

# The Journey to Ottawa: *Understanding and Transforming Publication Ban Law*

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Carrie Low +  
Morrell Andrews



# Welcome!

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- Understand section 486.4 of the Criminal Code
- Advocate for legislative change
- Take action to improve the use of publication bans





# Introductions



**Carrie Low**

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**Founder**

Survivors for Change and  
Empowerment



**Morrell Andrews**

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**Assistant Negotiator**

Crown-Indigenous Relations  
and Northern Affairs Canada



# Section 486.4: Before Bill S-12

## What is a publication ban?

- Order from the court that prohibits the publishing, broadcasting, or transmitting of information that can identify a victim-complainant or a minor witness in a sexual assault case, but they *are not* intended to protect the identity of the accused
- Once requested by the prosecutor, victim or minor witness, it is mandatory for a judge to impose the publication ban
- Publication bans remain in effect indefinitely, regardless of the trial outcome, until lifted by a judge
- Failure to comply with a section 486.4 publication ban order is a summary conviction offence, punishable by a fine of up to \$5,000 and/or imprisonment for up to two years less a day



# Section 486.4: Before Bill S-12

## Duality of publication bans

- Protecting the privacy and dignity of victim-complainant or minor witnesses
- Encouraging reporting and reducing fear of retaliation, promoting participation in legal proceedings
- Ordered by a judge immediately, can be requested at any time, stays in place indefinitely until requested to be lifted, with penalties for breaking the ban
- Can create a safer space for survivors to heal and recover
- No requirement for the court or prosecutor to inform victim-complainants about the imposed ban, leading to unawareness of its existence and its consequences
- Impression of accused protection and hindrance to victim-complainant's informed choice and consent
- Limitation of transparency, which makes it more difficult to raise awareness and educate
- Inconsistency within the legal system in how the law is applied by judges and attorneys, leading to discrepancies across provincial jurisdictions



# Impacts of Unwanted Publication Bans

- Most prosecutors request a publication ban at the first court appearance, usually when the victim-complainant isn't involved at this stage
- Prosecutors typically do not seek or obtain consent from victim-complainants before requesting a ban on their identity
- The law did not require the judge or crown to notify a victim-complainant about a placed publication ban, so many are unaware of its existence and its consequences
- Imposing restrictions without consent can restrict victim-complainant's freedom of expression, reinforce feelings of shame, and suggest that anonymity equals protection for everyone
- Removing an unwanted ban is difficult and comes with barriers and challenges



# Legal Injustice: Victim Prosecuted

WATERLOO REGION

## Sexual assault victim fined in Kitchener court for breaking order protecting her identity

'A great injustice has been done to a victim,' sexual assault support centre says

By Gordon Paul Record Reporter

🚨 Thursday, March 18, 2021 | ⌚ 2 min to read



KITCHENER — A sexual assault victim pleaded guilty on Wednesday to breaking a publication ban protecting her identity.

