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Backgrounder

BCLI Report no. 14—Report on Civil Remedies for Sexual Assault

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This report addresses the way in which civil damages are assessed and awarded to the victims of sexual assault. Sexual assault can be defined as the intentional application of force that violates a person's sexual integrity, without that person's consent. There is a range of conduct that falls within this definition, such as unwanted sexual touching, rape, buggery, and sexual torture.

Civil actions for damages are one means by which survivors may seek redress after they have been sexually assaulted. Civil actions for damages, broadly speaking, comprise lawsuits commenced by plaintiffs against defendants for alleged wrongful conduct. Other remedies available include criminal proceedings, criminal injuries compensation, human rights complaints, negotiated or unilateral compensation packages, and public or private inquiries. Actions for damages are a particularly significant means of pursuing redress in this context, as the civil justice system plays a leading role in establishing how our society compensates claims of sexual assault by framing the issues, developing compensatory principles, and influencing other procedures. As civil actions for sexual assault have historically been rare, the courts and parties have not had the benefit of many precedents for assessing compensation for the harm of sexual assault, which is primarily emotional and psychological rather than physical.

The Project Committee on Civil Remedies for Sexual Assault analyzed developments in the civil law of sexual assault over a three-year period from 1998–2001. A Working Paper was released by the BCLI in June 1999, and was subject to commentary by legal professionals, academics, government officials, and participants at a forum on women's equality rights. Additionally, the committee held a consultation session in Vancouver in January 2000, attended by rape crisis and shelter workers, advocates for Aboriginal and deaf survivors of sexual assault, representatives of centres working on behalf of women and girls, and a psychologist. The committee brought forward over 30 recommendations on this topic.

This report analyzes the legislative context and judicial decisions pertaining to civil sexual assault law. The focus is on claims in which the plaintiff has been successful in proving liability against the defendant (or defendants), and in particular this report focuses on compensation issues, which requires translating the harm of the wrongful conduct into monetary damages in order to compensate the plaintiff for her or his losses. Potential barriers

and procedural issues that survivors may face in the course of bringing civil actions for sexual assault are also discussed. While liability issues are identified and explored, the recommendations in this report focus on the development and reform of the law of damages and related issues of representation, procedure, and recovery. Recommendations are directed to the judiciary, judicial bodies, the British Columbia Legislature, members of the legal profession, the Law Society of British Columbia, law schools, continuing legal education organizations, and public service organizations.