

### **Courtesy of Randy Singh and Glynnis Kirchmeier:**

We are reaching out to you to ask for your assistance for a matter deeply important to all British Columbians: providing safe, discrimination-free higher education. We were heartened that Andrew Weaver introduced the private member's bill M205 (Post-Secondary Sexual Violence Policies Act), and happy that the government expressed vocal support and introduced the revised Bill 23. The fact that the elected representatives of British Columbia are discussing and debating this topic is an important step in addressing the problem of sexual violence and misconduct at post-secondary institutions. It is our hope that all three parties in the legislature thoroughly discuss and debate the bill to ensure that the best legislation possible is enacted.

There are positive aspects of this bill, but we think that there is room for improvement. We believe that the legislation is intended to prevent and address the issue of sexual violence and harassment at post-secondary institutions. Premier Christy Clark identified the bill's ambition as "setting a standard for the province." Our suggestions are offered with that goal in mind - of preventing and addressing the issue and setting a standard for the province.

Dr. Weaver, you have already made a meaningful difference on the issue of sexual violence and harassment at post-secondary institutions. The introduction of your private members bill and your subsequent cooperation with all people interested in change are promising steps on the road to fixing this issue. Though we are sending these suggestions to all three parties, we hope that you as the architect of the bill can drive this process forward.

We encourage you to finish what you have started and work to make this bill the kind of legislation that other governments will look to as the standard. First, we like a few things about the bill. It is long overdue that all BC institutions will have policies and that the policies will be made in consultation with students.

Other essential structural obligations include: The direction that policies to undergo a review and revision process; required procedures for both complaints and reports, a distinction which prevents universities from claiming that they had no obligation to act on information because a student didn't approach them in the way the bureaucracy preferred; and the annual report to governing body.

Our primary critiques of the legislation are all organized around the same thought: how might victims fall through the cracks? Based on Ms. Kirchmeier's personal experiences, research, and the experiences of victims who have disclosed to her, there are common problems that the bill can easily address. The great thing is that the legislation can simply direct the institutions to work out the details, providing flexibility and opportunities for innovation but also ensuring the safety of our campus communities - which is the point of all this effort.

**PROBLEM:** No requirement for universities to acknowledge their own liability

**DISCUSSION:** Currently, universities are legally required to provide safe and harassment-free environments. However, because of this obligation, they also have perverse incentives to silence victims, narrowly define their responsibilities (such as "on campus only" or "all parties currently enrolled only"), or to fail to discuss sexual violence at all. The interests of the institution are not the interests of the victim or of the accused. Students have a short time in the university before they graduate or leave. International students who may be there for a few weeks (say for a summer program) are even more

vulnerable. If a university simply sits on reports of violence, then very likely either the perpetrator or the victim will leave and the situation is no longer the university's problem. For example, one victim at UBC reported her fellow graduate student assailant to UBC years ago. He was "spoken to" but not formally disciplined, and he recently graduated this spring - a great relief to the student, whose science degree has been delayed by a year due to this. She changed academic projects, moved her office, and altered the path she walked into the building in order to avoid him. He continued to harass her throughout that time despite her repeated reports.

In another example, independent investigator Paula Butler found that UBC had unexplainable delays on at least two different reports of sexual violence against one individual. One wait was ten months, and the other was two and a half. The individual in this case did in fact assault at least one woman during one of the periods of delay (for more information, please see Ms. Kirchmeier's Human Rights Complaint).

In a third example, a number of international students studying at BCIT have been targeted by serial predators who ask them their nationality, how soon they leave (often in just a few weeks), and who then sexually assault them. Both BCIT and the local police have refused to act on the information of these international students. In fact, the head of BCIT's security services recently resigned because BCIT prohibited him from investigating sexual violence against current students.

