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*Should the presumption of innocence continue to apply in the #metoo era? Why or why not?*

The presumption of innocence is a fundamental principle in the Canadian judicial system and is vital to a free and democratic society; it unquestionably should continue to apply in the #metoo era. If one was to claim that the presumption of innocence should not or cannot exist alongside the changes called for by #metoo, they have misunderstood the purpose of the movement. This essay will first explore the importance of both the presumption of innocence and the #metoo movement. Next, it will examine some of the misconceptions around #metoo and problems that have arisen because of this interpretation. Lastly, the ways in which the purpose of #metoo and the presumption of innocence principle can be reconciled, and in fact can complement one another will be discussed. #Metoo is not about shifting the burden of proof to the accused but rather ensuring that individuals have more autonomy and protection in the legal system- the same purpose that the presumption of innocence principle reflects.

The idea that an accused is innocent until proven guilty is a necessary and desirable trait of the Canadian judicial system. It provides more protection for an accused and acts as a check on state power; the Crown has to do their job thoroughly and effectively in order to obtain a conviction. While wrongful convictions clearly and unfortunately occur, the presumption of innocence places the burden of proof on the state and away from the individual, in most cases. Without such a presumption, wrongful convictions would be much more common and the individual would be at the mercy of a state that could no longer call itself a democracy. The importance of the presumption of innocence principle simply cannot be overstated. In contrast, #metoo is a new movement that is not engrained in the Canadian legal tradition but addresses issues that feminist legal professionals have been tackling for years. The idea behind #metoo is essentially to raise awareness regarding the widespread occurrence of sexualized violence in its highly gendered nature. From a legal perspective, this encompasses issues such as the low conviction rates for sexual assault and the re-traumatization of victims on the stand. It is a timely and important movement that provides a voice for those who have experienced sexualized violence and have been treated poorly in the judicial system or discouraged from coming forward

at all; #metoo calls for more women to speak up about their experiences and report sexualized violence.

Unfortunately, the purpose of #metoo often gets misconstrued. Social media backlash against alleged perpetrators often creates the illusion that the alleged perpetrators are being found guilty with little to no evidence against them; particularly amongst celebrities and well-known public figures, claims of sexualized violence may result in firing or lost opportunities due to the negative connotations associated with the individual's name. The victims who came forward are usually the ones who get blamed for this. However, this is not logical; if an alleged perpetrator gets fired or otherwise 'punished' due to the claims against them, this is not related to the victim in any way but rather the private decision of their employer based on what is good or necessary for business. In the eyes of the judicial system, the alleged perpetrator is still innocent until proven guilty. The private decisions of individuals do not affect this. Additionally, the "I believe survivors" movement often gets interpreted as believing survivors no matter what and automatically making the alleged perpetrator guilty no matter the evidence or lack thereof. This interpretation is flawed for several reasons. First of all, it adopts the belief that victims often lie and that they will allege sexual assault in order to ruin a man's career. However, it is established that the percentage that women are found to be lying about rape is incredibly miniscule. This belief also ignores the fact that women who come forward are, more often than not, punished far more severely than the alleged perpetrator. Women may be harassed on social media, threatened, and punished in their personal lives through shame and stigma. Additionally, the belief that #metoo and the corresponding "I believe survivors" movement have the ability to make a man guilty with no basis also assumes that victims have a stronger voice than they actually do. #Metoo and "I believe survivors" are all about giving women a voice where historically they have been silenced, but it would be absurd to conclude that they are so powerful as to render an innocent man guilty on the basis of their words alone. These misinterpretations are solely based on sexism and reluctance to take claims of sexualized violence seriously.

The misinterpretation of the goals of #metoo incorrectly lead to the conclusion that the movement cannot be reconciled with the presumption of innocence- that believing and supporting survivors automatically leads to finding an alleged perpetrator guilty in the eyes of the law. These principles need to be examined in a larger context. As discussed, both of the principles are essentially about providing more protection for individuals in the legal system. The

overarching purpose of #metoo in the legal setting is to advocate for the rights of victims where they have historically been mistreated in legal proceedings. This involves rights of victims being incorporated into police procedures at the reporting stage, as well as education for lawyers and judges so that the survivor is being treated consistently and fairly throughout the process. For instance, the larger context of #metoo and advocating on behalf of sexual assault survivors involves bringing an end to some tactics used by defence counsel that may retraumatize the victim on the stand. Additionally, the #metoo era calls for the proper implementation of the Rape Shield laws- this is not giving any new rights to survivors but simply enforcing ones that already exist but are often ignored. In no way do any of these proposed changes take away from the rights of the accused in the legal system.

The presumption of innocence is a necessary and fundamental component of the Canadian judicial system and must remain so. The #metoo era and the changes it is calling for do not conflict with this but rather complements it; after all, both principles are about advocating for the rights of individuals in the legal system and providing them with more protection in a very adversarial context. The rights and power given to victims by #metoo do not take away from the rights of an accused in the legal context and in no way contravenes the presumption of innocence. If #metoo and the corresponding “I Believe Survivors” have the perceived effect of punishing alleged perpetrators, that is the decisions of private individuals, between employers and employees, and has no bearing on the rights of an accused in the court of law. If the changes called for in the #metoo era are implemented, victims will be encouraged to come forward and will have a stronger voice throughout the legal system and trial proceedings and the accused will still have the protection of the presumption of innocence. The bottom line is that that the Crown and the Defence counsel will have to be equally thorough in ensuring a fair trial for all involved, and the rights of all individuals involved need to be enforced.