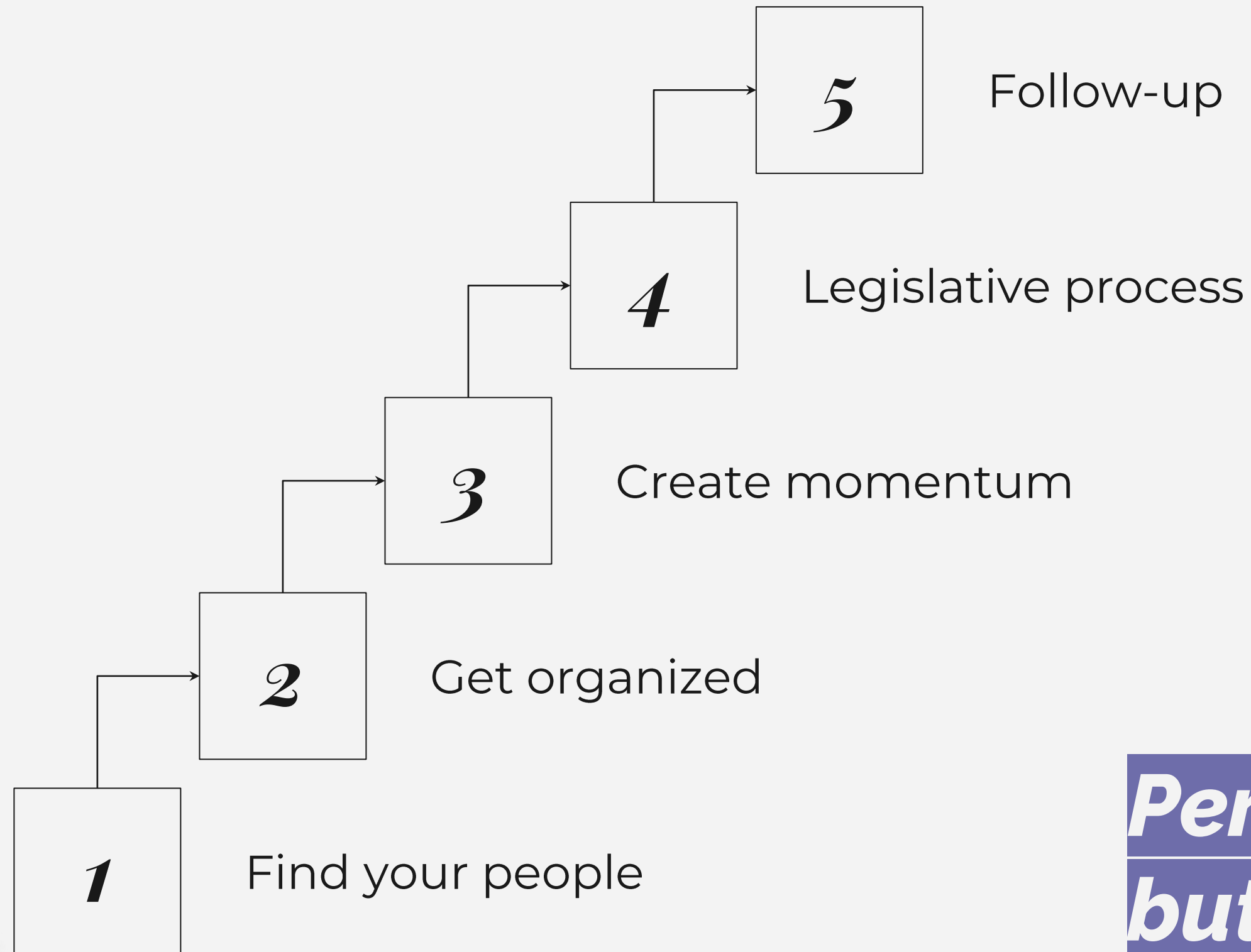
The Waterloo Region woman got a transcript of the judge's reasons for finding the man guilty of sexual assault and sent it to friends and family, described in court by her lawyer as "support persons."

- March 2021 - Sex assault victim fined for breaching her own publication ban
- Highlights prosecutors' misinterpretation of section 486.4 of the Criminal Code
- The impact of Kitchener-Waterloo case catalyzes change.....





