

WE ARE HERE

Women's Experiences of the Barriers to Reporting Sexual Assault

By Alana Prochuk

November 2018



WE ARE HERE: Women's Experiences of the Barriers to Reporting Sexual Assault

This report is one of the outcomes of a law reform project by West Coast LEAF and the YWCA Metro Vancouver called *Dismantling the Barriers to Reporting Sexual Assault*.

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First and foremost, we thank the women who generously shared their experiences and insights with us. Their voices are the substance and heart of this report.

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The views expressed by the women interviewed for this report are their own. Any errors, however, are West Coast LEAF's.

This report is for the purposes of education and discussion only. It is not intended to give you legal advice about your particular situation. Because each person's case is different, you may need to get help from a lawyer or advocate.

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Executive summary

This report aims to identify barriers to reporting sexual assault and ultimately inspire social and institutional change to reduce or eliminate these barriers.

CHANGES IN THE JUSTICE SYSTEM and in society are urgently needed to offer viable paths to justice for all survivors¹ of sexual assault in Canada — almost 90% of whom are women.² Only about 5% of sexual assaults are reported to police,³ and only 11% of the cases that are reported eventually lead to a conviction.⁴

This report, which focuses on the experiences and insights of sexual assault survivors, aims to identify barriers to reporting sexual assault and ultimately inspire social and institutional change to reduce or eliminate these barriers. The 18 women whose voices are at the heart of this report described a range of negative, positive, and ambivalent experiences with the criminal justice system; they revealed factors that informed their decision about whether or not to report; and they shared their vision for making the system more responsive to survivors' needs.

Although only a small number of sexual assault survivors report to police, many others perceive benefits in reporting, including personal empowerment, validation, perpetrator accountability, and a chance to try to prevent the perpetrator from offending against others. Most participants in our project ultimately determined that the risks and costs of reporting outweighed the possible advantages for them and pursued a different course of action.

1 We recognize that not everybody who has experienced sexual assault identifies as a “survivor.” Some people may prefer “victim” or another term, while others do not wish to label themselves based on their experience. For the sake of concision, we have used the word “survivor” to refer to people who have been sexually assaulted.

2 Canada, “GSS”, Canada, Juristat, *Criminal Victimization in Canada, 2014*, by Samuel Perreault, Catalogue No. 85-002-X (Ottawa: Minister of Industry, 2015) at 6.

3 *Ibid* at 40.

4 Canada, Statistics Canada, *From Arrest to Conviction: Court Outcomes of Police-Reported Sexual Assaults in Canada, 2009 to 2014*, by Cristine Rotenberg, Catalogue No. 85-002-X (Ottawa: Canadian Centre for Justice Statistics, 2017) at 3.

The 18 women whose voices are at the heart of this report described a range of negative, positive, and ambivalent experiences with the criminal justice system; they revealed factors that informed their decision about whether or not to report; and they shared their vision for making the system more responsive to survivors' needs.

The women we spoke with identified a number of factors that made them disinclined to report sexual assault to police, including:

- **SOCIO-CULTURAL ATTITUDES** that minimize the seriousness of sexual assault and expose survivors to blame, shame, skepticism, and stigma. Immersed in such a culture, survivors may internalize victim-blaming messages and may hesitate to label the assault as violence. Although research shows that false allegations of sexual assault are rare — occurring at a rate of 2% to 10%,⁵ similar to the rate for other offenses⁶ — there is a culturally entrenched skepticism about sexual assault that does not seem to apply to other crimes. Therefore, survivors may fear that they will be met with unsupportive responses if they disclose their experience to others. (Part 5)
- **SURVIVORS' BELIEFS AND VALUES ABOUT THE JUSTICE SYSTEM**, often based on prior unsatisfactory experiences. A number of women who participated in this project expressed deep misgivings about the legal system's prejudices, its treatment of perpetrators, and the types of remedies it can offer. (Part 6)
- **CONDUCT OF INDIVIDUALS** working in the criminal justice system, which can either exacerbate or ease the intense stress involved in reporting. One of the most significant barriers to reporting shared by project participants was problematic treatment by police, lawyers, judges, and other justice system personnel, which can take many forms, including failure to communicate clearly and consistently with complainants; insensitive remarks; and adoption of myths and stereotypes about sexual assault. Conversely, a number of women also highlighted instances where criminal justice system actors were exceptionally helpful. (Part 7)
- **PERSONAL REPERCUSSIONS** of reporting, including the risk of retaliation by the perpetrator, privacy violations, impacts on financial security and employment, and a range of unwanted legal ramifications. (Part 8)
- **CONCERNS ABOUT THE CRIMINAL JUSTICE SYSTEM PROCESS**, from police report to trial. Many participants expressed concerns about the legal viability of their case, demands on their time and energy, psychological impacts of reporting and testifying (particularly the risk of re-traumatization), and limited control and choice. They also proposed measures to make the justice system process more survivor-centred. (Part 9)

5 David Lisak, Lori Gardinier, Sarah C. Nicksa, and Ashley M. Cote, "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases," (2010) 16.12 *Violence Against Women* at 1331.

6 Government of Alberta, *Best Practices for Investigating and Prosecuting Sexual Assault* (Edmonton: April 2013), justice.alberta.ca/programs_services/criminal_pros/Documents/SexualAssaultHandbook-PoliceCrown.pdf at 16.

Most participants in our project ultimately determined that the risks and costs of reporting outweighed the possible advantages for them and pursued a different course of action.

The Canadian justice system can and must put the voices of survivors and the human rights of all at the centre of justice system reform.

Barriers to reporting are often compounded for survivors who experience systemic patterns of discrimination, as is the statistical probability of being sexually assaulted in the first place. The risk of being blamed or automatically disbelieved — in the justice system, as in the rest of society — is particularly acute for survivors who are marginalized based on race, Indigenous identity, class, occupation, disability, age, gender identity and expression, and/or other aspects of identity. Women with past negative experiences in the justice system, including overt or implicit discrimination or even abuse, may understandably lack trust in the system and feel reluctant to contact police in the aftermath of sexual assault. Furthermore, the drain of time, material resources, and emotional and physical energy involved in reporting may carry disproportionate consequences for women whose daily survival is already a challenge, such as single mothers living in poverty.

Participants' views of the criminal justice system and their experiences interacting with that system varied significantly. However, they tended to agree on the benefits of offering choices to survivors, adopting trauma-informed practices, improving access for diverse women, providing support services, and ensuring that the rights of complainants are not totally overshadowed by the rights of the accused.

The Canadian justice system can and must become more responsive to the needs of survivors. It can and must receive and handle all reports of sexual assault with the seriousness and respect they require. It can and must communicate to survivors that their rights matter — that *they* matter. Most importantly, it can and must put the voices of survivors and the human rights of all at the centre of justice system reform.

Now is the time to dismantle the barriers to reporting sexual assault, with survivors' knowledge guiding the way.

Methodology

THIS REPORT IS ONE OF THE OUTCOMES of a law reform project called *Dismantling the Barriers to Reporting Sexual Assault*, a partnership between West Coast LEAF and the YWCA Metro Vancouver. Staff at the YWCA recruited and interviewed close to 30 sexual assault survivors⁷ who generously and anonymously shared their experiences and insights regarding the decision of whether or not to report to police.

To recruit participants, the YWCA emailed a poster to women-serving organizations in Metro Vancouver, shared it on social media, and posted printed copies in public spaces throughout Vancouver, such as bus stops and music venues. The poster indicated that the project's objective was to "identify the barriers women face when deciding whether to report sexual assault and help improve criminal justice system responses to sexual assault." Eligible interviewees were self-identified women aged 19 or older who had experienced sexual assault in BC within the last five years (later expanded to seven years to increase the participant pool), with no current police or court involvement related to the sexual assault.

Only women were interviewed, and as a result this report discusses barriers to reporting sexual assault for women survivors specifically. We recognize that sexual assault is a form of gender-based violence that disproportionately harms not only women, but also Two-Spirit people, gender non-conforming people, trans people of all genders (not only women), intersex people, and people with non-binary gender identities. However, this research and the resulting report focus solely on the voices of those who identify as women and do not speak to the experiences of survivors who identify otherwise.

⁷ We recognize that not everybody who has experienced sexual assault identifies as a "survivor." Some people may prefer "victim" or another term, while others do not wish to label themselves based on their experience. For the sake of concision, we have used the word "survivor" throughout this report to refer to people who have been sexually assaulted. Nonetheless, we recognize and honour the fact that this word is not a fit for everyone. We have also used the term "complainant" when referencing case law and legal research findings, as this term has a particular meaning in legal proceedings (that is, a person who reports a criminal offense, leading to criminal prosecution of the suspect).

Of the 18 women whose interviews were included, seven had reported sexual assault to police.

From the bottom of our hearts, we thank the project participants for their candour, courage, and generosity. Their words powerfully illuminate barriers to reporting sexual assault and will contribute to the rising movement to dismantle them.

Eighteen interviews are referenced in this report; the remainder could not be used because consent was not granted or the eligibility criteria were not met. We are deeply grateful to all of the women who shared their stories and contributed to our learning, regardless of whether they are quoted in this report. Of the 18 women whose interviews were included, seven had reported sexual assault to police. These 18 participants indicated their demographic information as follows:

- One was aged 18 to 24; ten were aged 25 to 34; four were aged 35 to 44; and three were aged 45 to 54
- Two self-identified as Indigenous
- Five self-identified as women of colour
- Five self-identified as immigrant women
- Eight self-identified as having one or more visible or invisible disabilities
- Five self-identified as LGBTQ+

The interviews were conducted by YWCA staff over the phone and at several women-serving organizations in Metro Vancouver. Interviewers used a semi-structured interview format with certain pre-determined questions. Language interpretation and child care were available free of charge to participants requiring them, and the costs of public transportation were reimbursed. A peer counselor was available to the participants during the interview and immediately afterwards. Additionally, interviewees were given a handout listing community-based support services and had the option to contact the study coordinator if they needed additional support. They were welcomed to contact the Vice-President of Housing Services and Violence Prevention at the YWCA Metro Vancouver with any questions regarding study ethics or other concerns.

Any information that might identify participants has been removed from this report. When quoting them, we have used their exact words with only light edits for clarity and length, indicated by ellipses and square brackets.

From the bottom of our hearts, we thank the project participants for their candour, courage, and generosity. Their words powerfully illuminate barriers to reporting sexual assault and will contribute to the rising movement to dismantle them.



PART 3

Introduction and statistical overview

Interviewer: What kind of reaction did you get when you disclosed [the sexual assault] to others?

Participant: That it happens.

Interviewer: Yeah.

Participant: It happens.

Interviewer: That it happens, okay. So that it was a, that's a common occurrence?

Participant: Yeah. That I shouldn't be feeling as distressed as I was. (Interview 25)

IN THE #METOO ERA, there is growing public awareness of the devastating prevalence of sexual harassment and sexual assault and of the deeply gendered nature of these forms of violence. Social media conversations have made it apparent that the majority of women⁸ can say #MeToo — that they are among the hundreds of millions of people in the world who have experienced sexual harassment or sexual assault.

There is also growing recognition that naming and speaking out about experiences of sexual violence can propel social and institutional change, including change in the legal system. From 2016 to 2017, the number of sexual assaults reported to police in Canada increased by 8%, a trend Statistics Canada says might be connected to increased attention to sexual assault on social media

⁸ Quantitative research about sexual harassment, particularly in public spaces, is scarce. This may be partly because many public forms of sexual harassment are not illegal and tend to be dismissed as trivial (Rhonda Lenton, Michael D. Smith, John Fox, and Norman Morra, "Sexual Harassment in Public Spaces: Experiences of Canadian Women" (1999) 36.4 *Canadian Review of Sociology and Anthropology* at 518). However, those studies that do exist indicate that sexual harassment is an extremely common experience. For example, Lenton and her colleagues surveyed close to 2,000 English-speaking and French-speaking women in Canada over the phone, and found that 91% could recall one or more experiences of sexual harassment in public during their lifetimes. More than three-quarters reported more than one type of sexual harassment, and the majority had experienced more than one incident of each type.

In the #MeToo era, there is growing public awareness of the devastating prevalence of sexual harassment and sexual assault and of the deeply gendered nature of these forms of violence.

and in news reports.⁹ During the same period, the rate of sexual assault reports dismissed by police as unfounded — meaning that police consider the report a mere allegation of an offense that “did not occur, nor was it attempted”¹⁰— declined from 19% to 14%. While 14% is still a concerning figure, the small but significant drop in cases thrown out as unfounded may reflect efforts by some police forces to ensure that reports of sexual assault are received and investigated with due seriousness.

Yet, much work remains to make reporting sexual assault to police a safe and viable option for all survivors who wish to pursue it. We hope that this report, and the lived experiences and insights of survivors that are its foundation, will guide and inspire some of that work. We believe that these women’s stories will energize and inform efforts to transform the criminal justice system to be more responsive to the needs of sexual assault survivors, in all their diversity.

THE PREVALENCE OF SEXUAL ASSAULT

A theme that emerged clearly from our interviews with women — one that is corroborated by research — is the fact that sexual assault is shockingly common. Several participants commented on the toxic cultural attitudes that treat sexual assault as “just what men [do]” (Interview 24) and that create “a social norm kind of around [sexual assault in romantic relationships] and a sense of entitlement” (Interview 27) to the bodies of women and others who experience gender-based violence. The cultural normalization of violence is mirrored by statistics showing that sexual assault is far from rare in Canada. What’s more, stark gender-based inequalities are evident in the data on who most often experiences this form of violence — and who most often perpetrates it.

According to Statistics Canada’s 2014 General Social Survey on Victimization, about 3.5 to 4% of women in Canada self-reported one or more sexual assaults within the previous 12 months, compared to about 0.5% of men.¹¹ Furthermore, of those women who reported sexual assault within the previous year, just over half reported more than one sexual assault during that period, and just over a quarter reported three or more.¹² In contrast, more than 70% of men who reported that they had been sexually assaulted in the previous year reported one assault.¹³ Overall, 87% of sexual assaults were committed against women,¹⁴ and 94% of perpetrators were men¹⁵ (most often not strangers to the survivor¹⁶). Sexual assault perpetrated by intimate partners shows even more starkly gendered patterns, with women accounting for 97% of those who experienced this form of violence in 2015, according to data from

9 Canada, Juristat, *Unfounded Criminal Incidents in Canada, 2017*, by Jacob Greenland and Adam Cotter, Catalogue 85-002-X (Ottawa: Minister of Industry, 2018) at 6.

10 *Ibid* at 3.

11 *Supra* note 2 [“GSS”] at 6.


12 *Ibid*.

13 *Ibid*.

14 *Ibid*.

15 *Ibid* at 33.

16 *Ibid* at 37. 44% of sexual assaults were committed by a stranger, while 52% were committed by a friend, acquaintance or neighbour. The numbers of offenders who had a “family” or “other” relationship with the survivor were not reliable enough to be reported.



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police reports.¹⁷ The high incidence of sexual assault against women held steady between 1999 and 2014, even as the overall rate of violent crime declined.¹⁸

Gender is by no means the only aspect of identity affecting the likelihood of experiencing sexual assault. According to 2015 data, more than 40% of police-reported sexual assaults were perpetrated against youth under the age of 18.¹⁹ While violent offenses against children and youth may be reported to police more frequently than offenses against adults, this statistic undeniably reflects the devastating prevalence of sexual violence against youth,²⁰ rooted in power differences based on age and other aspects of identity.

In general, the probability of being sexually assaulted is strongly linked with marginalization, and this risk is compounded for those who experience overlapping inequalities and systemic patterns of discrimination. For example, the rate of sexual assault of Indigenous women is more than three times the rate for their non-Indigenous counterparts.²¹ Other groups at an elevated rate of sexual assault include people who are not heterosexual,²² people with mental and psychological disabilities (including

17 Canada, Juristat, *Family Violence in Canada: A Statistical Profile, 2015*, by Marta Byrczycka & Shana Conroy, Catalogue No. 85-002-X (Ottawa: Minister of Industry, 2017) [Canada, “Family Violence 2015”] at 51.

18 Holly Johnson, “Why Doesn’t She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police” (2017) 29.1 *Canadian Journal of Women and the Law* at 36-37; Canada, “GSS”, Canada, Juristat, *Criminal Victimization in Canada, 2014*, by Samuel Perreault, Catalogue No. 85-002-X (Ottawa: Minister of Industry, 2015) at 33.

19 *Supra* note 17 [Juristat, *Family Violence in Canada*] at 59.

20 *Supra* note 2 [“GSS”] at 33: Incidence rate of 71 per 1000 victims aged 15 to 24, and 32 per 1000 aged 25 to 34.

21 *Ibid* at 17: 115 incidents per 1000 population, as compared to 35 incidents per 1000 population.

22 *Ibid* at 33: Incidence rate of 102 per 1000 for gay, lesbian and bisexual people, as compared to rate of 17 per 1000 for heterosexual people. The report indicates that this rate is to be used with caution. The report does not indicate the sex or gender breakdown of gay, lesbian, and bisexual victims. Therefore, it is not possible to determine whether and to what extent women who identify as non-heterosexual are at a higher risk of victimization than the general population of Canadian women.

learning disabilities),²³ people dealing with poverty and housing insecurity,²⁴ transgender people,²⁵ and people with physical disabilities.²⁶ Based on the testimony of 93 expert witnesses, the House of Commons Standing Committee on the Status of Women concluded that the following groups of women experience particular vulnerabilities to sexualized violence: immigrant and refugee women; women of colour; sex workers; transgender women; Two-Spirit women; women in Northern, rural, and remote communities; and women facing other forms of social inequality.²⁷ Marginalization may also contribute to the likelihood of experiencing childhood sexual or physical abuse, which is statistically linked with a much higher rate of sexual assault in adulthood.²⁸

Although Statistics Canada's General Social Survey on Victimization found no significant difference between the rates of sexual assault self-reported by white people and non-Indigenous people of colour,²⁹ much research has documented the impacts of racism on people of colour when they disclose experiences of sexual assault or report these experiences through the criminal justice system.³⁰ Therefore, it is not difficult to imagine that self-reporting figures for people of colour may underestimate the sexual assaults they actually experience.