Further, institutions may narrowly define themselves as responsible for incidents that occur on-campus only. Much relevant activity occurs off campus, such as University-affiliated Greek housing, academic conferences, study sessions, socializing with classmates, athletic events, institution-affiliated extracurricular organization activities (e.g. a sailing club), etc. We want to ensure that the policy encompasses student behavior in the above settings as well as on campus. The above are all intrinsic to the experience of physically attending an institution of higher learning, and shouldn't be ignored in the measurement of incidences under the policy. In the same way that a student athlete or coach is responsible for their conduct while traveling or participating in events, students and faculty should also be responsible for their behaviour in similarly off-campus activities. If a student is assaulted off campus, but then has to sit next to the person who assaulted them in a lab, that is clearly inadequate. We do not want legislation that sets up institutions to fail by ignoring their existing incentives. If a university policy contains frank acknowledgement of institutional liability, the incentive to wait for problems to go away or to define them out of existence may be avoided.

**PROBLEM:** The following rights for individual students should be required in the legislation: explicit steps to ensure an individual's right to privacy; due process; equality of both accused and victim; prohibition of silencing.

**DISCUSSION:** The great thing about this bill is that the government need not work out the details: the institutions must do that. But without the government directing them to include the rights of students, the institutions probably will not address them since some of these rights are against their legal interests. For example, recently a student at the University of Victoria participated in a disciplinary process against someone she said assaulted her. At the end of the process, the student was told in writing to not talk about any part of the process - the original complaint, the process itself, or the outcome of the process. See <http://www.theglobeandmail.com/news/british-columbia/university-of-victoria-silencing-sexual-assault-victims-students-say/article29252614/> By silencing her, the university avoids the accused's possible future victims from learning that the university knew about his actions.

The University of Victoria (and other institutions) seem to believe that admitting rape occurs at an institution is a public relations disaster. To control it, they decided that they "own" the experiences of the victim and the outcome of the process. Premier Clark agrees that silence (and, therefore, the University of Victoria) is the rapist's best friend. Besides the silencing issue, this case illustrates failures of other essential rights. Participants must be treated equally, with all parties having equal information (for example). Anything else is discrimination. Due process does not include secret disciplinary proceedings with secret results and gagged participants. Due process requires transparency so that problems in the process may be corrected. Privacy of the participants, though important, is not so difficult that practices should exist in total blackout. The Privacy Act does allow for disclosures when the stakes are safety - is sexual violence not an issue of safety? The legislation should direct institutions to enshrine individual (NOT institutional) privacy, due process, equality, and prohibition of silencing in their policies. Frankly, the Privacy Act needs to be updated to provide firmer guidelines so that institutions do not weasel out of accountability, but we understand that this is beyond the scope of the bill.

**PROBLEM:** Section 5 regarding the survey. As written, this introduces political decision-making (the infrequent discretion of the Minister of Education) into what should be an annual fact-investigation process which allows standardized comparison across all institutions of higher learning in BC.

**DISCUSSION:** Currently the bill does not require some way to evaluate baseline levels of misconduct or efficacy of policy. Since we recognize that sexual violence and misconduct is universal throughout society, the patchy information provided by a survey ordered at the Minister's discretion would not be effective. Again, universities would have perverse incentives to minimize the problem on their campuses compared to others. Actually, Equity offices already regularly report to governing bodies (as will be required by section 6). Yet the content of those reports may be manipulated since right now their form and content is left to the discretion of individual administrators, whose skills and standards remain opaque.

The Equity report to the UBC Board of Governors for the 2014-2015 time frame - the time in which UBC received repeated reports about serial sexual predator whose actions form the basis of Ms. Kirchmeier's Human Rights Complaint - gives no hint of the ongoing problem that spawned an embarrassing national expose by the CBC. Ms. Kirchmeier has spoken with several other women who reported their assailants to UBC in the same time period - again, their dissatisfaction and harm, including enduring ongoing sexual misconduct, is not discussed in the report to the Board. Requiring an annual campus climate survey which allows comparison among all higher education institutions in BC erases the incentive to hide reports, and actually may cause competition for improvement as the schools will opt to avoid the negative status associated with having the most incidents. Such campus climate surveys have already been successfully administered at places such as the University of Oregon and the University of Colorado - Boulder, which had an excellent response rate of 41% for its most recent survey (<http://www.colorado.edu/student-success/sexual-misconduct/overview-sexual-misconduct-survey>). If British Columbia does this, it will be a national leader which other provinces will strive to model.