# Path to Change



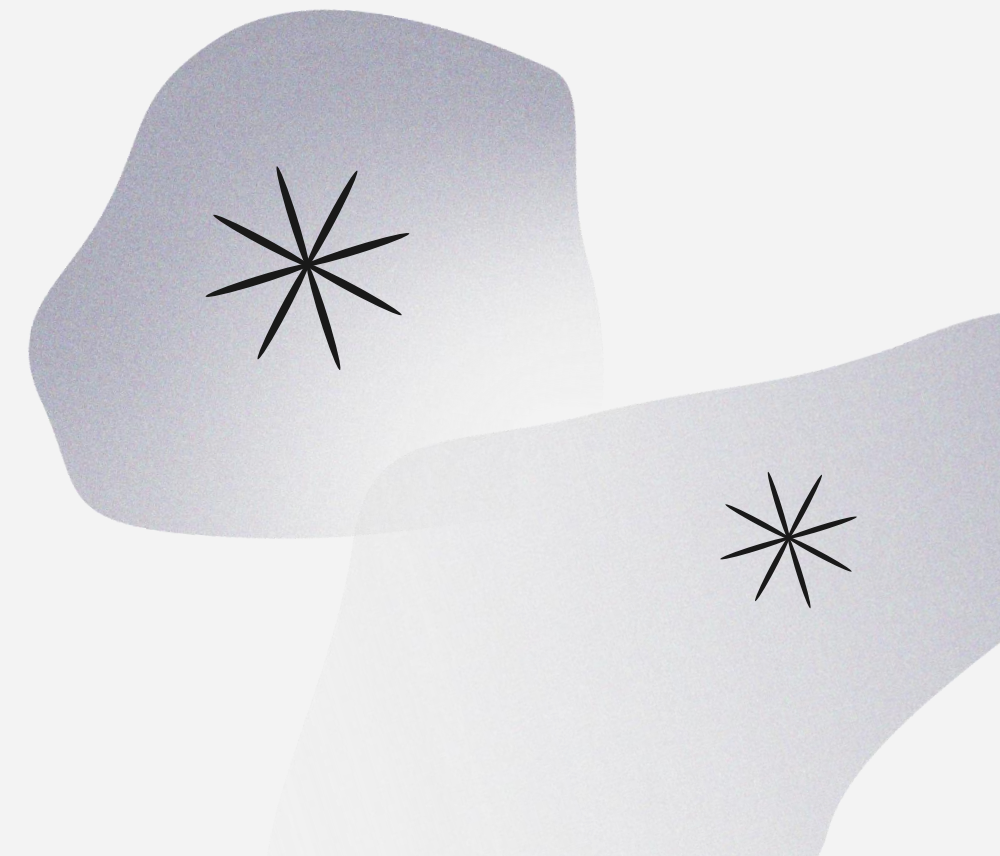
***Perfect is good,  
but done is better.***



# Step 1: Find your People

- Build a team with like minded goals
- Consult with experts and practitioners
- Identify decision makers
- Invest in relationships
- Cultivate a support system

***If you want to go fast, go alone.  
If you want to go far, go together.***





# Step 2: Get Organized

- 1. Do your research
- 2. Develop recommendations
- 3. Write a brief
- 4. Create a critical path
- 5. Track everything
- 6. Communicate frequently
- 7. Remember the goal

Date	Milestone	Status	Notes
2022			
July 26	Outreach to MPs sharing experience and views	Complete ▾	
September 1	Meeting with <b>MP Vecchio</b>	Complete ▾	
September 16	Meeting with <b>MP Brock</b>	Complete ▾	Invited to <a href="#">JUST</a>
September 27	Meeting with <b>MP Garrison</b>	Complete ▾	
October 6	Meeting with <b>MP Brock</b>	Complete ▾	
	Meeting with <b>MP Diab</b>	Complete ▾	
	JUST Appearance	Complete ▾	Consulted: victim-complainants, <b>LEAF</b> , lawyers, experts
October 20	Final JUST meeting on <a href="#">Obligations to Victims of Crime</a>	Complete ▾	Report drafting begins
November 3	Meeting with <b>oMOJAG</b>	Complete ▾	
November 10	Petition published	Complete ▾	Consulted: <b>LEAF</b> , <b>MP Erskine-Smith</b> , <b>MP Collins</b> , <b>MP Garrison</b> , and victim-complainants (tried <b>MP Brock</b> )  Sponsored: <b>MP Collins</b>
November 15	Compile list of stakeholders to send petition to	Complete ▾	<a href="#">List</a> to update and add to, and draft standard message
November 28	JUST reviews draft report	Complete ▾	JUST meeting to review report draft (1 of 2)
November 30	Send petition to all stakeholders using a standard message	Complete ▾	
December 1	JUST reviews draft report	Complete ▾	JUST meeting to review report draft (2 of 2) and adopted. Government response requested
December 7	JUST report tabled in the House and <a href="#">news release</a> published	Complete ▾	Quick analysis and <a href="#">summary</a> overnight
December 8	Media to promote petition and re recom	Complete ▾	Draft key messages and talking points