THE MOST UNDERREPORTED CRIME

The personal cost for nothing to happen was [...] too unbalanced for me, and that was why I didn't report. And this is the thing, it's like there's no guarantee that I am going to be heard and listened to and believed, and the skepticism that policing seems to have with sexual assault and all forms of unwanted sexual contact is a huge barrier to me. (Interview 4)

I didn't feel like the police would be able to do anything useful, so I thought that [reporting] might cause a lot of strife and conflict but not really have any [...] benefits. [...] I knew that the process of reporting could potentially be traumatic in itself, that I might not be believed, that there might be a lack of physical evidence. (Interview 29)

23 *Ibid* at 24: 82 per 1000.

24 *Ibid* at 35-36: Individuals who had to live temporarily with family/friends or in their car because they had nowhere else to live reported sexual assault at a rate of 56 per 1000 as compared to 18 per 1000 of those who did not. Individuals with an annual household income of less than \$20,000 experienced sexual assault at a rate of 79 per 1000, as compared to 60 per 1000 (income \$20,000 to \$59,999), 56 per 1000 (\$60,000 to \$99,000), 59 per 1000 (\$100,000 to \$139,999) and 54 per 1000 (\$140,000 to \$179,999). In Johnson's 2017 study, over half of the 36 survivors interviewed had an annual income of less than \$12,000 (See: Holly Johnson, *supra* note 18, at 45).

25 Caroline White and Joshua Goldberg, "Expanding our Understanding of Gendered Violence: Violence against Trans People and their Loved Ones" (2006) 25.1-2 *Canadian Women's Studies* at 125.

26 Karen K. Yoshida, Janice Dumont, Fran Odete, and Daria C. Lysy, "Factors Associated with Physical and Sexual Violence Among Canadian Women Living with Physical Disabilities" (2011) 32:8 *Health Care for Women International* at 769: This study surveyed 1095 Canadian women with physical disabilities and found that 30.5% had experienced sexual violence.

27 House of Commons, Standing Committee on the Status of Women, *Taking Action to End Violence Against Young Women and Girls in Canada* (March 2017) (Chair: Marilyn Gladu).

28 *Supra* note 2 ["GSS"] at 34: 36 per 1000 as compared to 15 per 1000.

29 *Ibid* at 33.

30 Jane Doe, "Who Benefits from the Sexual Assault Evidence Kit?" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada* (Ottawa: University of Ottawa Press, 2012) at 362.

In 2014 — the most recent year for which these data are available — sexual assault was the most underreported criminal offense in Canada.³¹ A mere 5% of sexual assault survivors reported their experiences to police, compared to 38% for physical assault.³² Moreover, the 5% reporting rate for sexual assault in 2014 represents a drop of more than 35% from the 2004 rate.³³ A notable exception to this trend is in the reporting of sexual assault within relationships, which appears to be on the rise: sexual assault is the only form of police-reported intimate partner violence to have increased between 2010 and 2015, rising 15% during this period.³⁴

The reasons for not reporting are varied, but certain trends are clear. Participants in the General Social Survey on Victimization indicated the following reasons they chose not to report their assaults to police, in order of frequency:³⁵

- They regarded the crime as minor and not worth reporting (71%)
- The incident was a private or personal matter and was handled informally (67%)
- They didn't want the hassle of dealing with the police (45%)
- There was a lack of evidence (43%)
- They believed that the offender wouldn't be convicted or adequately punished (40%)
- They believed that the offender did not intend to cause harm (39%)
- They feared the court process or didn't want the hassle of going to court (34%)
- They didn't want to get the offender in trouble (30%)
- They didn't want others to know about the assault (30%)
- They believed that police wouldn't have been effective (26%)
- They feared retaliation by the offender (22%)
- They believed police wouldn't have located the offender (21%)
- Their past experiences with police had been unsatisfactory (13%)
- They believed that police would be biased (13%)
- They felt that reporting would bring shame and dishonour to the family (12%)

Reporting rates — and reasons for not reporting — are not the same in all communities or for all survivors. Concerns about bias in the criminal justice system particularly impact decision-making about reporting for survivors who are marginalized based on multiple aspects of their identities. Discrimination, a major barrier to pursuing justice through the legal system, is discussed in Part 6 of this report.

31 *Supra* note 2 [“GSS”] at 3.

32 *Ibid* at 40.

33 Holly Johnson, “Why Doesn't She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police” (2017) 29.1 *Canadian Journal of Women and the Law* at 37; Canada, “GSS”, Canada, Juristat, *Criminal Victimization in Canada, 2014*, by Samuel Perreault, Catalogue No. 85-002-X (Ottawa: Minister of Industry, 2015) at 25, 40.

34 *Supra* note 17 [Juristat, *Family Violence in Canada*] at 48.

35 *Supra* note 2 [“GSS”] at 41.



In 2014 — the most recent year for which these data are available — sexual assault was the most underreported criminal offense in Canada. A mere 5% of sexual assault survivors reported their experiences to police, compared to 38% for physical assault. Moreover, the 5% reporting rate for sexual assault in 2014 represents a drop of more than 35% from the 2004 rate.

OUTCOMES OF REPORTING TO POLICE

People that partake in rape don't get really sentenced that harshly anyways, so going through [...] that whole process and me undertaking all like the mental, emotional, physical burden of that process for there not being that much of a ramification is definitely a consideration. (Interview 27)

About 95% of survivors of sexual assault choose not to report to police,³⁶ often because they believe it is unlikely that their report would lead to a conviction or other consequences for the perpetrator. Indeed, the attrition of sexual assault cases at every stage of the criminal justice system is well documented. Of the assaults reported to police between 2009 and 2014, 43% resulted in criminal charges being laid; of these, 49% went to court; of which 55% led to a conviction; of which 56% were sentenced to custody.³⁷ All told, just 11% of sexual assaults reported to police during that five-year period ultimately led to a conviction, and just 6.5% resulted in a prison sentence, with many cases dropping off at every step along the way. Of those cases that made it to trial in 2015-2016, 45% had the charges stayed or withdrawn; 44% resulted in a conviction; 9% resulted in an acquittal; and 2% had other decisions entered.³⁸ Just over half of individuals found guilty of sexual assault that year received a prison sentence.³⁹

Of the few cases that do result in charges, the overwhelming majority — 98% — are classified as “Level 1” sexual assault, the least severe category of sexual assault in the *Criminal Code*, defined as assault of a sexual nature that violated the sexual integrity of a person, and did not involve a weapon, cause bodily harm, or endanger life.⁴⁰ While the rates of all three levels of police-reported sexual assaults decreased between 2006 and 2016, Level 3 assaults — the most severe level in the *Criminal Code* — have dropped most dramatically, by 45% (compared to declines of 13% for Level 2 and 15% for Level 1).⁴¹

As a high-profile investigation by *The Globe and Mail* revealed, an alarming number of sexual assault reports across Canada never have a chance of leading to criminal charges at all because they are dismissed by police as “unfounded.”⁴² (That being said, even when a report is accepted by police as “founded,” charges are laid less than 60% of the time, according to 2017 data.⁴³) At the time of the *Globe's* investigation, the national unfounded rate was close to 20% for sexual assault cases, nearly double the rate for physical assault cases.⁴⁴ In 2017, after the *Globe's* series had garnered widespread public attention, there was a small but encouraging drop in the unfounded rate for sexual assaults,

36 *Ibid* at 40.

37 *Supra* note 4 (Statistics Canada, *From Arrest to Conviction*) at 3.

38 Canada, Statistics Canada, *Table 252-0053: Adult Criminal Courts, Number of Cases and Charges by Type of Decision*, CANSIM (database), www5.statcan.gc.ca.

39 Canada, Statistics Canada, *Table 252-0056: Adult Criminal Courts, Guilty Cases by Type of Sentence*, CANSIM (database), www5.statcan.gc.ca.

40 Canada, Juristat, *Police-reported crime statistics in Canada, 2016*, by Kathryn Keighley, Catalogue No. 85-002-X (Ottawa: Canadian Centre for Justice Statistics, 2017) at 19.

41 *Ibid* at 41.

42 Robyn Doolittle, “Unfounded: Why Police Dismiss 1 in 5 Sexual Assault Claims as Baseless”, *The Globe and Mail* (3 February 2017), theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/.

43 Canada, Statistics Canada, *Table 252-0051: Incident-Based Crime Statistics, by Detailed Violations*, CANSIM (database), www5.statcan.gc.ca.

44 *Supra* note 42 [Doolittle, “Unfounded”].

As a high-profile investigation by *The Globe and Mail* revealed, an alarming number of sexual assault reports across Canada never have a chance of leading to criminal charges at all because they are dismissed by police as “unfounded.”

down to 14% (still higher than the rate of 9% for physical assaults).⁴⁵ As a result, the number of sexual assault reports classified by police as founded increased by 13% between 2016 and 2017.⁴⁶

On the rare occasion when a sexual assault report does lead to a trial, there is no assurance that the court process or its outcome will feel just to the complainant. Many sexual assault survivors have little faith in the court process. In one study, 66% described themselves as “not very confident” or “not at all confident” in the court process, compared to just 19% who described themselves as “somewhat confident” (15%) or “very confident” (only 4%).⁴⁷ Indeed, most of the women who participated in interviews with us expressed some level of distrust of the court system — often an intense level. According to one woman:

[Speaking with a lawyer] didn't make me feel like, oh okay so the court system's on my side, like I'm not in the wrong here, finally somebody's going to support me because I'm a victim. [...] It definitely made it seem like you may be the victim and you may have had all these terrible things happen, but your life's not going to be easier by going through the legal system. (Interview 30)

This same project participant noted that she was determined not to engage in a drawn-out court process that would force her to interact at length with the abusive ex who assaulted her: “If you go through the court system it'll be years [...], and you will still have to deal with this person. It'll be years before you're really free.” Her perception that the court process can be protracted is borne out by statistics: in 2014-2015, over 40% of sexual assault cases took over one year to complete, from the time of the first court appearance to the rendering of a final verdict; over 60% took longer than eight months; and over 80% took longer than four months.⁴⁸ The median time required for completion of cases was close to a year: 310 days.⁴⁹

Navigating the criminal justice system in the aftermath of sexual assault can be a lengthy and grueling process for survivors, with no guarantee whatsoever of a satisfactory outcome.

45 *Supra* note 9 [Juristat, *Unfounded*] at 6.

46 *Ibid.*

47 Canada, Department of Justice, *A Survey of Survivors of Sexual Violence in Three Canadian Cities*, by Melissa Lindsay, Catalogue No. J2-403/2014E-PDF (Ottawa: Her Majesty the Queen in Right of Canada, 2014) [Canada, “Survivors of Sexual Violence”] at 21. These numbers include survivors of both child and adult sexual assault, and those who did and did not use the criminal justice process to respond to this violence.

48 Canada, Statistics Canada, *Table 252-0054: Adult Criminal Courts, Cases by Length of Elapsed Time*, CANSIM (database), www5.statcan.gc.ca.

49 Canada, Juristat, *Adult Criminal Court Statistics in Canada, 2014/2015*, by Ashley Maxwell, Catalogue No. 85-002-X (Ottawa: Minister of Industry, 2017) at 18.



PART 4

Reasons for reporting sexual assault to police

A mere 5% of sexual assault survivors in Canada report to police. However, this should not be taken to indicate that the remaining 95% do not perceive benefits in reporting, or contemplate reporting as an option, even if they ultimately elect not to pursue it.

A MERE 5% OF SEXUAL ASSAULT SURVIVORS in Canada report to police.⁵⁰ However, this should not be taken to indicate that the remaining 95% do not perceive benefits in reporting, or contemplate reporting as an option, even if they ultimately elect not to pursue it. The women who participated in our project identified several factors that made them feel somewhat encouraged to report sexual assault to police, although most ultimately pursued a different course of action. The considerations they shared with us included concern for the safety of others; desire to hold perpetrators accountable; self-empowerment; validation of their experiences; and faith in the legal system to deliver justice.

“JUST TO PROTECT OTHER WOMEN”

Had I known that I would have been heard, trusted, believed, I could have made that effort just to protect other women. Because that's at the end of the day all I care about. It's not about some sense of justice for me, like he did what he did and [...] there's nothing that's undoing that, but it's stopping it from happening again. And it's also alerting other guys that women are going to report you if you do this so that it sends a message to other guys that they shouldn't do this. (Interview 4)

For this survivor, a desire for the safety of others and the prevention of future violence by the perpetrator was a compelling consideration in her decision about whether to report to police. A vast body of research indicates that she is not alone in this regard: survivors who do choose to report to police often cite a sense of obligation to protect others from violence as an important reason for their decision. This was the most commonly cited motivating factor

⁵⁰ *Supra* note 2 [“GSS”] at 40.

for seeking criminal justice system involvement in Holly Johnson's study of women who reported sexual assault to Ottawa police,⁵¹ as well as in Allyson Clarke's research with women survivors in Toronto who testified against the perpetrator in a trial or preliminary hearing.⁵² Additionally, several of the Canadian women interviewed by Jane Doe about undergoing a forensic medical exam, also known as a rape kit, "explained that regardless of any negative feelings about the kit, undergoing it made them feel that at least they were doing *something*, including protecting other women [emphasis in the original]."⁵³ Compassionate concern for future or potential victims is also a common theme expressed by Canadian sexual assault survivors in their victim impact statements (written accounts to the court of the psychological, physical, and financial harms caused by the offense).⁵⁴

One participant in this project recounted that her concern for the safety of other women intensified because of her perception that the perpetrator, a white man, might be targeting women based on their racialization: "I had seen [the perpetrator] with a woman and I was like oh my God, do I run up to you to warn you? [...] And then to add to the layer, I have noticed that the women he has dated are all women of colour" (Interview 15). She chose to complete a third-party report (an anonymous report submitted to police by a community-based victim services worker) partly because she felt motivated to protect other women of colour.

Another woman, who works with children and was assaulted by a colleague, explained that her main motivation for taking action was to protect vulnerable youth: "When I saw that he was doing bad things to kids too, [...] for some reason it was more important. [...] I said, okay, I'll file a complaint, and so I did" (Interview 11).

At times, the social expectation that survivors have a duty to protect others from harm by contacting police contributes to feelings of guilt if they ultimately choose not to report. One woman recalled taking a post-secondary course where one of the key messages was that sexual assault survivors "owe it to the other women [to report], that if you want to protect other women you should report this so that this person doesn't do any more harm to other women" (Interview 16). She described the inner conflict she experienced as a result: "I felt a sudden surge of energy and motivation. Felt selfish as well because I didn't report, and guilty."

51 Holly Johnson, "Why Doesn't She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police" (2017) 29.1 *Canadian Journal of Women and the Law* at 47.

52 Allyson Clarke, *In the Eyes of the Law: Survivor Experiences and Image Construction within Sexual Assault Cases* (PhD Thesis, University of Toronto, Ontario Institute for Studies in Education, 2014) [unpublished] at 59.

53 *Supra* note 30 [Jane Doe, "Who Benefits"] at 378.

54 Karen-Lee Miller, "Relational Caring: The Use of the Victim Impact Statement by Sexually Assaulted Women" (2014) 29:5 *Violence & Victims* at 797.

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While some survivors feel empowered by their desire to try to prevent the perpetrator from offending against others, the social expectation that survivors can and should prevent future violence by reporting to police can exact a heavy emotional toll.

Another woman described feeling regret over her decision not to report when she considered the possibility that the perpetrator could have assaulted someone else: “I wish I had done something about it because I read about a similar incident happening to somebody else and I wondered if it was the same person [who perpetrated the assault]” (Interview 25). While some survivors feel empowered by their desire to try to prevent the perpetrator from offending against others, the social expectation that survivors can and should prevent future violence by reporting to police can exact a heavy emotional toll.

Furthermore, survivors must consider their desire to prevent the perpetrator from harming others alongside many other pressing concerns — sometimes including life-and-death concerns for their own safety. One project participant explained that her concern for public safety led to conflicted feelings about her decision not to report, but that ultimately she needed to prioritize her own safety:

Am I going to be responsible for other sexual assaults because I haven't reported a perpetrator? But you know like my safety was number one, and I was just too afraid of it not being successful and the repercussions that would happen if I attempted to bring this forward [if it] was unsuccessful. That overweighed any sort of like, 'Okay, I care about the general public,' like I really just was in a point where I had to care about my own safety first. (Interview 30)

HOLDING PERPETRATORS ACCOUNTABLE

One woman who shared her story explained that the possibility that contacting police would lead to consequences for the perpetrator motivated her, although she ultimately decided not to report: “I felt empowered,” she observed, “like I [...] can do something to make that guy pay” (Interview 16).

Other research confirms that holding perpetrators accountable is an important consideration in many survivors’ decision-making about reporting. Thirty-nine percent of the women who participated in Johnson’s study indicated that they decided to report sexual assault to police partly because they wanted perpetrators to be held responsible and told that their actions were wrong, although none of the women surveyed cited this as their sole reason for reporting.⁵⁵ Similarly, several participants in Clarke’s study reported that they chose to report to police partly because they knew the assault was wrong and wanted the perpetrator to be held accountable and to face consequences.⁵⁶

55 *Supra* note 51 [Johnson] at 47.

56 *Supra* note 52 [Clarke] at 59.

