prevent injury to international relations or national defence or national security. The court can order a support person be present during testimony (s.486.1(2)). Additionally, the court can order non-disclosure of witness' identify (s.486.31(1) and publication bans (s.486.4(1)). Relevant sections of the Criminal Code are reproduced below.

#### **486(2) Factors to be considered**

In determining whether the order is in the interest of the proper administration of justice, the judge or justice shall consider

- (a) society's interest in encouraging the reporting of offences and the participation of victims and witnesses in the criminal justice process;
- (b) the safeguarding of the interests of witnesses under the age of 18 years in all proceedings;
- (c) the ability of the witness to give a full and candid account of the acts complained of if the order were not made;
- (d) whether the witness needs the order for their security or to protect them from intimidation or retaliation;
- (e) the protection of justice system participants who are involved in the proceedings;
- (f) whether effective alternatives to the making of the proposed order are available in the circumstances;
- (g) the salutary and deleterious effects of the proposed order; and
- (h) any other factor that the judge or justice considers relevant.

#### **486.1(1) Support person — witnesses under 18 or who have a disability**

In any proceedings against an accused, the judge or justice shall, on application of the prosecutor in respect of a witness who is under the age of 18 years or who has a mental or physical disability, or on application of such a witness, order that a support person of the witness' choice be permitted to be present and to be close to the witness

while the witness testifies, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

**486.2(1) Testimony outside court room — witnesses under 18 or who have a disability**

Despite section 650, in any proceedings against an accused, the judge or justice shall, on application of the prosecutor in respect of a witness who is under the age of 18 years or who is able to communicate evidence but may have difficulty doing so by reason of a mental or physical disability, or on application of such a witness, order that the witness testify outside the court room or behind a screen or other device that would allow the witness not to see the accused, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

**486.31(1) Non-disclosure of witness' identity**

In any proceedings against an accused, the judge or justice may, on application of the prosecutor in respect of a witness, or on application of a witness, make an order directing that any information that could identify the witness not be disclosed in the course of the proceedings if the judge or justice is of the opinion that the order is in the interest of the proper administration of justice.

**486.4(1) Order restricting publication — sexual offences**

Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(iii) [Repealed 2014, c. 25, s. 22(2).]

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

**486.4(2) Mandatory order on application**

In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

**War and/or conflict**

21. Is rape criminalized as a war crime or crime against humanity? YES

(Included under “sexual violence” in s.6(3) of Crimes Against Humanity and War Crimes Act)

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? NO

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?  
NO

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES

## Data

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

According to a report published by Stats Canada in 2017, using self-reported data from the 2014 General Social Survey, self-reported sexual assault data suggested 22 incidents of sexual assault for every 1000 Canadians aged 15 years and older—approximately 636,000 incidents of sexual assault (see “Self-reported sexual assault in Canada, 2014”, Conroy & Cotter, 2017: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/14842-eng.htm>). Of these incidents, about 10% involved sexual activity where the victim was unable to consent, about 20% were sexual attacks and about 70% was unwanted sexual touching. Most incidents of sexual assault are not reported to the police; only about one in twenty (5%) of incidents of sexual assault are reported to the police. In 2014, according to the Incident-based Uniform Crime Reporting (UCR) Survey, there were 20,735 victims of police-reported sexual assault. Of these 20,311 were sexual assault level 1, 319 incidents were sexual assault level 2 and 1% sexual assault level 3.

Another Stats Canada reported published in 2017 (based on data from 2009 to 2014) found that an accused was identified in 60% of police-reported sexual assaults, of which 69% were charged (see “Police-reported sexual assaults in Canada, 2009-2015: A statistical profile”, Rotenberg, 2017: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54866-eng.htm>). Overall less than 41% of police-reported sexual assaults resulted in a charge being laid. About 19% of sexual assault cases were cleared (the case closed and the accused processed by other means). About 40% of sexual assault incidents were not cleared (no accused identified).

Of the roughly 41% of police reported sexual assault cases where a charge was laid, only about 49% proceeded to court of which about 55% were convicted (see “From arrest to conviction: Court outcomes of police-reported sexual assaults in Canada, 2009-2014”, Rotenberg, 2017: <https://www150.statcan.gc.ca/n1/pub/85-002-x/2017001/article/54870-eng.htm>). Only about 56% of those who were convicted were sentenced to custody. This illustrates sexual assault cases experience attrition at every step of the criminal justice system process—within 6 years only about 21% of sexual assaults reported to the police led to a completed case. About 12% of sexual assaults reported to the police led to a criminal conviction and about 7% resulted in a custody sentence.

Sexual Assault Incidence (from Incident-based crime statistics, Statistics Canada: <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=3510017701#timeframe>)

Year	2015	2016	2017	2018
Sexual Assault level 1	Actual incidents: 20,466  Rate/100,000: 57.32  Persons Charged: 7459	Actual incidents: 21,072  Rate/100,000: 58.36  Persons Charged: 6683	Actual incidents: 24,157  Rate/100,000: 66.11  Persons Charged: 7246	Actual incidents: 28,124  Rate/100,000: 75.89  Persons Charged: 8721
Sexual Assault level 2 (weapon or bodily harm)	Actual incidents: 379  Rate/100,000: 1.06  Persons Charged: 211	Actual incidents: 395  Rate/100,000: 1.09  Persons Charged: 263	Actual incidents: 423  Rate/100,000: 1.16  Persons Charged: 250	Actual incidents: 459  Rate/100,000: 1.24  Persons Charged: 260
Sexual Assault level 3 (aggravated)	Actual incidents: 103  Rate/100,000: 0.29  Persons Charged: 59	Actual incidents: 112  Rate/100,000: 0.31  Persons Charged: 84	Actual incidents: 160  Rate/100,000: 0.44  Persons Charged: 92	Actual incidents: 158  Rate/100,000: 0.43  Persons Charged: 86

### Other

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.