Senator	Province	Roles	Relevant Committee	Engagement	Interest	Follow-Up	Notes
Denise Batters	SK		LCJC	MA called 10 Feb, asked to send email. Emailed 10 Feb. KF Emailed 21March. Called 14 April, resend the email and it will be sent. Lana director of Parliamentary Affairs. MA called 28 April she's really busy, resend email to try to meet with Lana.	Maybe ▾	Michael knows well	Remains in Senate Conservative Caucus but expelled from national caucus. Former lawyer and former deputy chair of LCJC.
Kim Pate	ON		LCJC	MA called 10 Feb, left a message. Emailed 10 Feb. KF Emailed 21March	Yes ▾	Michael knows well	Lawyer, very into women in the criminal justice system. Former ED of Elizabeth Fry Society. Meeting scheduled May 1st at 3:45pm in Ottawa MA/KF
Mobina Jaffer	BC	Chair of Legal and Constitutional Affairs Committee	LCJC	MA called 10 Feb, left a message. Emailed 10 Feb. KF Emailed 21March, emailed one final time on April 11 (KF). MA called 14 April no answer. MA emailed 14 April. MA called 28 April no answer. Resent email	▾		Formerly chaired a study into the sexual exploitation of children, and chaired the Canadian Committee on WPS. Has spoken about UNSCR 1325. "Women's rights are central to [her] advocacy." Former lawyer.
Brent Cotter	SK		LCJC	MA called 10 Feb, left a message. Emailed 10 Feb. KF Emailed 21March. MA called 14 April no answer. MA emailed 14 April. MA called 28 April no answer. Resent email.	▾		Former lawyer and DM of Justice in SK. Founder of the Canadian Association for Legal Ethics.
Peter Harder	ON		LCJC	MA called 10 Feb, left a message. Emailed 10 Feb. KF Emailed 21March. MA called 14 April no answer. MA emailed 14 April. Called by MA April 28 no answer and resent email.	▾		Former Government Representative in the Senate until January 2020. Former Foreign Service Officer and DM of GAC.
Scott Tannas	AB	Leader of Canadian Senators Group	LCJC	MA called 10 Feb, left a message. Emailed 10 Feb. KF Emailed 21March. MA emailed 14 April	Yes ▾	Meeting with Parliamentary Affairs Advisor	
Gwen Boniface	ON		LCJC	MA called 10 Feb, left a message. Emailed 10 Feb. KF Emailed 21March. MA emailed 14 April	Yes ▾		"Has dedicated her efforts in the Senate to address Human Trafficking, [and] ending Domestic Violence." Former UNPOL and IACP. April 11 - they will be in touch if senator has time (KF) Meeting Confirmed May 4 at 1030am
Pierre Dalphond	QC		LCJC	MA called 10 Feb, left a message. Emailed 10 Feb. KF Emailed 21March	Yes ▾		Former lawyer. On Quebec Court of Appeal wrote leading judgements on freedom of speech. KF - Meeting with MA and KF on May 2nd in Ottawa
Fabian Manning	NL		LCJC	MA emailed 10 Feb. KF Emailed 21March. MA emailed 14 April. MA called 28 April no answer, resend email	Yes ▾		
Bernadette Clement	ON		LCJC	MA emailed 10 Feb. KF Emailed 21March. MA emailed 14 April. 28 April resend email.	Maybe ▾	Interested but can't meet the first week of May	Former lawyer.
Renée Dupuis	QC		LCJC	MA emailed 10 Feb. KF Emailed 21March. MA emailed 14 April. MA called 28 April no answer. 28 April resend email.	▾		Former lawyer. As a member of the Canadian Human Rights Commission "took special interest in discrimination against women [and] sexual harassment."
Peter Boehm	ON			MA emailed 10 Feb. Meeting on 8 March. Wants to keep in touch and will talk to MOJAG directly about the issue, as well as Mendicino. MA called 28 April and resend message to try to meet during 1-4 May.	Yes ▾	Morrell knows	Former DM of GAC