“TO TAKE THE POWER BACK”

It doesn't have to be a violent rape that ends up in the news for it to have a police file number and an investigation, and I wish I hadn't blamed myself enough to talk myself out of [reporting] because it's empowering being able to say out loud that this happened to me and that I didn't play any part in it apart from just happening to be there. (Interview 25)

For some survivors, reporting sexual assault to police can contribute to personal empowerment and can be a strategy to cope with the loss of power they experienced as a result of the assault. In the words of one participant, “I feel like whoever it has happened to deserves to know that they've done something about it to take the power back, because that's how I felt, I felt powerless” (Interview 25).

Reporting sexual assault has value and significance for some survivors because it creates a sense of containment and closure around the harm caused by the assault. One woman we spoke with, who submitted a third-party (anonymous) report to police, explained, “I just didn't want [the assault] to [...] be part of this new relationship. So I kind of felt like [reporting] was tying the loose ends, so to speak” (Interview 15).

For this same woman, the third-party reporting process was empowering because it validated her experience and the seriousness of the violence committed by the perpetrator: “It made it feel legit, [...] it just like made it look really like this is serious shit that I'm talking about” (Interview 15). She also found it advantageous to have her experience in writing to reduce the need to speak repeatedly about the assault: “There's a definite upside to having something tangible with you that helps in times of where you don't want to talk about it at all,” she explained.

“IT WAS VERY MUCH JUST PROTECTION THAT I WANTED”

Several women who participated in this project explained that they chose to contact police because their safety was in immediate jeopardy, although some also indicated that they lacked trust in police. For example, one woman shared that she initially felt disinclined to report, partly because she was “part of a community that had a strong negative bias about the police,” but that she eventually changed her mind when she “started to feel like I wasn't safe” (Interview 29). Another woman contacted police only after the perpetrator repeatedly threatened her and made her feel that it was dangerous for her to continue going to work (Interview 17). Yet another woman made the decision to report only after the perpetrator stalked her for a year, although she simultaneously believed that “the system's screwed up” and that her report “wasn't going to go anywhere other than probably rehashing, more like breaking open the wounds for me” (Interview 10).

One survivor explained that her fear for her physical safety after being assaulted was so intense that she never felt any hesitation about seeking help from the police:

As soon as he was gone, because I felt unsafe, I wanted to have police around me because it happened so close to my home that I was scared to go back to my house and be followed and not have police around. [...] I think the nature of the assault was so abrupt and I guess violent, so [...] I

While many participants in this project emphasized physical safety issues as a factor in their decision-making about reporting, some also shared concerns about their own or their family's psychological safety.

was very scared, so [...] I just didn't think anything over it. It was very much just protection that I wanted. (Interview 28)

Some women who feel clear about their intention not to report sexual assault can nonetheless envision life-and-death circumstances under which they might contact police. One woman we spoke with, who expressed "a big distrust for the criminal justice system," explained that she could imagine herself seeking protection from police only as a last-resort survival strategy:

[If] I thought there was a chance I was going to die and my kids were going to die, then I would have reported to protect myself and my kids. [...] Like I believed that the system as it exists can save me when I'm in imminent death situations, but I don't necessarily believe that it's going to be restorative or good. (Interview 6)

While many participants in this project emphasized physical safety issues as a factor in their decision-making about reporting, some also shared concerns about their own or their family's psychological safety. For one woman, who did ultimately contact police, a key consideration was her worry that her daughter's exposure to the perpetrator's escalating violence would "have such a huge impact on her personality, on her emotional well-being continually" (Interview 18, through an interpreter).

"FAITH THE LAW'S THERE TO SUPPORT ME"

I don't belong to any minority groups and have a great deal of privilege. I also had a great deal of faith the law's there to support me, and I knew that it doesn't serve everyone equally, but I really thought [...] that I would have a chance. So as long as I knew that I had been wronged, [reporting] seemed like the logical thing to do. (Interview 22)

For this participant, reporting to police "seemed like the logical thing to do" because she believed that the criminal justice system would offer a satisfactory outcome (at least to her, as a relatively privileged person). Later, she concluded that her initial optimism was due to "having had very little experience in the justice system." Recalling a conversation with a support worker who advised her that the criminal justice system process could be traumatizing, she shared the following reflections:

I mean now I certainly feel like it was fair warning. At the time, I found it to be really strange. I thought well, oh my gosh, no this is straightforward, this happens and then you do this, and then these proceedings occur. [...] And now in retrospect I understand why they took that stance, and I think they [...] did a great job providing their services.

This woman's view of the legal system changed when the outcomes of reporting fell far short of her expectations. The next sections of this report will examine some of the factors that stand in the way of pursuing and obtaining justice through the legal system for many survivors of sexual assault.

Socio-cultural barriers to reporting

MANY PROJECT PARTICIPANTS HIGHLIGHTED the impacts of cultural attitudes that minimize the seriousness of sexual assault and that blame, shame, doubt, and stigmatize survivors. Surrounded by such attitudes, some survivors hesitate to name their experience as sexual assault, to discuss it with others, or to seek assistance — legal or otherwise.

“THIS KIND OF GIRL THAT WAS ASKING FOR IT”

I just kind of feel like since I went on a date with him, people would, yeah, I guess blame me for it. [...] I didn't want to have to explain myself to those people that I was really close to and like, you know, be viewed as like this [...] kind of girl that was asking for it. (Interview 13)

I think there's a lot of stigma with coming forward about a sexual assault. (Interview 30)

“Asking for it.” These three words blame, shame, and stigmatize survivors of sexual assault. They misplace the responsibility for violence, with profound consequences. These words, and others like them (“What were you wearing?” “Why did you go back to his place?” “Why didn't you fight back?”), often create barriers to disclosing sexual assault to anyone or seeking support of any kind — let alone reporting to police.

The culturally prevalent notion that there can be such a thing as “asking for it” is sometimes internalized by survivors. A poll conducted by Ipsos/Global found that 29% of survivors who did not report the assault to police blamed themselves for the assault.⁵⁷ Even as many survivors consciously reject victim-blaming, they may find it difficult to escape the socially ingrained feeling that

⁵⁷ Anna Mehler Paperny, “Why Don't Women Report Rape? Because Most Get No Justice When They Do,” *Global News* (23 February 2015), globalnews.ca/news/1845136/why-dont-women-report-rape-because-most-get-no-justice-when-they-do/.

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they should have done something differently and that they are somehow at fault. One woman who participated in this project described her feeling of guilt at not preventing her own assault and her simultaneous knowledge that the violence perpetrated against her was wrong:

The other part I think for me was guilt that I didn't do anything while it was happening. I knew it was wrong the moment it started and I knew I deserved somebody to do something about it, but I felt like if I didn't do anything about it, why would somebody else?
(Interview 25)

The shame surrounding sexual assault can pressure survivors to deal with it privately rather than seek external support. One interview participant, who was sexually assaulted by her husband, described feeling intense pressure not to let anyone find out about the assault except “very close family” (Interview 18). She explained that her culture views sexual assault as a “family problem” to be resolved discreetly, not a problem to be addressed through the criminal justice system.

Taboos surrounding sex can also intensify stigma for sexual assault survivors; in the words of one woman who shared her story, “In a lot of like conservative social circles [. . .] [they] don't talk about sex as an everyday kind of thing [. . .]. It made me feel kind of like dirty, and I didn't want people to feel sorry for me” (Interview 27).

The intimate nature of sexual assault distinguishes it from many other criminal offenses. Jennifer O'Neil, a self-identified victim of sexual assault with complex PTSD, put it this way in her testimony to Ontario's Select Committee on Sexual Violence and Harassment: “Sexual violence is different than having your house broken into, because it's your body and there's so much shame.”⁵⁸ O'Neil also remarked that “it just seems that we've somehow come to believe — in this system, on a very deep level — that it's characteristics of the complainant that lead to sexual assault.”⁵⁹

Such victim-blaming can have a gaslighting effect, undermining survivors' confidence in their own perceptions. In the words of one woman who participated in this project, “The biggest thing was I didn't even trust my own instincts on what happened. [. . .] I felt icky but I felt like I was making things up in my head or I was reading stuff that didn't exist” (Interview 4). She explicitly linked her feelings of “self-doubt” to the cultural tendency to not take women's experiences seriously:

When people don't believe you [. . .], it makes me feel less-than. It makes me feel [. . .] undermined in my own reality, [. . .] and it also makes me have to defend myself and I've done nothing wrong. [. . .] The personal cost is the self-doubt and it's the feeling the need to — because, you know, the way that I walk through the world, I'm always having to, as a woman [. . .] — make sure that I am beyond reproach, that I'm fitting that narrow little victim box so that if something goes bad, you know, oh I had my whistle or I didn't go out past 10 or whatever it is that I'm supposed to do in order to avoid, you know, being a victim or being a target [. . .]. It's bad enough that I have to live with it, but then to have to defend myself or defend my reality or defend my perspective, that's the personal cost. (Interview 4)

58 Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 41st Parl, 1st Sess, No 18 (21 May 2015) at SV-458.

59 *Ibid.*

The culture of victim-blaming can carry deep costs not only for survivors' self-perceptions but also for their relationships with others. Significantly, 18% of respondents in the Ipsos/Global poll indicated that they chose not to report sexual assault to police in part due to concerns about impacts on their future relationships,⁶⁰ perhaps because of a belief that future partners might regard them as damaged or blameworthy.

Victim-blaming and stigma take a particularly heavy toll on marginalized women. For example, women engaged in sex work have reported that discriminatory assumptions about their occupation often expose them to intense judgments and blame if they disclose sexual assault or report it to the police.⁶¹ While many survivors experience criticism and dismissal when they speak out about their sexual assaults, such attacks can be particularly relentless for survivors whose lived realities and personhood have already been undermined or erased by the dominant culture.

“NO, THAT DOESN'T SOUND LIKE SOMETHING THAT HE WOULD DO”

Although research shows that false allegations of sexual assault are very rare — occurring at a rate of 2% to 10%,⁶² similar to the rate for other offenses⁶³ — there is a culturally entrenched skepticism about sexual assault that can deter reporting⁶⁴ and that does not seem to apply to other crimes. While the fear of not being taken seriously by the police and other criminal justice system actors was one of the most commonly cited barriers to reporting among participants in this project, skeptical reactions from family, friends, acquaintances, and community members can be equally hurtful.

One woman who participated in this project described disclosing her assault to people in her life who “just said no, that doesn't sound like that's what happened”; the result, she said, “is you stop believing yourself eventually” (Interview 22). The people she opened up to defended the perpetrator, outright rejecting the possibility that he could be capable of such a thing: “they told me like no, that doesn't sound like something that he would do, and they [...] came up with excuses and with reasons for what had happened.”

Another woman described a similar experience; although she was supported by some of the people she disclosed to, several of her female acquaintances reacted

60 *Supra* note 57 [Mehler Paperny].

61 Victoria Kar-Yan Sit, *Sexual Assault and Formal Service Use: Understanding Help-Seeking Among Women Living in Poverty* (MA Thesis, University of Toronto, Ontario Institute for Studies in Education, 2015) [unpublished] at 59.

62 *Supra* note 5 [Lisak et al.] at 1331.

63 *Supra* note 6 [Government of Alberta] at 16.

64 *Supra* note 5 [Lisak et al.] at 1331.



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Several women who participated in this project indicated that the possibility of being disbelieved was a major factor in their decision not to report their sexual assault to police. As one woman explained, “I see that a lot in the media [...], a woman says this horrible thing has happened to me, and everybody’s like, oh well, she’s just doing it for the publicity.”

with incredulity: “It was like, ‘Are you sure?’ It’s like, ‘How could you say that? He’s like this, he’s like this, he’s like this, he’s never been like that to me.’ Like they just like make a laundry list of [...] all of his redeeming qualities” (Interview 15). These acquaintances sent her harassing messages after her disclosure and pretended not to know her when they saw her in public.

One participant in this project recounted that she was yelled at by the perpetrator’s mother, who not only disbelieved her but also tried to dissuade her from speaking about the assault to anyone else. The verbal attack included the following accusations: “I put everything out of proportion, [...] that I wrongfully accused my husband”; “this is not a big deal, you exaggerate, this is just nothing, like maybe he was just joking around”; “there’s no point even to talk about it because people would ignore it” (Interview 18, through an interpreter). This example illustrates that failing to take survivors’ accounts seriously and discouraging them from reporting are closely connected — and that invalidating a survivor’s disclosure can even be an intentional strategy to deter reporting.

Indeed, several women who participated in this project indicated that the possibility of being disbelieved was a major factor in their decision not to report their sexual assault to police. As one woman explained, “I see that a lot in the media [...], a woman says this horrible thing has happened to me, and everybody’s like, oh well, she’s just doing it for the publicity” (Interview 4). This same woman anticipated that “if I waited a couple of weeks [to report] it would have been misconstrued as, you know, ‘angry feminist,’” and that her report would be disbelieved based on myths, namely: “if it had been a real assault I would have known it and I would have done something right away and that it’s being done for other reasons.” Another woman noted that “the disbelief that I was getting [...] really intensified” when discussing the involvement of

alcohol in her assault; people assumed that she must be misremembering what had happened, when in fact she remembered “every single thing” (Interview 22). Yet another woman feared that people in her social circle would discount her story based on the myth that attractive men don’t ‘need’ to commit sexual assault (Interview 13).

Again, the threat of being disbelieved is particularly severe for women who are marginalized. Participants in this project observed that survivors’ accounts are more likely to be regarded with suspicion if they use drugs (Interview 10); are survivors of relationship violence (Interview 10); are racialized (Interviews 13 and 15); have low incomes (Interview 15); have been charged with criminal offenses in the past (Interview 6); or are single mothers (Interview 15). In addition, some participants felt that survivors’ credibility was likely to be judged unfairly based on their appearance (Interviews 13 and 23) and occupation (Interview 13). When survivors are subjected to intersecting forms of discrimination based on multiple aspects of their identity, they may be met with even more intense skepticism. Furthermore, a perpetrator’s relatively privileged social position — for example, a white perpetrator’s racial privilege over the woman of colour he assaulted — can predispose people to believe the perpetrator’s version of the story rather than the survivor’s. In the words of one woman, “When it comes to race, it’s not a level playing field” (Interview 15). She explained that as a “single mother, low income, woman of colour,” her version of events was less readily accepted than the perpetrator’s, who is white.

“IT’S SO NORMALIZED IT’S NOT EVEN CONSIDERED A BIG DEAL”

The tendency not to take survivors seriously can take more than one form. Sometimes, people accept a survivor’s description of the perpetrator’s actions but resist acknowledging that those actions constitute sexual assault. The cultural normalization of sexual assault can make it hard for survivors to find validation that what happened to them is indeed a serious form of violence — not to mention a criminal offense.

“When I was obviously upset about [multiple workplace sexual assaults], people told me that I should take it as a compliment,” recalled one woman who participated in our project (Interview 27). She observed that sexual assault was normalized by the “masculine culture” of her work environment to the extent that, for women employees, it was “almost like a rite of passage, you know, like you were tested, you asserted yourself, and now you’re like part of the pack.” When her coworkers minimized and even joked about the violence she had experienced, she felt discouraged from reporting the assault to law enforcement or taking further action within her workplace: “It definitely made me feel that if I did try to say anything about it, that it wouldn’t be understood by anybody and that it would have just been an uphill battle to have to fight through.”

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Attitudes that minimize and dismiss sexual assault and sexual harassment may be particularly prevalent in male-dominated industries, where the “boys’ club mentality” predominates (Interview 27), but they are not limited to such environments. As another participant remarked, “It’s just something that’s very normalized in society; it’s like yes of course men slap women’s asses, they do that all the time. [...] It’s so normalized it’s not even considered a big deal” (Interview 21). She observed that children and youth in our society are frequently exposed to TV and movies that depict non-consensual sexual touching as a “normal thing”—not as sexual assault. One consequence of this cultural minimization of violence is that “We just don’t expect it to be taken seriously by anybody that you would mention this to.” This sentiment was echoed by another woman: “Unless it’s like a stranger jumping out of the bush, nobody really cares so much about these incidents,” she remarked (Interview 4).

As a result of this cultural attitude, some survivors internalize the view that sexual assault is not ‘a big deal’ and may therefore be less inclined to contact police. According to Statistics Canada’s 2014 data, many survivors chose not to report partly because of their perception that “the crime was minor and not worth taking the time to report” (71%),⁶⁵ the issue was a private or personal matter (67%),⁶⁶ or no harm was intended (39%).⁶⁷ As one participant in this project put it, “It didn’t even occur to me to be [...] a thing that was serious enough or severe enough to warrant talking to police about” (Interview 21).

For some survivors, it can take time to recognize what happened to them as violence. One woman who participated in this project recalled that, at first, “I wasn’t really sure that what had happened was actually wrong,” even though “on many levels my body was reacting like it was very wrong” (Interview 22). It may be particularly difficult to name an experience as sexual assault when it does not align with cultural stereotypes about what sexual assault looks like. For example, one woman we spoke with reflected that “because the rape happened within the context of a relationship,” she didn’t immediately think of it as rape; it was only later, “through much therapy,” that she came to the realization that “oh my God, that was not consensual” (Interview 15). Another woman, who was also assaulted in the context of a relationship, recalled, “I wasn’t even aware at the time that the stuff he would do to me was considered assault. It was kind of my view was I had entered into a contract and therefore he was allowed to do what he wanted” (Interview 24). Yet another woman pointed out the pervasiveness of the myth that, within relationships, there is “almost a grey area of consent, like well he’s your partner so maybe it’s okay that that happened because you guys were in a relationship and [...] these kind of things happen in relationships” (Interview 27). “These things happen”: a normalizing, minimizing, and profoundly dangerous cultural attitude.

