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## **ANOVA'S STATEMENT ON DISMISSAL OF JURY IN HOCKEY CANADA SEXUAL ASSAULT TRIAL**

The frustration shared by survivors watching this trial is palpable. From a mistrial mere days into the trial, to watching E.M. courageously face a revolting masterclass in rape myths and victim blaming over 8 days of testimony, the failures of our legal system have been on full display. It is with equal amounts of fury and exhaustion to learn that a decision has been made to proceed as judge-only in order to avoid a second mistrial.

To be clear, defendants have the option to choose trial by judge or trial by a jury of their peers. Those peers are comprised of a random collection of adult citizens who promise that they 1) are not themselves legal experts and 2) are not biased in assessing the facts of the case as presented in the courtroom. The first jury had significantly more women than men (11 to 3), but that is the risk one runs when they choose trial by jury. "Random" cannot also always be "perfectly balanced along gender lines". But that first jury was dismissed, because one of the defense lawyers chose to loudly share information about the case in a public space where jurors could overhear. We were surprised that such a highly paid and experienced lawyer would make such a mistake, which can only now be publicly reported on. One might think that it would be strategic for defense lawyers to all be on their best behaviour with the second jury then, to avoid another mistrial.

One would be mistaken though. The judge was informed by the jury that some of the defense counsel were making several jurors feel uncomfortable. The rest of the defense lawyers quickly moved for another mistrial, arguing that the jury couldn't possibly remain unbiased after that. To avoid a second mistrial, which at this point would mean that E.M.'s marathon 8 days on the stand would need to be repeated for yet another jury, the judge declared, with consent of both Crown and defense, that this would be a trial by judge instead.

Again, the defendants could have requested this from the beginning. It's a strategic choice, whether to choose jury or judge. Juries are more likely to be swayed by appeals to emotion and myth, whereas judges are more likely to understand technicalities and arguments of legal interpretation. In this case, the defendants have attempted to rely strongly on rape myths, implying or outright stating that E.M. is a liar, a cheater, and essentially a shameful slut. In years past, those types of arguments have worked well on juries, but as society becomes more aware of those myths and overall more trauma-informed, such appeals to victim blaming are less likely to succeed. Indeed, this jury in particular appeared to grow tired of the unnecessarily long cross examination. Now that the case has moved to a judge-only trial, that's no longer a concern. The standard to convict for sexual assault is *beyond a reasonable doubt*, the technicality of which a judge will be much more familiar with than your average citizen.

The judge, a former defense attorney herself, also could have made different choices. We wonder what else could and should have been done from the bench to prevent this outcome. Watching the ways in which this case has unfolded, first with a mistrial and now with the sudden and late move to judge-only, is infuriating.

As we have said before, all eyes are on this trial. Survivors, past, present and future, are watching this case and learning how the justice system will treat them if they come forward. What they've learned so far is that the legal system is designed to protect perpetrators, to traumatize victims, and to project a masquerade of justice without a single ounce of accountability, respect, honour, or care. The system is on trial here too, but this time the jury is all of us. And we won't be intimidated.