# Briefing Notes

## Title

Key Messages

*Essential Only*

Background Information

*Concise*

Recommendations

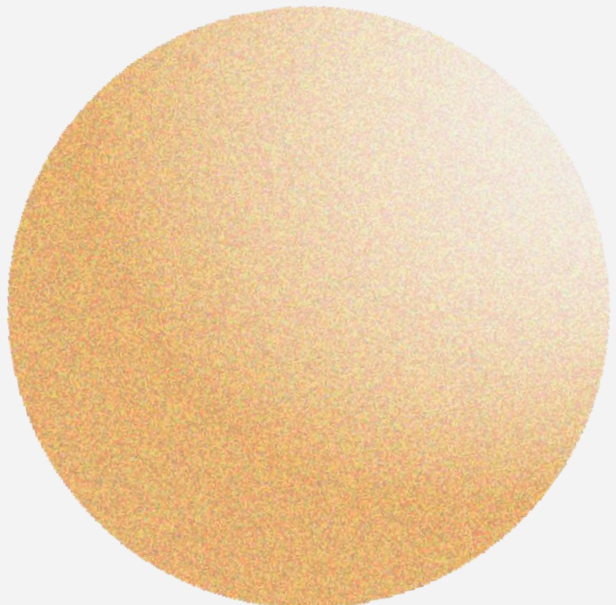
*Specific*

Talking Points

*Scripted*

Detailed Context

*Everything Else*



Example from Justice  
Committee

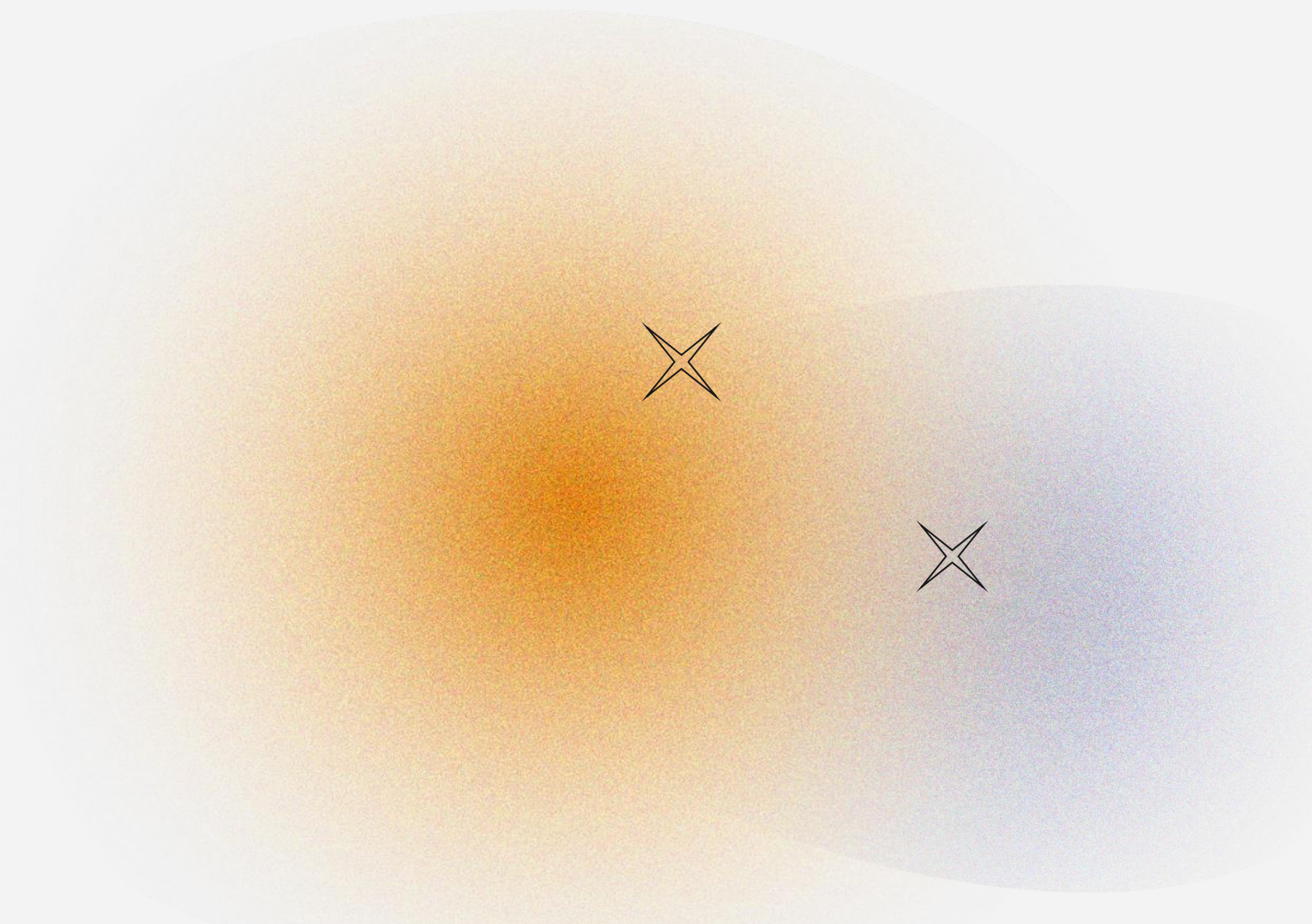




# Step 3: Create Momentum

- Refine the message (and repeat it)
- Use the media
- Find many champions
- Create a petition
- Leave no stone unturned
- Say *yes!*

Example of a ←  
House of Commons petition





# My Voice, My Choice

## No longer silent, more victims of sexual violence fight publication bans imposed in their names

When abusers go to trial, survivors who want to tell people what happened are often thwarted by court orders that are costly and time-consuming to undo. These women want to change that

ZOSIA BIELSKI > AND MOLLY HAYES >

PUBLISHED JUNE 5, 2023

UPDATED JUNE 7, 2023

This article was published more than 6 months ago. Some information may no longer be current.



Carrie Low, Jade Neilson, Brandy Mullen, Kelly Favro and Morrell Andrews are members of My Voice, My Choice, a group pressing for legislation allowing sexual-assault survivors like themselves to opt in or out of court publication bans on their identities.

JESSICA DEEKS/THE GLOBE AND MAIL

***Was an initiative created by victim-complainants, for victim-complainants, to demand amendments to how publication bans were used.***

- Allow victim-complainants to attribute their own experience of sexual offences without being charged
- Grant adult victim-complainants of sexual offences a choice in the application of a 486.4 publication ban
- Produce comprehensive, accessible, multi-lingual, and public information about 486.4 publication bans on government websites
- Simplify the process to lift a ban at any time before, during, or after court proceedings without the services of a lawyer
- Allow victim-complainants to opt out of a 486.4 ban on the Victim Impact Statement form



# Step 4: The Legislative Process

**1**

## **First Reading**

Bill is introduced in Parliament via the Senate

**2**

## **Second Reading**

Bill is referred to relevant Senate Committee for study

**3**

## **Third Reading**

Bill is passed with major amendments

**4**

## **First Reading**

Bill is sent to the House from the Senate for review

**5**

## **Second Reading**

Bill is referred to relevant House Committee for study

**6**

## **Third Reading**

The Bill is passed with amendments and Senate agreement

[View the entire journey](#)