Deeply rooted cultural myths about consent — for example, that consent is not needed in relationships, or that consent to one sexual activity implies consent to all activities — can contribute to the difficulty in labelling an experience as sexual assault. For instance, one woman we spoke with said that she thought that her experience “didn’t count as a sexual assault” partly because “I gave my consent initially but then when things escalated I didn’t say no, I didn’t stop. So then I didn’t know. Later on, when I talked to other counsellors, they said consent’s supposed to be ongoing” (Interview 16).

65 *Supra* note 2 [“GSS”] at 41: This belief was also cited by victims of spousal violence (both physical and sexual) in 28% of cases not reported to police.

66 *Ibid.* This was the most commonly cited reason that victims of spousal (physical or sexual) violence did not report to the police.

67 *Ibid.*



As with most barriers to reporting, the cultural tendency to minimize and deny sexual assault can impact marginalized women especially deeply.

As with most barriers to reporting, the cultural tendency to minimize and deny sexual assault can impact marginalized women especially deeply. For example, some sexual assault survivors living in poverty have described sexual assault as something that “just happens” as a result of being homeless, living in dangerous conditions, and/or engaging in street-level sex work.⁶⁸ Their view reflects the prevalence of the violence impacting them, as well as society’s normalization and rationalization of the harms they experience.

Given the grossly disproportionate frequency and severity of violence against Indigenous women and girls, some Indigenous women report that they are used to sexual assault or have come to expect it, and that they do not think of it as violence.⁶⁹ According to legal scholar Patricia Barkaskas (Métis) and geographer and Indigenous Studies scholar Sarah Hunt (Kwagiulth),

Indigenous survivors face particular barriers to naming their experience and being validated due to the silencing and normalizing of sexual violence in many Indigenous communities as well as societal discrimination which delegitimizes Indigenous peoples’ experiences as valid.⁷⁰

Even before survivors consider whether to report sexual assault to police, they may have to contend with minimizing and victim-blaming beliefs about sexual assault in their workplaces, their social circles, their families, the media, and society more broadly. Understandably, many survivors worry about encountering these widespread beliefs in the criminal justice system as well. The next sections of this report focus on how survivors’ views of the justice system and their concerns about its process — from police report to trial — inform their decision-making after being sexually assaulted.

68 *Supra* note 61 [Sit] at 52.

69 Barb MacQuarrie, “Needs Assessment: A Study to Identify and Address Systemic and Service Barriers Impacting Particularly At-Risk and Marginalized Women and Youth who have Experienced Sexual Violence in Sarnia-Lambton” (2015) Centre for Research & Education on Violence Against Women and Children at 29.

70 Patricia Barkaskas and Sarah Hunt, *Access to Justice for Indigenous Adult Victims of Sexual Assault*, For the Department of Justice (October 2017), academia.edu/36438213/Access_to_Justice_for_Indigenous_Adult_Victims_of_Sexual_Assault at 6.

POLICE

PART 6

Beliefs, values, and fears about the justice system

In many cases, the women's misgivings about the system — often based on past experiences — contributed to their decision not to report sexual assault to the police.

The more I learned about the [criminal justice] system and the more I experienced it, [...] I saw it really does do more harm than good for everyone, I think. (Interview 6)

If you look at the news, they're always rehabilitating these sexual predators, letting them out in community and not telling anyone where they are. [...] I just don't think it works. Then we hear they're re-offending and gone missing, even. [...] I think the system's screwed up. (Interview 10)

SEVERAL OF THE WOMEN WE SPOKE TO during this project critiqued the foundations of the criminal justice system: its basic assumptions, its aims, its processes, and its model of justice. In many cases, their misgivings about the system — often based on past experiences — contributed to their decision not to report sexual assault to the police. These women expressed concerns about the legal system's biases, its treatment of perpetrators, and the types of remedies it can offer.

“BAD EXPERIENCES WITH COPS”

As a young teenager I went to police, and about stuff that was much more serious, and nothing happened from it. (Interview 4)

What you hear with other women's experiences with the police and how unwilling they are, I guess, to really investigate, arrest, charge, forward charges, whatever, for anything, it's like they just don't want to do it, so if they have a reason not to, they'll come up with one. (Interview 19)

“What you hear with other women’s experiences with the police and how unwilling they are, I guess, to really investigate, arrest, charge, forward charges, whatever, for anything, it’s like they just don’t want to do it, so if they have a reason not to, they’ll come up with one.”

I have in the past been sexually harassed by cops or had bad experiences with cops [...], so I see them too sometimes as more of an unsafe, threatening place. (Interview 6)

[A support worker] said that the small-town RCMP tended to be harder to deal with than the VPD and that [...] they didn’t have a specialized domestic violence officers and they tended to have less training. [...] My experience with the VPD was not great, so the idea of going to the second police department that was worse than the first one just didn’t sit well. (Interview 29)

Research suggests that these survivors are not alone in lacking trust in the police: 53% of sexual assault survivors surveyed by Melissa Lindsay in three Canadian cities indicated that they were not very confident or not at all confident in police,⁷¹ as did fully 67% in the Northwest Territories.⁷² In many cases, such attitudes stem from previous police failures to provide effective service, either to the survivors themselves or to people they know. Unsatisfactory past experience with police was cited as a reason for not reporting sexual assault by 13% of respondents in Statistics Canada’s 2014 General Social Survey.⁷³ Similarly, in Lindsay’s study in three Canadian cities, 10% of participants who chose not to report to police cited a previous bad experience as a reason,⁷⁴ while 15% did so in a similar study she conducted in the Northwest Territories.⁷⁵

Furthermore, many women who have reported sexual assault to police say that they would refrain from doing so in the future. For example, six of the eight survivors interviewed by Clarke about the experience of testifying at a trial or preliminary hearing indicated they would not pursue legal recourse if assaulted again.⁷⁶

Some women who participated in our project recounted incidents of serious mistreatment by police. Take, for example, the following description of physical violence, verbal abuse, and other severe police misconduct:

I mean I’ve had other experiences where [...] a man was being aggressive and violent and unsafe towards me [...], but then once the police got called, I’m the one who ended up with the assault charge because I hit him in trying to defend myself and get away [...]. That put a kibosh on my [...]

71 *Supra* note 41 [DOJ, *Three Canadian Cities*] at 21. These numbers reflect the feelings of survivors of both adult and childhood sexual assault, whether or not they chose to report to police.

72 Canada, Department of Justice, *A Survey of Survivors of Sexual Violence in the Northwest Territories*, by Melissa Lindsay, Catalogue No. J2-404/2014E-PDF (Ottawa: Her Majesty the Queen in Right of Canada, 2014) at 17. In the Northwest Territories, the numbers were 7% very confident, 16% fairly confident, 48% not very confident, 19% not confident at all, and 10% “don’t know.”

73 *Supra* note 2 [“GSS”] at 41.

74 *Supra* note 41 [DOJ, *Three Canadian Cities*] at 13.

75 *Ibid* at 12.

76 *Supra* note 52 [Clarke] at 129.

career basically. So just the fact that the system can even do that, that a woman can be in danger and can end up with an assault charge and the guy can get nothing, is kind of mind-boggling to me. So that's one example I have of why I think the system's broken. Another time too I had like five police officers come to arrest me and like sit on top of me and I mean I'm, I was very small at the time, I was like 5'2" and 100 pounds, and had five male officers on top of you, and they were calling me cunt and all this other kind of stuff too. So that to me is triggering trauma as well. As well as just, you know, regular things like I have been arrested too and just gang strip searched and that kind of stuff too. (Interview 6)

Another woman who participated in this project, who is of colour, remarked that discrimination based on race, appearance, and occupation affects "how [police] view me, for sure" and described several incidents where she felt unfairly targeted:

I feel like [...] all my interactions with police have always been kind of negative, like they always pull me over for, you know, driving too close to the line or, you know, suspicious reports of [...] people drinking and driving. [...] They always looked at me like a suspect, so why would I turn to them for help? [...] So I just didn't really see that as, you know, productive going to them. (Interview 13)

It is understandable that reporting to police is not regarded as an appealing option by many sexual assault survivors whose past experiences with law enforcement have been disappointing and even traumatizing. Marginalized women are particularly likely to have suffered substandard treatment — including overt or implicit discrimination — by police and other justice system actors.

"A LOT OF THESE PREJUDICES WOULD WORK AGAINST ME"

I'm also a woman of colour, and [...] I never thought [reporting to police] would be helpful or that I would be treated fairly. [...] I've heard a lot of things about Aboriginal women who have, you know, tried to reach out about different assaults in the Vancouver area and just like what little support they've been getting. (Interview 30)

I didn't feel like [police would regard me as] credible, like 'Hey, I'm this like rich white lady who's coming here to say something has happened and the police are going to take me seriously.' Like no, I'm someone who's basically run away from their [...] abusive family, and culturally like it's, I just felt like a lot of these prejudices would work against me, especially with the police. (Interview 30)

I didn't want [the perpetrator] to deal with worse repercussions because of his race, because it's something that I deal with as well. [...] I think if he was white I wouldn't think that, you know. [...] Maybe the blame would be put on me more [if the perpetrator were white], you know what I mean? (Interview 13)

Several participants in this project explained that their awareness of bias in the criminal justice system contributed to their decision not to contact police after being assaulted. Research shows that they are not alone: for many survivors of sexual assault, discrimination is a significant impediment to seeking and obtaining justice through the legal system.

For example, Indigenous women, who experience grossly disproportionate levels of violence,⁷⁷ often don't believe that police will provide the protection they require⁷⁸ and are significantly less likely than their non-Indigenous counterparts to state that the police are doing a good job of "enforcing the laws" and "treating people fairly."⁷⁹ Their concerns are unsurprising given the frequency of media reports about police officers sexually and physically assaulting Indigenous women,⁸⁰ neglecting investigations of disappearances and violent crimes where Indigenous women are the victims,⁸¹ and even arresting and jailing Indigenous women when they report that they have been sexually assaulted.⁸² As Barkaskas and Hunt have observed, police violence against Indigenous women and girls cannot "be ignored as a root cause of fear and mistrust. A person who has been physically and/or sexually assaulted by the police cannot be expected to trust that they would be able to rely on police for assistance in the future."⁸³ Racism and misogyny may result in sexually objectifying and dehumanizing treatment of Indigenous women and girls in the criminal justice system.⁸⁴ Additionally, some Indigenous women fear that contacting the police to report a sexual assault would trigger involvement of the child protection system and the apprehension of their children⁸⁵ (a worry also shared by two women who participated in this project, one of them Indigenous and the other white). Understandably, then, some Indigenous women view

For many survivors of sexual assault, discrimination is a significant impediment to seeking and obtaining justice through the legal system.

- 77 John Borrows, "Aboriginal and Treaty Rights and Violence against Women" (2012) 50.3 *Osgoode Hall Law Journal* at 699.
- 78 Louisa Russell, "What Women Need Now from Police and Prosecutors" (2010) 28:1 *Canadian Business & Current Affairs Database* at 29.
- 79 Canada, Juristat, *Violent Victimization of Aboriginal Women in the Canadian Provinces, 2009*, by Shannon Brennan, Catalogue No. 85-002-X (Ottawa: Minister of Industry, 2011).
- 80 For example, see Shari Narine, "Missing and murdered women's commission will probe police behaviour," (22 November 2016), *Windspeaker*, windspeaker.com/news/windspeaker-news/missing-and-murdered-womens-commission-will-probe-police-behaviour/; David P. Ball, "Human Rights Watch Details Alleged Abuse, Rape, of Aboriginal Women by RCMP Officers in British Columbia" (14 February 2013), *Indian Country Today*, <https://indiancountrymedianetwork.com/news/first-nations/human-rights-watch-details-alleged-abuse-rape-of-aboriginal-women-by-rcmp-officers-in-british-columbia/>; and Benjamin Singler, "37 cases of alleged police abuse in Val-d'Or handed over to Crown" (14 November 2016) *CBC News*, cbc.ca/news/canada/montreal/val-dor-abuse-surete-du-quebec-montreal-police-1.3849786
- 81 For example, see Kathleen Martens and Tamara Pimentel, "Not only the RCMP failed you ... it's Canada' Audette tells family at inquiry" (21 October 2018), *APTN News*, aptnnews.ca/2017/10/21/not-only-the-rcmp-failed-you-its-canada-audette-tells-family-at-inquiry/
- 82 For example, see CBC, "Jailing of Edmonton sex assault victim a 'call to action': Independent investigator blasts justice system for its treatment of Angela Cardinal" (23 February 2018), *CBC News*, cbc.ca/news/canada/edmonton/angela-cardinal-justice-alberta-jailed-victim-1.4547990; Kenneth Jackson and Keith Laboucan, "Bloodied First Nations woman claim she was raped but Edmonton police arrest her instead" (23 February 2013), *APTN News*, aptnnews.ca/2013/02/23/bloodied-first-nation-woman-claims-she-was-raped-but-edmonton-police-arrest-her-instead/
- 83 *Supra* note 70 [Barkaskas and Hunt] at 24.
- 84 Tracey Lindberg, Priscilla Campeau, and Maria Campbell, "Indigenous Women and Sexual Assault in Canada" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012).
- 85 *Supra* note 69 [MacQuarrie] at 31.



As one woman of colour who participated in this project explained, “I felt like if I was to report [the perpetrator, a man of colour] and him get treated worse because of his race, I don’t feel like that’s justice.”

Canada’s criminal justice system as an extension of colonial violence.⁸⁶ Some perceive a glaring gap between the legal system’s treatment of sexual assault committed against Indigenous women and girls and the understandings of these forms of violence in Indigenous law and by Indigenous communities.⁸⁷

Non-Indigenous people of colour are also likely to consider the track record of police and the courts when deciding whether to engage with the criminal justice system after experiencing sexual assault.⁸⁸ They are often well aware of criticisms of police handling of crisis situations involving members of their communities.⁸⁹ As one woman of colour who participated in this project explained, “I felt like if I was to report [the perpetrator, a man of colour] and him get treated worse because of his race, I don’t feel like that’s justice” (Interview 13).

Racism can lead to unjust treatment not only of the accused but also of the complainant in sexual assault cases. One participant in this project, a woman of colour, said she was not offered water, given a break, or allowed to have a support person with her when she reported to police. Yet, two of her white friends described being treated much more considerately when they reported. “I just know in my gut that it’s something there — it’s racial, I don’t know how else to say it,” she explained (Interview 15). She proposed that police forces should adopt “a uniform system of steps” for dealing with all reports of sexual assault, in order to mitigate the effects of racial bias.

The 12 Canadian women interviewed by Jane Doe about their experiences undergoing rape kits unanimously agreed that Indigenous, racialized, and

⁸⁶ *Supra* note 84 [Lindberg et al].

⁸⁷ *Ibid.*

⁸⁸ *Supra* note 61 [Sit] at 81.

⁸⁹ *Ibid.*

immigrant women are subjected to racism when they report sexual assaults.⁹⁰ According to participants in Doe's study, this racism can take the form of stereotypes that "their cultures promote violence against women, and they are more subject to shame, community censure, disbelief, and the fear of powerful men, than are white women."⁹¹

When criminal justice system actors apply stereotypical or ethnocentric filters to their dealings with sexual assault complainants, significant unfairness can result. In sexual assault trials, judges may assess the credibility and reliability of witnesses (including sexual assault complainants) using so-called 'common sense,' a flawed approach when working with people whose worldview, culture, and life experience do not align with dominant Canadian norms.⁹² Sometimes court regulations and procedures create a lack of cultural safety for complainants. For instance, the demand that Muslim women wearing the niqab reveal their whole face to testify can make the already-stressful court process feel even more unsafe; such a requirement can be experienced as stigmatization and discrimination on the basis of religion and culture.⁹³

The threat of being stereotyped and treated unfairly can also create barriers to reporting for other groups of women. Respondents in Doe's study shared their view that young women, trans women, lesbians, women living in poverty, and sex workers are less likely to be believed by police and the courts because of their position in society and are therefore less likely than other women to report sexual assault.⁹⁴ In a separate study, sex workers expressed fear that they would be blamed for the assaults because of discriminatory attitudes about their occupation.⁹⁵ For marginalized groups, a history of negative experiences with the criminal justice system may weigh heavily in decision-making about whether to report sexual assault. For example, about a quarter of the transgender people surveyed in the Ontario-based Trans PULSE Project reported having been harassed by police, and few of those who had been the targets of physical or sexual violence reported it through the criminal justice system.⁹⁶

Discrimination can also lead to unfair assessments of the credibility of women with disabilities, particularly those women whose disabilities affect their communication or cognition and who experience multiple layers of marginalization. In the words of scholar and disability justice advocate Fran Odette:

When looking at the hierarchy of disablement and who is credible as the 'story-teller,' compare a speaking, white woman in a wheelchair who is employed to a young, racialized woman who lives with a cognitive and a communication impairment and who uses a word board.⁹⁷

90 *Supra* note 30 [Doe] at 363.

91 *Ibid* at 362.

92 Cristin Schmitz, "Prosecutors Also Need Mandatory Training on Sexual Assault, Says Senior Crown", *The Lawyer's Daily* (11 April 2017), thelawyersdaily.ca

93 Natasha Bakht, "What's in a Face? Demeanour Evidence in the Sexual Assault Context" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012).

94 *Supra* note 30 [Doe] at 363.

95 *Supra* note 61 [Sit] at 59.

96 Greta R. Bauer and Ayden I. Scheim, "Transgender People in Ontario, Canada: Statistics from the Trans PULSE Project to Inform Human Rights Policy" (London, Ontario: Schulich School of Medicine and Dentistry of the University of Western Ontario, 2015) at 6.

97 Fran Odette, "Sexual Assault and Disabled Women Ten Years after *Jane Doe*" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012) at 187.

As Odette points out, the intersection of race, class, ability, age, and other identity factors unjustly influences how reports of sexual assault are viewed and handled, in the criminal justice system and in society at large.

