

Dear Senators,

Thank you for hearing from LEAF about our concerns regarding Bill C-51. As a follow up to my comments in today's hearing, I am providing LEAF's proposed language, which reflects the recommendations we have made in our submissions.

LEAF proposes that the amendments to section 153.1(3) and 273.1(2) found in Bill C-51 be changed to the following:

**273.1(2) or 153.1(3)** For the purposes of this section, no consent is obtained if

(b) the complainant is, at the time the sexual activity takes place, incapable of consenting to the activity. "Incapacity" in this context means the inability to meaningfully understand the risks and consequences of the sexual activity, or to know that one has the choice whether to engage in it, or the inability to affirmatively express one's agreement to the sexual activity by words or actively expressed conduct.

This captures what is important about *J.A.*, which is that consent must be contemporaneous with the sexual act and cannot be provided in advance of sexual contact. It also provides judges who are tasked with assessing capacity to consent in the context of sexual violence committed against conscious women with guidelines that will enable them to determine the degree of impairment required to render a conscious individual incapable of providing consent.

In LEAF's submissions, this will protect the important and uncontroversial legal principle that unconscious individuals cannot consent to sexual contact, while also ensuring that the many thousands of women who are sexually assaulted while conscious, but severely impaired due to drugs, alcohol or other forms of incapacity, receive the protection of the criminal law.

Thank you very much for having me today and for considering this important issue.

Yours very truly,

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