# Bill S-12

- You should be asked about whether you want a ban
- You should be informed of your right to revoke a ban
- Codifies the process to remove or modify your ban
- Your abuser cannot argue that you should be silenced
- No prosecution for breaching your own ban
- You can talk to a lawyer, doctor, counsellor, and someone in a relationship of trust

# Step 5: What Happens Next?

- Updates needed to the Department of Justice website
- Sharing detailed information about the legal changes
- Awareness about how to promote legislative reform from the outside



## Are you a feminist who wants to reform laws and policies to advance women's equality rights?

Law reform is an essential component of the struggle for women's equality in Canada. It is an opportunity to change laws and policies to better reflect the experiences, perspectives and realities of women in all their diversity.

The [National Association of Women and the Law \(NAWL\)](#) developed this open access course to equip law students and social justice advocates, activists and organizations with the skills and knowledge to engage in feminist law reform and advance equality rights. It draws on the expertise of feminist lawyers and others actively engaged in federal law reform to provide a tool-kit for pursuing systemic legislative remedies to advance this crucial work in Canada.

While this course is primarily geared towards training the next generation of feminist law reformers, we hope it will also be useful as a template and resource for educators designing courses on feminist law reform and advocacy.

Not legal advice

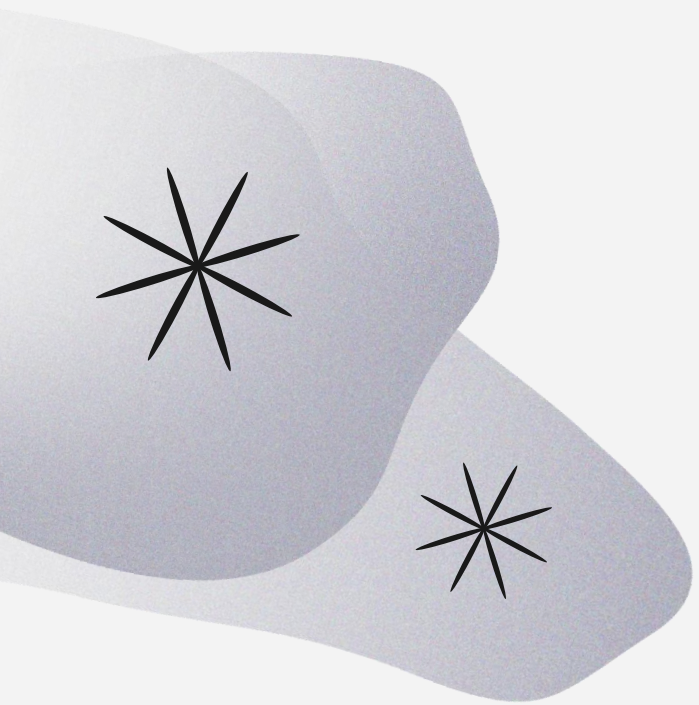
Accessibility



# Moving Forward: Remaining Challenges

## What is there left to do?

- Addressing provincial issues
- Ensuring consistency
- Resource creation
- Training initiatives
- Supporting victim-complainants
- Review of the law





# Supporting Victims and Survivors

## Empowerment + Agency

- Prioritize survivors agency in deciding whether to vary or revoke a publication ban
- Provide comprehensive information to empower victims to make informed decisions
- Offer emotional support and validation

## Holistic Support

- Connect victim-complainants with legal resources and support organizations
- Discuss safety planning
- Maintain privacy and confidentiality

## Advocacy + Awareness

- Advocate for survivor-centred policies within the legal system
- Raise public awareness to dismantle rape culture and challenge societal attitudes that perpetuate victim-blaming and stigma
- Centre survivors voices and decisions, acknowledging their expertise in their own experience





# Thanks!

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Questions + answers