“HE DOESN’T DESERVE TO BE IN JAIL FOR IT”

In some cases, survivors’ concerns about systemic bias in the justice system can overlap with consideration for the perpetrator’s rights and well-being. One woman of colour who participated in this project shared that she didn’t “want to put [the perpetrator, a man of colour] in a bad position that I already know that he is in in society” by reporting to police:

I was concerned and aware that if I do report it that he might not get treated the same as everybody else. Like if it was like a white man his age, I think that they would, you know, maybe treat him differently, and I didn’t want to be a part of that unjust behavior towards him, because even though he did what he did, it has nothing to do with his race and I don’t believe that repercussions should be based on race, and I know that the reality is that’s how life is. [...] It was one of the factors that kept me from reporting.

To put another guy behind bars or have to deal with probation and parole and all that stuff, you know, another [man of colour], put him behind bars, I didn’t want to have to be the one. If I can get an apology out of that and like a, you know, ‘I’m sorry, I shouldn’t have, or I took it too far,’ that would have been enough for me. But putting him behind bars, that’s not my objective, you know, or putting something on his criminal record. Like I already know how, you know, people view men of colour, and especially ones that have touched the criminal justice system, and I don’t want to be a part of that. (Interview 13)

This woman was not the only participant in this project who voiced concern for the perpetrator and identified it as a factor in her decision-making about reporting. Another woman explained that family considerations gave her “a lot of empathy” for perpetrators. First, she shared her belief that her father’s pattern of sexual offending was rooted in trauma and explained how this view has shaped her attitude towards others who commit violence:

My father’s a sexual perpetrator, so I see him both as a sexual perpetrator and also as my father, and so that has fostered in me an understanding of individuals as also humans, or like people who were hurt themselves who then hurt people. And so I guess there is definitely some consideration for the [perpetrator as an] individual that went into [the decision not to report]. (Interview 6)

Second, she explained that she felt greater concern for the perpetrator of a more recent sexual assault because he was also the father of her own child:

That definitely affected my decision-making, because I was aware that this individual was not only someone who was perpetrating violence against me, but it was also the father of my biological child. (Interview 6)

According to research, it is not unusual for survivors to consider perpetrators' interests, particularly when perpetrators are loved ones. Not wanting to get the offender in trouble was indicated as a reason for not reporting sexual assault by 30% of General Social Survey respondents.⁹⁸ In the Ipsos/Global poll, 19% of women who did not report cited not wanting to turn in a family member, while 9% said they knew the offender and did not want to destroy the offender's life.⁹⁹ On the other hand, concern for perpetrators can also be a motivating factor in the decision to report sexual assault to police: 14% of the women interviewed by Johnson said they did so because they wanted offenders to access help.¹⁰⁰

One woman who shared her story with us, who was assaulted by an intimate partner, explained that she initially felt reluctant to report the assault because of concern that the perpetrator might face disproportionate consequences relative to the severity of the offense. However, she explained that she later came to recognize the seriousness of the assault and reflected that she might choose a different course of action if she were faced with the decision today:

So I think what oftentimes comes up in these situations, and mostly for myself in this situation, is that like, 'Yeah that was a shitty thing to do, but he doesn't deserve to be in jail for it.' [...] That's kind of a social mentality that I particularly had at the time, as well. Almost like, 'Well, that was rape, but he's not like a rapist,' kind of mentality. So then that kind of prevents you from pulling the trigger on this serious legal avenue. But yeah, I think that if that had happened to me now, I would have done something totally different. (Interview 27)

"That definitely affected my decision-making, because I was aware that this individual was not only someone who was perpetrating violence against me, but it was also the father of my biological child."

"THERE ARE WAYS TO HAVE SAFE RESTORATIVE COMMUNITIES THAT ARE HEALING, AS OPPOSED TO A PUNITIVE SYSTEM"

Two of the women who participated in this project indicated that they were not interested in reporting because they viewed any resolutions the criminal justice system might offer — such as incarceration or a criminal record for the perpetrator — as unhelpful or even counterproductive. Instead, they advocated for a more restorative model of justice.

One woman explained her support for abolition of the current prison system:

I'm an abolitionist now. [...] I think that there are ways to have safe restorative communities that are healing as opposed to a punitive system where [offenders] are going to get further degraded, further experience of violence, further shame, further things that are going to push them into recidivism as opposed to healing. (Interview 6)

98 *Supra* note 2 ["GSS"] at 41.

99 *Supra* note 57 [Mehler Paperny].

100 *Supra* note 18 [Johnson] at 47.

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She also shared her view that humanizing and supporting rather than labelling perpetrators is key to preventing violence:

I don't think being called a sexual perpetrator is ever going to heal that sexual perpetrator, right. Like I think being called Stan or Dan or Tom or whatever human who's hurting, who's got issues, who needs help, who needs healing, I think that's way more effective in trying to stop the cycle.
(Interview 6)

Another woman emphasized the need for rehabilitation of offenders rather than punishment and vengeance:

In my eyes what justice is, is a chance for rehabilitation. If you're using the prison system to put people away, and as a way to kind of put bad people away, that's not what it's used for, it's for rehabilitation, it's for change and that's what I feel like I would rather be a part of, rather than an eye for an eye. (Interview 13)

She explained that she would feel empowered by a restorative model of justice that would create space for her to communicate her perspective: “I would be like gaining my power, you know what I mean, like I would be like speaking about how this impacted me and what I feel about this and what I hope for [the perpetrator], even.”

Unsurprisingly, survivors’ global impressions of the criminal justice system can affect their willingness (or unwillingness) to engage with that system in the aftermath of an assault. A lack of confidence in the criminal justice system as a whole can be a significant barrier to reporting; it is also a common one, cited by more than a third of the survivors in Lindsay’s study who opted not to report.¹⁰¹

Many survivors also have more specific concerns about how they will be treated in the justice system, which are examined in the next section of this report.

101 *Supra* note 47 [DOJ, *Three Canadian Cities*] at 13.

Positive and negative interactions with justice system personnel

NAVIGATING THE CRIMINAL JUSTICE SYSTEM as a sexual assault complainant can be profoundly stressful. The conduct of police, lawyers, judges, and other personnel can either exacerbate or ease the process. One of the most significant barriers to reporting described by the women we spoke to was problematic treatment by criminal justice system actors, which can take many forms, including failure to communicate clearly and consistently with complainants; insensitive remarks; and adoption of myths and stereotypes about sexual assault. Conversely, a number of women also highlighted instances where criminal justice system actors were exceptionally helpful.

Reflecting on their experiences interacting with justice system personnel—both positive and negative—several participants made suggestions about how the justice system can improve communication practices and provide more effective service to survivors.

“I FELT LIKE IT WAS ALWAYS ME HAVING TO CALL HIM”

[The police] said that they were going to contact me to see if I [...] would be okay going with them to [the crime scene]. So I had spent several sessions with my therapist preparing for this appointment that never happened, you know, and not getting a phone call. And I had sent, you know, several emails saying hi, how's it going, what's happening? (Interview 15)

I feel like it was always me having to call [the police officer]. He never called me. (Interview 27)

Then [the police] gave me a date [when I would find out results from DNA testing] [...] and on that day it was like waiting, right, I was just like so

The conduct of police, lawyers, judges, and other personnel can either exacerbate or ease the process.



Thirty-one percent of respondents in the *Globe and Mail's* investigation of sexual assault cases classified as unfounded said they received no updates from police after reporting, and only one of 54 survivors who had their cases dismissed as unfounded was informed by police when this occurred.

excited to find out, and then I just never heard anything. And I called him and I called him and I called him and I called him, and he never called back ever, I think. (Interview 28)

These are just some of the stories of project participants who expressed frustration about a lack of proactive communication from police. Some found it difficult to obtain basic information about the criminal justice system process and the resources available to complainants, even though Canada's *Victims of Crime Act* is supposed to guarantee access to information about available services, benefits available through the Crime Victim Assistance Program, the workings of the criminal justice system, and privacy rights under the *Freedom of Information and Protection of Privacy Act*.¹⁰²

Similar concerns have been highlighted in other research. Many of the survivors surveyed by Lindsay indicated they did not receive adequate information about victims' rights and the criminal justice system process or regular updates on the status of their reports.¹⁰³ In Johnson's research with women who reported sexual assault to police in Ottawa, fewer than half of the 37 participants felt that officers explained the process or answered their questions fully.¹⁰⁴ Thirty-one percent of respondents in the *Globe and Mail's* investigation of sexual assault cases classified as unfounded said they received no updates from police after reporting, and only one of 54 survivors who had their cases dismissed as unfounded was informed by police when this occurred.¹⁰⁵

102 *Victims of Crime Act*, [RSBC 1996] CHAPTER 478.

103 *Supra* note 47 [DOJ, *Three Canadian Cities*] at 25.

104 *Supra* note 18 [Johnson] at 55.

105 *Supra* note 42 [Doolittle, "Unfounded"].

Effective communication with survivors can be a matter not only of how much information is provided but also how it is imparted. One woman interviewed for this project described how jargon can limit the usefulness and clarity of information conveyed by police. After repeated attempts to obtain information about the status of her case, she finally received a return phone call from the officer in charge of the investigation:

When he had called, he didn't come out and say that the file was being closed, which I would have preferred because [...] I've been through worse, so just tell me [...], right? Because he started talking about V-class, he spent most of the conversation talking more about V-class, and I'm thinking like whoa, what [...] is V-class? Like suddenly I'm given a new set of semantics that I have to figure out, right. And then I'm like, 'Tell me what V-class is again?' And then I'm hearing and I'm listening to him as a layman person, right, I'm listening [...] and I'm trying to like figure it out in my head, and I'm like is he [...] making me figure out this equation myself? And then I was like, 'So is my file closed?' And he's like, 'Yes, that's what I'm basically telling you.' And like, you could have said that. (Interview 15)

According to several participants, it can be particularly disheartening when police do not follow through on their promises regarding communication. The same woman who was baffled by 'V-class' terminology also reported that she felt let down because she never received a letter from police that had been promised. The woman (quoted above) who had been advised that DNA testing results would be available on a particular date recounted feeling frustrated because her follow-up phone calls to police were not answered or promptly returned: "I remember just sort of hitting the wall of voicemail all the time, and that drove me crazy" (Interview 28). She said that she eventually found out that the officer assigned to her case was no longer working with the sex crimes unit, though she had not been informed of his change in position or who had taken over her case, if anyone. She also indicated that the police did not notify her when her case was closed and that the police Property Office did not return an article of her clothing as promised.

A number of participants also pointed out the need for justice system representatives to communicate empathetically and convey awareness of the seriousness and traumatic nature of sexual assault. One woman recounted that a police officer called her case "classic peace bond material," which struck her as "dismissive": "I'm sure he deals with domestic violence cases every day, but referring to it as like 'classic' I think it minimized it. It minimized the impact that it was having in my life, certainly" (Interview 29). Another woman described an incident where a police officer admonished her for crying:

I was just terrified, and I remember just like crying so hard, and at the time I had a two-year-old or 18-month-year-old son, and I was crying so hard in front of him and the police officer said like, 'Don't cry like that in front of your son, it's going to damage him.' (Interview 29)

Yet another woman hesitated to contact the police about stalking by the perpetrator because an officer had instructed her, "You have to be in fear for your life, like don't call us if he's just outside your house" (Interview 11). As a result, this survivor felt "worried that if [...] I call [the police] at the wrong time I'm going to be in trouble."

“HE WAS VERY EFFECTIVE COMMUNICATING WITH ME”

On the other hand, several women also expressed appreciation for justice system personnel who communicated in a caring, consistent, forthright, and clear way:

And what I appreciated about [a police officer from the sex crimes unit] is [...] he was very effective communicating with me even if it was just to say I haven't been able to get back to you because this has specifically happened. He would even go on to say what specific case he was working on. I'd be like, oh yeah, that's in the news, okay I totally get it [...]. So I really loved, appreciated his transparency. [...] I really felt solidarity from him. (Interview 15)

Consistent communication and a continuing relationship with a particular officer were also valued by another participant, who commented that “[the detective’s] involvement was [...] helpful because she was like an ongoing contact with [police]. She was assigned to my case, so I wasn’t getting like random officers all the time” (Interview 29).

Another woman remarked upon the helpfulness of a “female police officer saying ‘these are your rights’” (Interview 11). She appreciated the officer’s clear communication of useful information and also found her “very empathetic.”

A common theme in the interviews was the need for justice system personnel to demonstrate compassionate understanding of survivors’ perspectives and the difficulties they face in engaging with the legal system. One woman relayed a positive experience with Crown Counsel, who was “pretty gentle. [...] She just seemed to really understand how scared I was, and even though I was being kind of resistant [to testifying in a peace bond hearing], she didn’t seem judgmental at all” (Interview 29). This participant appreciated Crown Counsel’s warm and personal manner: “I felt like I had kind of an ally which I wasn’t expecting, because once people talk about Crown the idea’s a bit faceless, right, like the Crown it’s sort of anonymous [...] but she was really like a real person.”

“SURVIVORS SHOULD BE KEPT INFORMED”

Many survivors also stressed the importance of proactive communication from representatives of the justice system. These women wished to be kept in the loop about the progress of their cases rather than having to devote significant time and energy to tracking down information themselves. They tended to agree that a lack of information can exacerbate the stress involved in reporting, contemplating reporting, or navigating the system:

Maybe that's part of the problem, like people don't really know where they're supposed to go, or people don't really know what happens after you report it. [...] Like you have no idea what the process is or what happened, and it just adds to the pressure or adds to the bad experience. (Interview 30)

I guess another thing is that I don't really know what the reporting looks like. Like is it just one paper you fill out or [...] am I going to be talking to a male police officer? I don't want to do that too. If it's going to be a female police officer then maybe. If it's short and brief and quick then maybe I'll just

do it tomorrow, I don't know. But if it's a long, drawn-out process and all this physical testing then I don't think I'll do it. (Interview 16)

It would be nice to see [...] a step-by-step process of what the reporting actually looks like. (Interview 16)

At the least, [survivors] should be kept informed of every single step in the process. (Interview 25)

Three participants said they would have benefited from information about the supports available to them. Other participants noted that they would have liked to know the types of questions they might be asked in a hearing or trial, the legal definition of the offense, and the likelihood that their report could lead to conviction.

A number of survivors also saw a need for expanded anti-violence education for the public. For example, one woman believed that a lack of awareness about the necessity of ongoing consent, both on the perpetrator's part and on her own part, contributed to the sexual assault: "him not understanding that he needed consent and me not understanding that I can ask for it" (Interview 24). She felt it would have been valuable to know that choosing to take off one's clothes does not indicate that "anything goes"—that consent must be granted for each and every sexual activity. Another woman proposed that classes for newcomers to Canada should include information about the prevalence of violence and the support options available to survivors (Interview 18).

For survivors whose legal status in Canada is precarious, information about rights under immigration law can be vital to decision-making after sexual assault. One woman emphasized the importance of accurate legal information to counter her husband's repeated claims that he had the right to "do whatever he want[ed] [to her] because he's my husband" and that he would have her deported if she reported his violent offenses:

Because for so many years of living with him, he made sure that I remembered that I have no rights, and I believed him that I have no rights, any legal rights in Canada. But in [the] hospital when they talked to me, they told me that I have certain rights. (Interview 18, through an interpreter)

She also expressed dismay at being given outdated information regarding immigration requirements by a lawyer she consulted; she felt that he was implying that she should "stay with [the perpetrator] and suffer."

A number of survivors also saw a need for expanded anti-violence education for the public. For example, one woman believed that a lack of awareness about the necessity of ongoing consent, both on the perpetrator's part and on her own part, contributed to the sexual assault.

“THE POLICE WOULDN’T BELIEVE ME”

A key priority for many survivors is being assured that their reports of sexual assault are regarded as serious and will be treated accordingly. Much research has demonstrated that the fear of being automatically disbelieved is a common obstacle to reporting sexual assault.¹⁰⁶ This concern was articulated by many participants in this project:

I felt like maybe the police wouldn’t believe me, you know what I mean, because [...] I did agree to go out with him [...] and there was drinking involved. So I just thought that maybe they would say that it was my fault. (Interview 13)

Well I guess even other girls that I’ve known who’ve been raped and stuff were just like, they got on the stand and [...] they went into my past and brought up my history and said I wasn’t believable, that I was just a junkie, stuff like that. Saying that because I had [...] abusive partners and stuff that it wouldn’t go good anyways getting up there. (Interview 10)

I’ve seen other women disclose and not be taken seriously enough. (Interview 25)

Moreover, a significant number of survivors who have opted to report sexual assault indicate that they would not do so again because they felt disbelieved by police.¹⁰⁷ Fewer than half of the survivors Johnson surveyed felt believed by the first officer they spoke with; of those who attended a follow-up interview with a sexual assault investigator, only half felt believed during that process.¹⁰⁸ The *Globe and Mail’s* investigation even uncovered instances in which police officers who assumed survivors were not telling the truth threatened them with criminal charges for filing a false report.¹⁰⁹

One participant in this project recalled that police used a similar tactic to encourage her to drop her report: “[The police officers] were like, if you absolutely insist that we need to keep going on this, the next thing is you have to take a lie detector test, but you can get in a lot of trouble, you know, if you’re found to be lying” (Interview 22).

Another woman commented on a police officer’s word choice regarding her report, which struck her as skeptical and dismissive: “like, ‘I want to talk to you about your supposed rape you want to claim.’ Like that’s basically saying that you didn’t get raped, but let’s hear what you’re lying about, you know” (Interview 10).