**PROBLEM:** The legislation does not require institutions to warn about ongoing possible threats, regularly disclose the number of expelled students, fired employees, and ongoing investigations, or specifically collecting and publishing statistics about incidents.

**DISCUSSION:** The Supreme Court of Canada has ruled in *Jane Doe v. Metropolitan Toronto Police* that there is a duty to warn possible victims of crime when risk is foreseeable. Current research about sexual

violence shows that many if not most offenders repeat their crimes as well as committing associated criminal acts such as domestic violence, peeping, and child battery. However, British Columbia's institutions of higher learning appear to be completely unaware of the Court's ruling. At UBC, for example, a serial predator attacked a child on campus, and the child's guardians learned that not only was it the fourth incident, UBC "had no intention of telling anybody." (See coverage by Global News here: <http://globalnews.ca/video/2606984/ubcs-reputation-affected-by-multiple-sex-assaults-on-campus>). Public embarrassment after repeated victimizations is not a safety strategy. Repeated statements of "we take safety very seriously" with little (or secret) follow up is not a safety strategy.

We recognize that institutions of higher learning cannot control all individuals' behaviour at all times, but they can certainly mitigate risks by sharing knowledge and banning those who pose risks to others. Doing so would not necessarily be a violation of due process rights, especially if institutions worked with students, faculty, and unions to update codes of conduct and collective agreements. Keeping silent about what they know directly assists future attacks. Unless the legislation requires them to disclose, their past and ongoing behaviour shows that they will not do so. If a Supreme Court ruling does not convince them of this obligation, perhaps forcing them to write it into their own policies can.

**PROBLEM:** Intimate partner violence and the definition of sexual misconduct

**DISCUSSION:** It is the practice of some universities to artificially lower their reportable rates of sexual violence by strategically excluding said violence from the definition of sexual misconduct. For example, because Mandi Gray was casually dating her rapist when he attacked her, York University has refused to recognize her rape as sexual misconduct, calling it "domestic violence" instead. Current research shows that most rapists know their victims socially. Failing to include intimate partner violence as part of the definition of misconduct would leave an attractive loophole for universities seeking to minimize their own liability. A university should not be able to manipulate definitions in order to get out of their responsibilities to provide a safe environment. York University's attempt to do this has drastically increased the cost to York because Ms. Gray's Human Rights case cannot be settled as long as York insists her rape is not sexual violence. Any campus climate survey (discussed above) will establish a broad analytical approach such that intimate partner violence is part of the definition of sexual violence. Doing so ensures that institutions cannot mislabel or under report incidents.

**PROBLEM:** Employee-students

**DISCUSSION:** Many students, especially graduate students, have a dual role as employees of the university (usually teaching or research assistants). Remember our question at the top: how does this legislation help prevent people or situations from falling through the cracks? The fact of the matter is that the unions will be very unwilling to advocate for their members who may be victimized unless it happens in an employment context, even if a situation has employment-related consequences (for example, one grad student assaults another and the next term they are assigned to teach a class together). Unions are also totally unequipped at this time to handle violence between members; structurally, they assume conflict occurs between member and employer. Can this bill direct the universities to explicitly state that employee students' employment status will not be held against them in the process? Part of the point of the legislation should be to avoid entangling complainants in a battle over bureaucratic jurisdiction.

We've already seen multiple institutions within BC fail to adequately develop policy and procedures on their own. Nothing should be left to the benevolence of university administrators. After all, if the will to do right by victims of sexual violence, harassment, and discrimination existed, wouldn't these things have been addressed already by the very well-paid and intelligent individuals who make up the administrations and faculties? We think the government should take a firmer line in this. The last thing we need in BC is to enact some legislation that doesn't actually address the concerns of those who have been affected by sexual violence while pursuing an education. They've already been ignored repeatedly by university administrations. We implore you to not allow the same mistake to happen again.