In the words of another survivor:

I felt like [the police officer] didn’t believe me and he had a lot of questions about why I’d waited so long to report. A lot of the questions he asked me seemed to be sort of grounded in like a skepticism about what I was saying. [...] I kind of fell into a depression for about a year, and I got out of it eventually, but I had a really hard time specifically with not being believed. (Interview 29)

106 In Lindsay’s study conducted in three Canadian cities, 22% of survivors who did not report cited fear they would not be believed as a reason (*Supra* note 47 at 13), and 29% of participants in the Northwest Territories study expressed this fear (*Supra* note 72 at 11-12). Five of eight survivors interviewed by Clarke expressed experiencing fear that they would not be believed by the police, or would be blamed for their own assaults (*Supra* note 52 at 60).

107 *Supra* note 18 [Johnson] at 50, 51, 54, 55, 56, 57.

108 *Supra* note 18 [Johnson] at 49.

109 *Supra* note 42 [Doolittle, “Unfounded”].

Depression is by no means an unusual outcome of interactions with the criminal justice system in the aftermath of sexual assault. In a poll conducted by Global/Ispos, 39% of respondents indicated that they felt “devastated” after reporting their sexual assaults to police, and 39% said they felt “abandoned,” compared to just 2% who felt “vindicated” and 22% who felt “satisfied.”¹¹⁰ Fully 71% assessed their experiences with police as negative overall.¹¹¹ Negative police interactions were described by the survivors in Clarke’s study as those that left them feeling unsupported, disbelieved, blamed or judged, re-victimized, and shamed.¹¹²

DAMAGING MYTHS AND STEREOTYPES

Interactions with the criminal justice system can be all the more traumatic for survivors when myths about sexual assault and ‘real victims’ are reflected and reinforced by the words and actions of system actors, even though many of these myths have been explicitly rejected by Canadian law. The persistence of such myths, both in the justice system and society at large, constitutes a major barrier to reporting.

Stereotypes held by police can have severe consequences because police are usually the first point of contact in the criminal justice system for survivors of sexual assault. Reluctance to report to police is understandable when an officer assumes that a woman’s report of sexual assault is not credible because: she didn’t fight back vigorously¹¹³; witnesses say she kissed the alleged assailant¹¹⁴; or she went to an apartment with a group of men, behaviour deemed ‘risky’ according to the mistaken reasoning that holds women responsible for anticipating and preventing their own assaults.¹¹⁵ Survivors interviewed by the *Globe and Mail* described police questioning their personal choices (such as drinking alcohol and going home with men) and their initial reactions to being assaulted, and treating these as confirmation that what had occurred was not actually sexual assault.¹¹⁶

One participant in this project recalled “clearly telling [police] about me not giving my consent, and then they listed all the ways in which I actually was giving consent”: “you were there willingly, you don’t have any physical damage to your body;” “you weren’t locked in, you weren’t tied down, those kinds of things” (Interview 22). It has in fact been more than 25 years since Canadian law clarified that refusing consent does not require fighting back physically.¹¹⁷

110 *Supra* note 57 [Mehler Paperny].

111 *Ibid.*

112 *Supra* note 52 [Clarke] at 71.

113 *Supra* note 18 [Johnson] at 51.

114 *Supra* 57 [Mehler Paperny].

115 *Supra* note 18 [Johnson] at 51.

116 Robyn Doolittle, “What it’s Like to Report a Sexual Assault”, *The Globe and Mail* (17 March 2017), theglobeandmail.com/news/investigations/what-its-like-to-report-a-sexual-assault-36-people-share-their-stories/article34338353/.

117 *R. v. M. (M.L.)*, [1994] 2 S.C.R. 3.



A significant number of survivors who have opted to report sexual assault indicate that they would not do so again because they felt disbelieved by police.

Another woman observed that she does not “fit the typical victim” profile according to stereotypes and explained that she was reluctant to report because she believed that “the fact that I didn’t report right away [...] would be called into question” (Interview 4). Indeed, although a 1983 amendment to the *Criminal Code* removed the requirement for survivors to report their sexual assaults as quickly as possible, some criminal justice system actors still rely on the debunked assumption that survivors who wait to report are less credible.¹¹⁸

Research has suggested that police often assess the credibility of sexual assault reports — and dismiss many as unfounded — based on normative assumptions about ‘real’ survivors,¹¹⁹ including their reactions to violence and trauma, their manner of recounting the assaults, and their level of investment in the police investigation and the justice system’s overall process.¹²⁰ Such biases and stereotypes often operate unconsciously. For instance, a psychological study found that people are more likely to believe and respond supportively to disclosures of sexual assault when communicated by a tearful and visibly upset person as opposed to a calm and controlled-seeming one.¹²¹ The reality is that emotional detachment can be a symptom of post-traumatic stress disorder (PTSD) and is a common psychological consequence of sexual trauma.¹²²

Expectations about ‘reasonable’ emotional reactions to violence can create a double-bind for survivors, as they may be judged negatively either for appearing unemotional or for expressing emotions deemed too intense. One woman we interviewed, who obtained her own police file through a Freedom of Information request, was disturbed that the police sketch artist had described her as “uncooperative” after she broke down crying and requested a break during a session to create an artistic rendering of the perpetrator. She was also put off by the police file’s emphasis on steps she should take to fend off future attacks and the implication that she was somehow at fault for having been assaulted: “Like, ‘we advised her to not walk home at night with headphones in and keep her phone charged at all times.’ You know, just like stuff like that, [. . .] like pat yourself on the back for like just telling me [...] what I did wrong” (Interview 28). Reviewing her police file left this woman feeling “judged by these people that are trying to help me.”

Stereotypical assumptions can also be embedded in the formal assessment tools and reference materials used by police. For example, lawyer and researcher Teresa DuBois noted that the Toronto police’s Rape Investigation Handbook indicates that false reports of sexual assault are common, a damaging myth based on a handful of flawed studies.¹²³

118 Elaine Craig, “The Relevance of Delayed Disclosure to Complainant Credibility in Cases of Sexual Offence” (2011) 36 *Queen’s Law Journal* at 551.

119 *Supra* note 18 [Johnson] at 49-57.

120 Andrea Quinlan, “Suspect Survivors: Police Investigation Practices in Sexual Assault Cases in Ontario, Canada” (2016) 26.4 *Women & Criminal Justice*.

121 Marc A. Klippenstine and Regina Schuller, “Perceptions of Sexual Assault: Expectancies Regarding the Emotional Response of a Rape Victim Over Time” (2012) 18:1 *Psychology, Crime & Law*.

122 Nicole P. Yuan, Mary P. Koss and Mirto Stone, “The Psychological Consequences of Sexual Trauma” (2006), *Applied Research Papers* (Harrisburg, PA: National Resource Center on Domestic Violence), citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.445.6463&rep=rep1&type=pdf at 5.

123 Teresa DuBois, “Police Investigations of Sexual Assault Complaints: How Far Have We Come Since *Jane Doe*?” in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* (Ottawa: University of Ottawa Press, 2012).

In some cases, police bias against women who report sexual assault results in police explicitly dissuading women from making official reports. Two of the 15 women interviewed for Victoria Kar-Yan Sit's thesis on access to support services for sexual assault survivors living in poverty recounted that police strongly discouraged them from pursuing charges. In both cases, these women came away with the impression that the officers' primary concern was with protecting the perpetrators (in one case, two adolescent boys, and in the other case, a police officer's son).¹²⁴ A participant in this project recounted a similar interaction with police: after she reported her assault, the officers gave her "a really really stern warning about how much this could ruin the perpetrator's own life and they were really really adamant about that, and [...] I think they said something to the effect of [...] how much misreporting occurs" (Interview 22). The worry that police might respond in precisely this way was cited as a barrier to reporting by another participant: "[Police] can say something like, 'Oh, do you really want to ruin this poor guy's life over something so small?'" (Interview 21).

Police are not the only representatives of the criminal justice system who may hold problematic attitudes about sexual assault. Legal scholar Elaine Craig has described three legally invalid yet stubbornly entrenched myths upon which defense lawyers continue to base their arguments in sexual assault cases: namely, "that sexually active women are both more likely to have said yes and more likely to lie on the stand, that women who are actually raped will raise a hue and cry at first opportunity, and that women who failed to fight back actually 'wanted it.'"¹²⁵ Drawing such inferences "constitutes an error of law"¹²⁶ but continues to occur in some cases, even many years after legislation and case law disallowed such reasoning.¹²⁷

Unfortunately, judges are not immune from such problematic reasoning or from legal errors based on sexual assault myths. To give a rather blatant example, several Canadian judges have been willing to accept defense lawyers' arguments that the accused mistakenly believed there was consent even though the survivor was unconscious at the time and thus patently incapable of consenting.¹²⁸

Often, though, myths about consent surface in more subtle ways in judges' decisions. Although the *Criminal Code* does not distinguish between voluntary and involuntary intoxication when it comes to consent, the courts tend to set a significantly higher threshold for incapacity to consent in cases where the complainant's intoxication was voluntary (that is, the result of freely and knowingly using alcohol or drugs, as opposed to being drugged by someone else).¹²⁹ Legal scholar Janine Benedet has interpreted this trend as evidence that women's choices to drink or take drugs are implicitly (and improperly) understood by many judges as partial advance consent to sexual activity.¹³⁰ In other words, some judges seem influenced by the pervasive myth that women who choose to get drunk or high are 'asking for' sex.

124 *Supra* note 61 [Sit] at 67, 69, 70.

125 Elaine Craig, "The Ethical Obligations of Defence Counsel in Sexual Assault Cases" (2014) 51.2 *Osgoode Hall Law Journal* at 435.

126 *Ibid.*

127 *Ibid* at 431-434.

128 Elizabeth A Sheehy, "Judges and the Reasonable Steps Requirement: The Judicial Stance on Perpetration Against Unconscious Women" in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012).

129 Janine Benedet, "The Sexual Assault of Intoxicated Women" (2010) 22.2 *Canadian Journal of Women and the Law*.

130 *Ibid.*

Judges may also stereotype complainants based on their own personal values and assumptions about what constitutes ‘normal’ sexuality.¹³¹ For instance, they may draw negative inferences from complainants’ consensual participation in so-called ‘rough sex’ or in any sexual activity with the accused after being assaulted.¹³² Jennifer Koshan’s review of cases involving rough sex found that, in most instances, “evidence of the past sexual history of the parties was admitted as relevant to issues of consent (or mistaken belief in consent).”¹³³ Yet, Canadian law prohibits the use of evidence about a complainant’s sexual history to suggest that she is less worthy of belief or that she probably consented to the sexual activity in question.¹³⁴

Myths about ‘normal’ and ‘reasonable’ behaviour for sexual assault survivors are not limited to the domain of sexuality. A wide range of stereotypical expectations about how the ‘ideal victim’ should act before, during, and after assault persist in the reasoning of some judges.¹³⁵ For example, in a case called *R v DK*, the judge wrote that it was “unusual and troubling” that the complainant did not mention the alleged assault when the accused asked her during a Facebook exchange what he had done wrong.¹³⁶ In another case called *R v TE*, the judge reasoned that the complainant’s conduct before and after the alleged assault, such as her text message communication with the accused after he left her place, did not “seem consistent with such a severe sexual act having been perpetrated by him.”¹³⁷ Reacting to the not-guilty verdict in the high-profile sexual assault trial of media personality Jian Ghomeshi, some observers critiqued the judge’s emphasis on complainants’ behaviour after the alleged offenses and proposed “an evidentiary presumption that post-offence conduct by the complainant is inadmissible.”¹³⁸

Because judges are vested with tremendous authority in the legal system and in society, their reliance on myths about sexual assault can reinforce and normalize discriminatory attitudes that are already culturally prevalent.¹³⁹ A well-publicized example is the egregious conduct of former judge Robin Camp, who asked a complainant why she couldn’t “just keep [her] knees together,”¹⁴⁰ implying that she should have been able to prevent the attack, and stated, “She knew she was drunk [...] Is not an onus on her to be more careful,”¹⁴¹ among many other deeply problematic remarks. Camp’s conduct is all the more devastating given the intersecting forms of discrimination faced by the complainant, an Indigenous woman who was 19 years old and homeless at the time of the alleged assault.¹⁴²

131 Lucinda Vandervort, “Sexual Consent as Voluntary Agreement: Tales of ‘Seduction’ or Questions of Law?” (2013) 16:1 *New Criminal Law Rev: An International and Interdisciplinary Journal*.

132 Jennifer Koshan, *The Legal Treatment of Marital Rape and Women’s Equality: An Analysis of the Canadian Experience* (Equality Effect, 2010), theequalityeffect.org/pdfs/maritalrapecanadexperience.pdf at 57.

133 *Ibid* at 33.

134 *Criminal Code*, RSC 1985, c C-46, s 276(1).

135 Shannon Kari, “The Trouble with Sex Assault Trials” *Canadian Lawyer* (2 May 2016), canadianlawyermag.com.

136 *R v DK*, 2017 BCPC 44 at para 83.

137 *R v TE*, 2016 BCPC 267 at para 45.

138 Blair Crew, Daphne Gilbert, and Elizabeth Sheehy, “The Ghomeshi Verdict: This is No Time for Complacency” *Policy Options* (12 April 2016), policyoptions.irpp.org/magazines/april-2016/the-ghomeshi-verdict-this-is-no-time-for-complacency/.

139 Canadian Judicial Council, *In the Matter of an Inquiry Pursuant to s. 63(1) of the Judges Act Regarding the Honourable Justice Robin Camp — Report and Recommendation of the Inquiry Committee to the Canadian Judicial Council* (29 November 2016), publications.gc.ca/collections/collection_2016/ccm-cjc/JU14-27-2016-eng.pdf.

140 *In the Matter of an Inquiry Pursuant to s 63(1) of the Judges Act Regarding the Honourable Justice Robin Camp*, (March 2017) Canadian Judicial Council (Notice of Allegations) at para 3.

141 *Ibid* at para 5.

142 Alison Crawford, “Justice Robin Camp resigns after judicial council recommends removal,” *CBC News* (9 March 2017), cbc.ca/news/politics/justice-robin-camp-judicial-council-1.4017233.

“Ideally I would have been dealing with someone from the beginning who knew about domestic violence and about trauma, and who wouldn’t have been asking questions about why I waited so long to report.”

CONCERNS ABOUT JUSTICE SYSTEM STAFFING AND TRAINING

Ideally I would have been dealing with someone from the beginning who knew about domestic violence and about trauma, and who wouldn’t have been asking questions about why I waited so long to report. Like they should know about the barriers to reporting. [...] There’s so many reasons to wait or to not report, and they don’t mean you’re a liar. (Interview 29)

A few participants in this project expressed concern that many police and other justice system staff have not been “trained very well or for very long” (Interview 28) on “trauma-informed” practice (Interview 25) and the appropriate handling of sexual assault cases.

One commented that she felt like a “guinea pig” because one of the police officers involved in her case was still in training (Interview 6). She proposed that people with lived experience of sexual assault should be involved in the training of justice system staff.

Another survivor suggested that police training on sexual assault should demand significant engagement and effort and should resist a box-ticking model where “you barely pay attention and you get your gold star at the end and you say you did it” (Interview 28). Additionally, she expressed concern about understaffing of the police units that investigate sexual assault:

Seeing the police presence in Vancouver in the form of beach patrol [...] and all of those things is a slap in the face to somebody that had to go through an experience like mine and to find out that there was nobody there. Like I remember Canada Day was the week after, and I just saw two dudes like rolling down the seawall on ATVs, just cruising, like making sure people weren’t publicly drinking. And [...] that was the week that I couldn’t get in touch with anybody in the police department. So it’s just like get your priorities straight. (Interview 28)

She also wished for greater public transparency about the allocation of resources and staff in law enforcement: “like just a pie chart to be like how much resources are actually going to the sex crime unit.”

At least five participants said they found it beneficial to receive service from a woman police officer (Interviews 6, 10, 24, 25, and 28), and two recommended measures to increase the proportion of women hired in law enforcement (Interviews 24 and 28).

Survivors’ experiences in the criminal justice system — and their willingness to engage with that system in the first place — are greatly shaped by the conduct of system actors. With respectful and consistent communication from well-trained and empathetic personnel, reporting to police may become a viable course of action for more survivors, or at least a less traumatizing one.

Personal consequences of reporting

Perpetrators may threaten to retaliate against survivors through physical violence, attacks on their reputation or character, or exposure to other dangers.

MANY PARTICIPANTS in this project explained that they felt reluctant to report partly because of concerns that they might suffer personal consequences as a result. They worried about retaliation by the perpetrator, a loss of privacy, impacts on their financial security, and a range of legal consequences.

“SAFETY IS NON-NEGOTIABLE”

I've always been afraid of [the perpetrator's] temper, and although never violent towards me, just aggressive nature and, you know, violence towards objects or like rage issues, and so that really scared me to come forward. (Interview 30)

I was not going to report to the police because [the perpetrator] (a) knows where I live, and (b) knows what my son looks like. [...] I want to just say as a single mother [...], as a mother period, [...] [my son's] safety is non-negotiable. (Interview 15)

Women are afraid to reach for help because they are afraid that they may be deported, they may put themselves [at] higher risk, that may even create even more severe violence. (Interview 18, through an interpreter)

Several survivors feared that seeking police involvement could expose them and their families to violent retaliation. Research suggests that such fears may be particularly prevalent — and may constitute a particularly severe barrier to contacting police — for sex workers who have been assaulted by clients.¹⁴³

¹⁴³ *Supra* note 61 [Sit] at 75.

“If I had never called the cops, he would have sort of calmed down and moved on with his life. [...] Nothing really good came of [reporting] for me and he’s still so angry and it’s six years later and it impacts how I parent now.”

Perpetrators may threaten to retaliate against survivors through physical violence, attacks on their reputation or character, or exposure to other dangers.¹⁴⁴ One project participant described how the perpetrator and several people in his social circle threatened to reveal her location to an abusive ex-partner if she went ahead with a police report (Interview 10).

One survivor regretted her decision to report because the legal system failed to protect her from the perpetrator, her abusive ex-husband. She felt that justice system involvement only prolonged his aggression towards her and her children:

If I had never called the cops, he would have sort of calmed down and moved on with his life. [...] Nothing really good came of [reporting] for me and he’s still so angry and it’s six years later and it impacts how I parent now [...]. Sometimes I think that if the first couple of judges had just done their jobs [in family law proceedings] that I wouldn’t be in this situation that I’m in now, parenting. (Interview 29)

Another woman shared that she chose not to contact police because she believed the justice system would not protect her from reprisals by the perpetrator: “Because of my fear of retaliation of coming forward and not feeling like I would actually have support on my side to protect me from that retaliation, I chose not to go forward” (Interview 30).

For women with disabilities who are sexually assaulted by care providers, retaliation can include a withdrawal of caregiving supports, institutionalization, further violence, and even death.¹⁴⁵ Women with disabilities are more likely than other women to experience social segregation, which is a possible reason for their elevated risk of sexual assault¹⁴⁶ as well as for the intensified dangers they face when the criminal justice system fails them.

Women are more likely to have disabilities and care needs as they grow older. Social science research indicates that older women most often experience sexual assault at the hands of a person known to them, often in residential care settings; however, the case law primarily involves older women attacked by strangers in the context of a home invasion or robbery.¹⁴⁷ This trend may reflect barriers in seeking and obtaining legal recourse for older women assaulted by a family member or caregiver, including the risk of life-threatening retaliation.

144 *Supra* note 18 [Johnson] at 48.

145 *Supra* note 97 at 175.

146 Janine Benedet and Isabel Grant, “Sexual Assault of Women with Mental Disabilities: A Canadian Perspective” in Clare McGlynn & Vanessa E Munro, eds, *Rethinking Rape Law: International and Comparative Perspectives* (New York: Routledge, 2010).

147 Isabel Grant and Janine Benedet, “The Sexual Assault of Older Women: Criminal Justice Responses in Canada” (2016) 62.1 *McGill Law Journal*.

“FINANCES WERE A HUGE BARRIER”

For women with and without disabilities, the threat of losing material resources provided by the perpetrator can be a significant barrier to reporting sexual assault. Two project participants described how financial dependency on the perpetrator made it extremely difficult for them to pursue safety and legal help:

[The perpetrator] kept saying that [...] you have no medical insurance, then you have to pay for all the medical bills and all the medical treatment yourself, I am not going to support you.
(Interview 18, through an interpreter)

I was trying to escape a very stressful and abusive life. [...] I just felt trapped and I felt like I didn't have any sort of options. Like I couldn't afford to live by myself so where would I go, to a shelter? Well if I'm at a shelter, could I still maintain my job? I guess like finances were a huge barrier for me, like I didn't think that if I brought it forward I would be able to sustain myself on my own. [...] There was nobody I could really depend on other than the perpetrator. [...] I felt really trapped.
(Interview 30)

“THE RISK OF EXPOSING YOURSELF”

The main reason why I did not report about all these times is because I was worried that that perpetrator will find out and then he will spew all the details of what happened to everyone and embarrass me. Especially if my dad finds out what happened and my mom too, then [...] it'll bring shame to my family and to me in my career maybe as well. (Interview 16)

The desire for sexual assault to be kept private is by no means unusual. According to Statistics Canada's General Social Survey, 30% of non-reporting sexual assault survivors did not want others to know about the assault, in contrast to 11% of non-reporting physical assault survivors.¹⁴⁸ Many of the sexual assault survivors surveyed by Lindsay emphasized the importance of private settings for conversations with police.¹⁴⁹

Privacy may be even more critical in smaller communities and for people who face marginalization. For example, some Indigenous women have cited concerns about confidentiality and about community members finding out as reasons for not reporting to police or seeking other services.¹⁵⁰

One participant in this project was concerned about the privacy implications of reporting because she was “easily identifiable” as a woman of colour in her public-facing job and worried about possible repercussions at work. She explained:

There's so much at stake, you know, with the community being small. [...] A lot of people do know [the perpetrator]. [...] I feel like sometimes the risk of kind of exposing yourself is a high price to pay.

148 *Supra* note 2 [“GSS”] at 41.

149 *Supra* note 47 [DOJ, *Three Canadian Cities*] at 24.

150 *Supra* note 69 [MacQuarrie] at 31.

[...] Identifying that that happened to you, it's just a huge risk because how about if the case is mishandled and how about if confidentiality is broken? [...] If I can remain completely anonymous, then yeah I would [report].
(Interview 13)

She suggested that the justice system should strengthen safeguards for complainants' confidentiality to prevent their identity from becoming known in the community.

Another woman shared a "really discouraging and very terrifying" experience that raised red flags about confidentiality: a package containing a police interview with the perpetrator was mishandled by UPS and sat at a major airport in the United States for two weeks before it was located. She felt horrified at the thought that a similar privacy violation could occur "closer to home" (Interview 15).

"I WOULD HAVE HAD TO QUIT IF I DIDN'T GET FIRED"

One project participant emphasized employment-related concerns as a major barrier to reporting multiple sexual assaults that had occurred at her male-dominated workplace. She felt that speaking out about the violence would lead to severe social consequences at work and undermine her efforts to advance in her career:

The reason that I didn't come forward was because my boss was there so he knew that [repeated sexual assaults in the workplace] had happened and didn't do anything. [...] I was the only girl at my work, so I'd already had to really work hard to get that job and so I felt like if I had come forward and complained then I would have been ostracized. (Interview 27)

She also feared that she would lose her job or face intense pressure to resign if she pursued legal action:

And I feel like I would have definitely been fired 100 percent if I had tried to go to the police or anything or gotten any type of legal representation or anything like that. And everybody at my work would have hated me, and then I would have had to quit if I didn't get fired because people would have been upset with that.

"I feel like I would have definitely been fired 100 percent if I had tried to go to the police or anything or gotten any type of legal representation or anything like that."

“ALL THE SYSTEMS ARE SO CONNECTED AND SO BROKEN”

Several women interviewed for this project feared that reporting sexual assault might trigger unwanted legal consequences, including deportation (Interview 18), child apprehension (Interviews 6 and 10), a child custody battle with the perpetrator (Interview 6), or being charged with a criminal offense themselves (Interviews 22 and 6).

One survivor consulted an immigration lawyer regarding the perpetrator’s threats to end her conditional sponsorship and her daughter’s sponsorship, and she was anything but reassured by the lawyer’s response: “He kept saying just be quiet, [...] don’t do anything because you’re going to be deported if you report that to anybody” (Interview 18, through an interpreter).

Two women, both of whom had had previous dealings with the Ministry of Children and Family Development (MCFD), were concerned that reporting might lead to another ordeal with the child protection system. Research has found that many Indigenous women choose not to report sexual assault or access support services because they want to avoid triggering interventions by the child protection system — unsurprisingly, given the devastating colonial history and ongoing reality of state intrusions into the lives of Indigenous families.¹⁵¹ One project participant, an Indigenous woman, feared MCFD involvement because of past negative experiences and threats by the perpetrator to try to have her children apprehended if she reported the assault to police. She explained that when she sought help in the past to escape violence, the child protection system threatened to remove her child:

I was going into a transition house [...] but then [the social worker] heard about the domestic violence before that, so she wanted to take my child because I wasn’t protecting her. So in this instance I thought [MCFD] would say I wasn’t protecting my children because I let these guys stay in my house. (Interview 10)

On another occasion, her one-year-old daughter was removed by MCFD for two years because she allowed the child to spend six hours in the presence of her physically abusive ex: “So yes, I went about it the wrong way. But just for me having a man in my house, [my child was removed]. [...] Having this happen, I was scared to go to the cops, I was scared to go to the hospital because I’d have to bring my four kids with me to go.”

Another survivor, who is white, explained that she was not sure “if there’s any link between the cops and the Ministry, but you know, I just didn’t want to take that chance” (Interview 6). She felt that “all the [legal] systems are so connected and so broken” and described her previous interaction with MCFD as “by far the worst, most violating experience I’ve ever had,” worse than sexual assault itself. She commented on single mothers’ disproportionate risk of being unfairly targeted by the child protection system:

I think it’s a broken system, and I think too as a single mom you’re so much more vulnerable. Like just as an example, when I had [my daughter] I ended up having an emergency C-section, and I wanted to keep my other daughter with me in the hospital. But [...] I didn’t have another parent to watch her, so they automatically sent me for a social work referral, which I didn’t like, and it wouldn’t have happened to me if I hadn’t been a single mom, right. [...] As a single mom you’re

151 *Ibid.*



so much more vulnerable to that MCFD call or that social worker role, you know what I mean? (Interview 6)

This woman also feared that reporting the assault could lead to a family law dispute with the perpetrator: “If I report [...] then I’m acknowledging him as the father and he could go for custody, whereas if I don’t and I don’t put him on the birth certificate, [...] I’m not necessarily acknowledging him as the father.”

Some survivors worry that they may be charged with an offense themselves if they pursue legal recourse after being assaulted. One project participant recounted that police threatened to charge her with an offense if she did not drop the report:

They said that I needed to stop the proceedings and they brought up a charge. [...] I actually don’t remember what the initial charge was, but they said, you know, if you don’t drop the charges, [...] you’re going to be accused of this. And it was some non-serious accusation of like [...] obstruction of justice. (Interview 22)

Another woman recalled, “I’ve had other experiences where [...] a man was being aggressive and violent and unsafe towards me [...], but then once the police got called, I’m the one who ended up with the assault charge because I hit him in trying to defend myself” (Interview 6).

Reporting sexual assault to police can be a destabilizing event with wide-ranging repercussions in survivors’ lives — which can include safety risks and serious economic and legal consequences. Understandably, concerns about such repercussions weigh heavily in many survivors’ decision-making about whether to report.

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Concerns about the criminal justice system process

Perpetrators may threaten to retaliate against survivors through physical violence, attacks on their reputation or character, or exposure to other dangers.

[Reporting] means [...] the police taking down your name and having to conduct interviews and maybe coming to your house and [...] having to show up to court or having to testify because that's all they have is your word against his. So you have to, you know, come up from the shadows and it seems like kind of state your case, you know what I mean? And it [...] makes me feel really vulnerable to have to feel like I have to defend myself. [...] This is something that's pretty intimate and a bit embarrassing and shameful. And the last thing I want to have to do is explain myself [...], why this happened or how it happened and have to keep going through it and tell multiple people. [...] I'll have to relive it constantly and have to be kind of exposed, you know, and have your name maybe in documents and having to show up to court. (Interview 13)

I've been with women to court and [...] watched them testify and watched them be cross-examined and it's awful. Yeah, I would not want to do that. That's just a nightmare. (Interview 21)

I [...] mentally and emotionally and physically couldn't take on climbing this mountain [...]. Like if I had maybe had known that there would be some type of a certain outcome or I like knew for certain that there would be some type of like change made by it [...] so it wouldn't happen to somebody else, maybe that would have been more motivating [...]. (Interview 27)

Most participants in this project expressed concerns about the process of seeking justice through the criminal justice system, from police report to trial. Research suggests that such concerns frequently factor into survivors' decision-making about whether to pursue legal recourse. A general fear of the justice

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system process was cited by 11% of respondents in the Ipsos/Global poll as a reason for not reporting sexual assault.¹⁵²

In our interviews with survivors, certain misgivings about the criminal justice system process were voiced again and again. Many women expressed concerns about the legal viability of their case, demands on their time and energy, psychological impacts of reporting and testifying, and limited control and choice. They also proposed measures to make the justice system process more survivor-centred.

“I DIDN’T THINK I HAD A STRONG CASE”

I don’t know who he was. I’ve never seen him before or after it happened. And I don’t remember [...] any details to be able to describe what he looked like. So even if I did want to report it I don’t feel like I would have enough evidence. (Interview 25)

It was well after the fact, so I guess I just feel like, well it happened years ago so how can I bring this forward now? Like I have no evidence [...]. This is my word against the perpetrator’s word, like I don’t [...] know what I needed to be successful at this point. Like it didn’t just happen, I can’t do a rape kit, I can’t, there’s no video footage of the assault. I guess I didn’t feel like I could prove what happened. (Interview 30)

I washed myself immediately, so I didn’t have any evidence. [...] I didn’t have any proof of what happened. (Interview 16)

If I were going to file charges it was like a month after the fact so I couldn’t go to the hospital and get a rape test, for example [...]. And then I would have to just go up and again be on the stand and tell my story with little evidence. (Interview 27)

At least seven participants in this project highlighted concerns about evidence as a significant factor in their decision about whether to report (Interviews 11, 13, 16, 25, 27, 29 and 30). As one woman explained, “I didn’t think I had a strong case to bring it forward” (Interview 30).

Research has shown that many survivors choose not to report because they believe the evidence is not strong enough to lead to charges or a conviction. Statistics Canada’s General Social Survey found that 43% of survivors who chose not to report cited a lack of evidence as a reason.¹⁵³ In Doe’s research,

¹⁵² *Supra* note 57.

¹⁵³ *Supra* note 2 [“GSS”] at 41.

survivors expressed their view that police generally do not regard women's "lived experience, their first-person evidence as to the crime," as adequate evidence to pursue charges.¹⁵⁴ As self-identified sexual assault victim Jennifer O'Neil put it in her testimony to Ontario's Select Committee on Sexual Violence and Harassment, many police officers "know how hard the system is and almost act like a filtration process from the get-go by informing survivors of their likelihood of making it to trial before they've even reported."¹⁵⁵

Indeed, several of the participants in this project described instances where police implicitly or explicitly discouraged them from pursuing charges on the basis that the evidence was lacking. One participant was advised that her case would "probably get thrown out" because of a lack of forensic evidence and that cross-examination would be a "long drawn-out process" if the case did go to trial (Interview 10).

To be sure, many survivors want a frank and realistic explanation of the justice system process and the statistical probability of success so that they can weigh the risks and benefits of pursuing charges.¹⁵⁶ Yet, the careful delivery of this information is crucial, as it can easily be expressed in a way that feels invalidating to the survivor. In the words of one participant:

I think that there's no harm in taking down the victim's story as if you believe them but also telling them about the low rates of conviction and, I mean, telling them about the low rates of conviction is a different thing than telling them that women often lie. I mean those are two very different pieces of information to deliver to a victim. (Interview 22)

Another woman recounted that "the officers I dealt with [...] all sort of commented on the fact that the case was based on hearsay, which was hard to hear" (Interview 29). She went through "48 hours of absolute terror" after police initially informed her that there was nothing they could do, only to be told later "actually we're gonna go forward with [an arrest]":

[Police] came back to me and they said, [...] 'There's no evidence, we can't do anything.' And I had all these documented incidents that had happened, but anyway they said, 'There's not enough evidence, we can't really move forward with anything, sorry.' [...] And I then was really scared for my safety because [the perpetrator] would know at that point that I had gone to police because they had come to him and been like, 'Well, your wife says this.' But the police weren't offering me any legal protection, and the police said, 'You're out of luck, like you can go get a civil restraining order if you want, but it's not even police-enforceable.' (Interview 29)

Concerns about evidence can be particularly acute for survivors who do not have the option of undergoing a rape kit because too much time has passed (see, for example, Interviews 27 and 30). Although there is no legal time limit for reporting sexual assault in Canada,¹⁵⁷ several survivors we spoke with believed that a delay in reporting would weaken the legal viability of their case: "It was too late in my mind to do anything about it" (Interview 25); "Because it happened [...] at that point years ago, so then I thought it was too late to report" (Interview 16).

154 *Supra* note 30 [Doe] at 370.

155 *Supra* note 58 [Ontario, Legislative Assembly] at SV-457.

156 *Supra* note 41 [DOJ, *Three Canadian Cities*] at 26.

157 Royal Canadian Mounted Police, "Information for sexual assault survivors" (20 July 2018), rcmp-grc.gc.ca/en/information-sexual-assault-survivors?fe.

It is undeniably difficult in many cases to prove beyond a reasonable doubt that sexual assault occurred, which is required for conviction. Disturbingly, some perpetrators exploit concerns about evidence to try to dissuade survivors from reporting to police. One woman recalled that the perpetrator, a co-worker, “said ‘prove that’ and walked away” immediately after assaulting her (Interview 11). She then sought guidance from contacts in law enforcement, who advised her that criminal law would not be the most useful avenue for pursuing justice:

And so I have friends who are police and who are RCMP, and they all said there’s no proof of the assault, but because you’re in [name of workplace] and they do it in-house, and it’s the same thing as a legal thing. You’d be better off just saying [...] sexual harassment and getting him that way than the assault. And so that’s what I did. And so nobody knew about the assault but me.
(Interview 11)

The statistical reality is that reporting sexual assault leads to conviction only about 11% of the time.¹⁵⁸ Therefore, it is understandable that many survivors question the legal viability of their cases and do not contact police if they believe that the personal costs outweigh the small possibility of a satisfying outcome.

“DO I HAVE THE TIME AND MONEY AND RESOURCES TO FOLLOW THROUGH WITH THIS?”

Am I [...] going to make a big deal of this and [...] go into some type of legal thing over this? And I am not making a lot of money, I can’t really pay for that. And if [the report] ends up turning up to be [considered] nothing because it is a grey area [...], like do I have the time and money and resources to actually [...] follow through with this? (Interview 27)

Well, I was pretty busy. I also thought it was like a lot of [...] paperwork and a hassle, and people will doubt that I had the incident. (Interview 16)

All the mental logistics, that’s the stuff that’s taxing for me. (Interview 4)

I just didn’t have enough energy to go through with it, I guess. (Interview 10)

A number of survivors we spoke with believed that reporting was likely to drain their time, money, and energy. For many, the financial, logistical, and psychological stresses involved in the process were a substantial barrier to reporting. Similarly, 45% of General Social Survey respondents who did not report indicated that they

¹⁵⁸ Canada, Statistics Canada, *Police-reported sexual assaults in Canada, 2009 to 2014: A Statistical Profile*, by Cristine Rotenberg, Catalogue No. 85-002-X (Ottawa: Canadian Centre for Justice Statistics, 2017); Canada, Statistics Canada, *From Arrest to Conviction: Court Outcomes of Police-Reported Sexual Assaults in Canada, 2009 to 2014*, by Cristine Rotenberg, Catalogue No. 85-002-X (Ottawa: Canadian Centre for Justice Statistics, 2017) at 3.



Disturbingly, some perpetrators exploit concerns about evidence to try to dissuade survivors from reporting to police. One woman recalled that the perpetrator, a co-worker, “said ‘prove that’ and walked away” immediately after assaulting her.

did not want the hassle of dealing with police, and 25% indicated that they did not want the hassle of dealing with the court process.¹⁵⁹

One participant explained that her apprehensions about being treated disrespectfully by justice system actors made her especially unwilling to invest in the process: “I don’t have the time or the energy to have somebody treat me like I’m dumb or question my motivations” (Interview 4).

Another woman, who had some measure of financial security, reflected that “the burden of time” involved in reporting could carry greater costs for survivors without that same economic privilege:

I was able to not work and I had dropped out of school and was able to get by, but I can’t imagine that happening and then like having to go to work to make money to survive and then to also then take more time to go back into your case and to deal with all this shit, just do more work, like more and more work. Or [...] not having the time to chase [police] down and be like, ‘What’s going on?’” (Interview 28)

For some survivors, serious financial impacts result from the emotional impacts of reporting. As one woman explained it:

[Reporting] was just so emotionally draining. [...] I underestimated how much of a toll it would take on me afterwards. [...] For me it wasn’t so much the preparation going into it, it was everything after, right, because you just like opened up yourself and you just are full of vulnerability and feel over-exposed and then you have to go back into the real world and what? Yeah, it was very difficult. [...] I had a very difficult time concentrating at work soon after [reporting]. Like my productivity went down and [...] I had a lot of somatic memories come up that I needed to [...] go for shiatsu a lot. [...] I found that I was going like three times a week which as a single parent I can’t afford but I just needed it because so much was coming up, right. And then so that was in June and then November that year I got fired from that job. (Interview 15)

“BRINGING BACK THE ATTACK OVER AND OVER AGAIN”

At least seven women who participated in this project indicated that the re-traumatizing potential of the justice system process was a consideration in their decision about whether to report (Interviews 10, 13, 15, 16, 21, 27 and 28). Here are just a few of the reflections they shared:

[Cross-examination] is gruelling to watch, you know, [complainants] are asked so many extremely detailed questions. They have to relive the assault moment to moment. [...] And asked the same question over and over, especially by defence counsel. (Interview 21)

I [had] one or two [therapy] sessions, but what that did was really — I mean it made me functional again after about a week of [being] a broken human — but what it did was it definitely took away my visual memory. So when I went into the [session with the police sketch artist] it was really tough, because they just keep saying visualize, visualize, visualize, like keep imagining, keep imagining, keep imagining, keep imagining, bringing back the attack over and over again. (Interview 28)

159 *Supra* note 2 [“GSS”] at 41.

The thought of a lawyer asking me all these questions I thought was really violating, and I'd rather just not go through that process of having to justify why [the assault] wasn't okay. (Interview 27)

Several studies with survivors have found that the act of describing the assault is often experienced as traumatic in itself—and also as exhausting, frustrating, and re-victimizing.¹⁶⁰ Half of the women interviewed by Clarke about their experience testifying at a trial or hearing characterized the process as re-victimizing and overwhelmingly negative.¹⁶¹

One woman who shared her story with us said that reporting sexual assault triggered her PTSD and was “a big mistake” (Interview 15). She explained that she would not contact police directly again “because I cannot be guaranteed that my mental state is going to be A-OK after.”

“VICTIMS SHOULD HAVE A SAY IN WHAT HAPPENS”

A defining feature of trauma is that it originates from uncontrollable events that overwhelm a person's coping ability.¹⁶² A key objective of trauma-informed practice, therefore, is to “provide clients with the experience of choice and control.”¹⁶³

Many survivors who participated in this project expressed a desire for greater choice and control in the justice system process:

I think that there should be a choice, you know, and victims should have a say in what happens because this happened to my body, you know what I mean, why I should be able to have a choice in what I think, you know, is the consequence for being violated. (Interview 13)

Once it's in the hands of the police, [...] you don't have as much control. I felt like with a third-party [anonymous] report, even though I wasn't fond of the questions being asked of me, I felt I had more control over that. (Interview 15)

Participants identified several options in the justice system process that were not available to them but that they would have appreciated. For example, one woman suggested that all survivors should have the freedom to testify behind a screen or in a separate room from the perpetrator (Interview 21). Another wished that survivors

160 Holly Johnson, “Why Doesn't She Just Report It? Apprehensions and Contradictions for Women Who Report Sexual Violence to the Police” (2017) 29 *Canadian Journal of Women and the Law* at 56; Robyn Doolittle, “What it's Like to Report a Sexual Assault”, *The Globe and Mail* (17 March 2017), theglobeandmail.com/news/investigations/what-its-like-to-report-a-sexual-assault-36-people-share-their-stories/article34338353/.

161 *Supra* note 52 [Clarke] at 128.

162 BC Provincial Mental Health and Substance Use Planning Council, *Trauma-Informed Practice Guide* (May 2013), bccewh.bc.ca/wp-content/uploads/2012/05/2013_TIP-Guide.pdf at 6.

163 *Ibid* at 10.



Several studies with survivors have found that the act of describing the assault is often experienced as traumatic in itself—and also as exhausting, frustrating, and re-victimizing.

could report to police anonymously over the phone, to eliminate uncertainty about what a community-based victim services worker might communicate to police in a third-party report (Interview 13). Yet another woman suggested that survivors should be able to choose the location of their police interview and have it conducted by a plain-clothes officer; she indicated that she would have preferred a familiar, non-institutional environment over the “small cell-like room” where she actually gave her statement (Interview 15).

Other research has focused on factors in the justice system that can exacerbate survivors’ sense of lost personal control. For example, survivors who were denied the opportunity to prepare themselves for a police interview and were instead pressured to provide a statement quickly — even when they had not slept, were hungover or mildly intoxicated, or were still in shock from the event — reported experiencing a distressing loss of control.¹⁶⁴

Emphasizing the choices survivors do have in the justice system might make reporting a less daunting prospect for some. In the words of Jennifer O’Neil, “If it’s underlined at first response that anything [the survivor does] right now will not force [the survivor] into a trial, the likelihood of getting survivors to the [forensic medical exam] will go up.”¹⁶⁵

“THE ACCUSED’S RIGHTS SEEM TO WEIGH SO MUCH HEAVIER THAN THE VICTIM’S RIGHTS”

It’s incredibly stressful and dramatic having to retell your story over and over [. . .]. And to be cross-examined by defence counsel, [. . .] it’s just unnecessarily brutal and nobody stops them, you know, Crown doesn’t stop them, the judge doesn’t stop them. Defence counsel just get to ask questions in whatever way they want with whatever facial expression that’s on their face and nobody says anything because of the accused’s right to a fair trial [. . .] It’s just the accused’s rights seem to weigh so much heavier than the victim’s rights. The witness is just a tool for the Crown, [. . .] they’re not treated well. (Interview 21)

I needed someone to hold my hand, you know, and it wasn’t there, and that was sort of the feeling I got. Like it was very much on me to, to do [complete paperwork and apply for supports] and [. . .] it doesn’t work that well, like it’s just not realistic for somebody that’s gone through something like that. (Interview 28)

Many project participants shared their view that the justice system process would be improved by a more victim-centred orientation. They identified measures that would have helped them feel better supported, such as automatic enrollment in the Crime Victim Assistance Program (Interview 28); assistance with paperwork (Interview 28); accompaniment by a support person when giving a police statement or testifying (Interviews 16 and 21); legal consultation before reporting (Interview 27); and follow-up supports after reporting (Interview 11).

164 Allyson Clarke, *In the Eyes of the Law: Survivor Experiences and Image Construction within Sexual Assault Cases* (PhD Thesis, University of Toronto, Ontario Institute for Studies in Education, 2014) [unpublished] at 70; Robyn Doolittle, “What it’s Like to Report a Sexual Assault”, *The Globe and Mail* (17 March 2017), theglobeandmail.com/news/investigations/what-its-like-to-report-a-sexual-assault-36-people-share-their-stories/article34338353/.

165 *Supra* note 58 [Ontario, Legislative Assembly] at SV-457.



“It’s incredibly stressful and dramatic having to retell your story over and over.”

Several survivors suggested that the justice system process should be streamlined to save survivors from having to repeat their stories many times to different personnel (Interviews 10, 15, 21, and 27). Two women proposed that multiple services for survivors could be housed in one location — for example, police, victim services, counselling, legal assistance, and health care (Interviews 15 and 27). According to one participant, this model would spare survivors “the intimidation of going into a hospital and speaking to a police officer and a social worker and like everybody under the sun about what happened, [...] particularly within such a short window of time for rape” (Interview 27).

Two survivors highlighted the importance of independent legal advice in the aftermath of sexual assault (Interviews 27 and 29). As one woman explained, “I struggled to get legal aid [for a family law matter after being assaulted]. It was awhile before I got legal aid, so I was self-represented for awhile” (Interview 29). Fielding emails from her ex-husband’s lawyer without the benefit of legal advice left her feeling “intimidated” and “belittled.”

Several women suggested measures to make the justice system more accessible to survivors with diverse needs and life circumstances. For example, one participant stressed that all services should be available in survivors’ own languages and that community-based supports and monitoring should be extended proactively to women known to be in distress (Interview 18). Another recommended that free child care be provided for all meetings with police and other appointments in the justice system (Interview 6).

Research suggests that survivors with disabilities are especially likely to encounter barriers in the criminal justice system as a result of processes designed without consideration for their needs. For example, whereas many sexual assaults of women with cognitive disabilities involve abuses of power and trust, the courts often limit their analysis of power differentials to age when considering whether legal consent is possible.¹⁶⁶ The courts may struggle to take into account the particular vulnerabilities of survivors with cognitive disabilities while simultaneously resisting ableist stereotypes that desexualize them and undermine their freedom to make decisions for themselves, including decisions

¹⁶⁶ Janine Benedet & Isabel Grant, “Sexual Assault and the Meaning of Power and Authority for Women with Mental Disabilities” (2014) 11 *Feminist Legal Studies*.

about sexual activity.¹⁶⁷ Court procedures can also pose accessibility problems. For example, intense cross-examination — which many survivors describe as stressful and even re-traumatizing, regardless of whether they have disabilities — may create particularly acute barriers for women with cognitive disabilities. These women may require adaptations to the cross-examination process that are not always provided.¹⁶⁸

Many factors that could contribute to a more survivor-centred criminal process are summed up in the following participant comment:

Maybe I would report if I knew that the police interview would be comfortable, you know, if the officer, if I knew that the officer would be friendly, approachable, would believe me, would be easy to talk to, it didn't feel like an interrogation. If the room was comfortable. I remember seeing that awful video of the woman who was sexually assaulted and was interviewed in this tiny little room that looked like a depressing cell, like that just, God that was awful, I wouldn't want to sit in a room and talk about something so personal in a room like that. So even like the environment matters too. And if it didn't take a lot of time, like if they actually managed to get everything in one interview and you didn't have to go back for a second interview [...] and then if you didn't have to tell your story five times, that would also be nice. And if you knew that your rights and really your well-being as a victim would be respected and not just by police but in the court system, [...] that they wouldn't treat you as just a means to a conviction, that they would actually, you know, place you at the centre of things rather than focusing solely on the accused's right to a fair trial at any cost. (Interview 21)

While the need to “place [survivors] at the centre of things” was a key theme in the interviews, several participants also recalled positive experiences in the justice system that made them feel that their needs and rights were priorities. One woman highlighted the crucial assistance she received from victim services workers, who did their utmost to support her: “Victim’s service and women’s centre was like my family, like my sister, my mom” (Interview 17, through an interpreter).

Another woman appreciated a judge who put a stop to inappropriate behaviour by the accused and unreasonable questions posed by defense counsel during cross-examination:

I felt [the judge] was impartial. [The accused] started yelling on the stand during the peace bond hearing, and she admonished him. That kind of made me feel like someone else could see that he was inappropriate. Like it wasn't like he could just do whatever he wanted and get away with it. [...] And there were a couple of times when I was being cross-examined that she didn't think the questions I was being asked were fair or reasonable, and she cut them off. (Interview 29)

While survivors recounted both positive and negative experiences in the justice system, they tended to agree about the benefits of offering choices, adopting trauma-informed practices, improving access for diverse women, providing support services, and ensuring that the rights of complainants are not completely eclipsed by the rights of the accused.

167 Janine Benedet & Isabel Grant, “A Situational Approach to Incapacity and Mental Disability in Sexual Assault Law” (2012) 43.1 *Ottawa Law Review*.

168 Janine Benedet & Isabel Grant, “More Than an Empty Gesture: Enabling Women with Mental Disabilities to Testify on a Promise to Tell the Truth” (2013) 25.1 *Canadian Journal of Women and the Law*.



PART 10

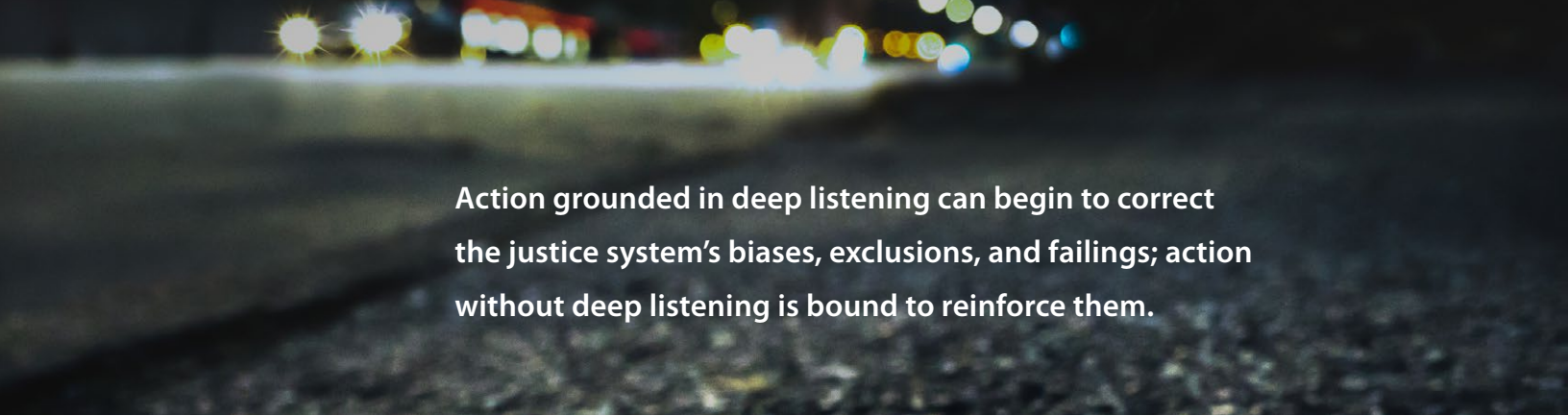
Conclusion

CHANGES IN THE JUSTICE SYSTEM and in society are urgently needed to offer viable paths to justice for all survivors of sexual assault. While scholars and justice system professionals have meaningful insights to contribute as part of the change process, nothing can replace the expertise of survivors, grounded in their lived experiences. The intention of this report is to amplify the voices of survivors and to urge decision-makers in the justice system and others in positions of social and institutional power to listen deeply. Action grounded in deep listening can begin to correct the justice system's biases, exclusions, and failings; action without deep listening is bound to reinforce them.

Survivors who participated in this project identified many promising directions for change, stemming from their experiences seeking justice for sexual assault:

- **EDUCATION FOR ALL SYSTEM ACTORS** — trauma-informed education for professionals engaged in all aspects of the criminal justice system
- **FUNDING** — adequate staffing and staff training in the justice system, and well-resourced survivor-focused services and supports

Survivors who participated in this project identified many promising directions for change, stemming from their experiences seeking justice for sexual assault.



Action grounded in deep listening can begin to correct the justice system's biases, exclusions, and failings; action without deep listening is bound to reinforce them.

Now is the time to dismantle the barriers to reporting sexual assault, with survivors' knowledge guiding the way.

- **PROFESSIONAL PRACTICES** in handling sexual assault cases — changes to justice system professionals' decision-making practices and communication with survivors
- **IMPROVEMENTS TO CRIMINAL JUSTICE SYSTEM** processes and support for alternative approaches — exploration of alternative programs and changes to the courtroom practices
- **IMPROVED SUPPORTS FOR SURVIVORS** — expanded social and health services, information for survivors, and access to independent counsel
- **PUBLIC EDUCATION** — efforts to raise public awareness about consent and sexual assault, options for survivors, the risks and benefits of reporting, and the steps in the justice system's process

The Canadian justice system can and must become more responsive to the needs of survivors. It can and must receive and handle all reports of sexual assault with the seriousness and respect they require. It can and must communicate to survivors that their rights matter — that *they* matter. Most importantly, it can and must put the voices of survivors and the human rights of all at the centre of justice system reform.


Now is the time to dismantle the barriers to reporting sexual assault, with survivors' knowledge guiding the way.


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West Coast LEAF is an incorporated BC non-profit society and federally registered charity. West Coast LEAF promotes gender equality and human rights through equality rights litigation, law and policy reform, and public legal education in British Columbia.



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