

SURVIVORS OF SEXUAL VIOLENCE AND THE CRIMINAL JUSTICE SYSTEM

Reviewing a legacy of harm, the
justice gap, and recommendations
for advocates and allies

ST. JOHN'S STATUS OF WOMEN COUNCIL

Written by Bridget Clarke
Advocacy Coordinator with the St. John's Status of Women Council

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Canada



-  ST. JOHN'S WOMEN'S CENTRE
-  MARGUERITE'S PLACE
-  SAFE HARBOUR OUTREACH PROJECT

170 Cashin Ave. Ext., St. John's, NL Canada A1E 3B6 | T. 709.753.0220 | F. 709.753.3817 | www.sjwomenscentre.ca

OVERVIEW

In light of the recent Snelgrove mistrial here in St. John's and the subsequent grassroots activism in support of Jane Doe, survivors and allies have once again directed our focus to the ways the criminal justice system perpetually fail survivors of sexual violence. Across Canada, we know that rates of sexual violence continue to climb, and that rates of reporting sexual violence remain incredibly low. Even more, we know that when reports are made, less than one percent are convicted in the criminal justice system.

Here in St. John's there have been calls to action echoing those across the country to engage judges in mandatory trauma-informed training, in hopes that this will improve processes and outcomes for survivors like Jane Doe. Most recently, on October 19th 2020 the Canadian government voted unanimously in support of the second reading of the re-introduced Bill C-337, an Act to amend the Judges Act and the Criminal Code.

In this report we scan the wider body of existing research, media, and literature to evaluate the ways victims of sexual violence are impacted through the processes made available to them in the criminal justice system. It is worth noting that this review is within a Canadian context, with select references to relevant North American and International resources. Our aim is to determine the most effective, equitable, and evidence-based recommendations for increased access to justice and reducing harm for survivors of sexual violence, both within and outside of the criminal justice system.



HIGHLIGHTS

- An underpinning of this report is a recognition that the criminal justice system is an institution which was built to uphold patriarchal and colonial outcomes and continues to operate to great extent within those constraints. We also recognize that victims and survivors of sexual violence are not a homogenous group. Gender-based violence and specifically sexual violence is pervasive and impacts all people, but most of all women and especially trans women, across communities and regions, socioeconomic statuses, ages, and cultures.
- In the context of this review it is important to identify that the way we currently understand rates of sexual violence is inherently flawed. This is due largely to mass under-reporting of sexual violence and also because of reported cases that are deemed unfounded by law enforcement, resulting in those cases slanting our national statistics and how we understand them.
- Notably, there has been long standing work towards policing and law reform in favour of survivors, such as the Philadelphia model in policing oversight and Canada's federal Bill C-337. While these are important strides aimed at restoring the trust of survivors in our criminal justice system, significant gaps remain with disparate impacts on our most at-risk communities.
- By a longshot, most survivors of sexual violence fall into what researchers and advocates alike call the 'justice gap'. Our work to improve survivor's access to and experiences within the criminal justice system must be informed by a comprehensive understanding of the justice gap.
- People have different experiences and therefore different requirements both for safety and towards seeking justice. However, the vast majority of survivors who report sexual violence find their experiences throughout all levels of the criminal justice system to be harmful and unjust.



DISCUSSION

Survivors and the Criminal Justice System

To date there are well documented systemic deficiencies in how the criminal justice system responds to cases of sexual violence. It is important to consider the many steps involved with reporting an instance of sexual assault, and the interactions a survivor could have with the criminal justice system at each step. To report sexual violence means stepping into an arduous process, and research tells us as survivors that the odds are not favourable.

There is plenty of evidence-based research archiving survivors' experiences throughout the criminal justice system. Experts say the approach of law enforcement is the single most influential factor in determining the outcome of an interview with a survivor, and by extension the outcome of the entire investigation. Survivors who choose to report to police frequently face blame, disbelief, or interrogation. Unsurprisingly, survivors who experience this say it's unhelpful, unsupportive, and contributes to secondary victimization. In several studies, survivors who encounter secondary victimization identify that it shows up throughout many stages in the legal process, but consistently in interactions with police officers.

Some studies found that about one third of survivors who report to police experience healing throughout the criminal justice system, and similar numbers are recorded capturing survivors who do not experience re-victimization. Other studies show that the majority of survivors rate their experiences with the criminal justice system as harmful and in some cases, interactions with the system were more harmful than the assault itself. Similarly, many survivors indicate that if they were more informed about what reporting would be like they would not have pursued it. Cumulatively, these experiences contribute towards sexual assault being the least reported crime in Canada.

The Justice Gap

It has been widely recognized that lack of access to justice is a critical issue deeply entrenched in our criminal justice system in Canada, disproportionately impacting our most marginalized communities. Women and non-binary people who are most vulnerable to sexual violence in Canada are Black, Indigenous, women of colour, migrants, newcomers, sex workers, disabled, young, 2SLGBTQI, have used alcohol or drugs, are impoverished or homeless, or experience other circumstances of marginality. It has been found that the people most at-risk of sexual violence also experience a decreased access to justice. In other words, people who are the most at-risk and who inherently face heightened systemic barriers are least likely to have cases investigated, prosecuted, or tried. This is known as the justice gap.

Recent Canadian research has identified that across survivors' experiences, sex workers and women of colour receive the harshest treatment by police when they report sexual assault; including experiences of interrogation, disbelief, implicit and overt discrimination, victim-blaming and neglect. Marginalized women facing intersecting oppression who experience sexual violence are also more likely to become criminalized through interactions with police, even in attempts to report violence. Inevitably, these interactions inform survivors' access to justice and police. Experiences like these have a longstanding impact on survivors' likelihood to report instances of sexual assault or involve themselves with the police in any capacity.

Discriminatory practices by police can also lead to reported cases of sexual assault being deemed unfounded. Police in Canada write off sixteen percent of reported sexual assaults as baseless. This number is staggering, and substantially higher than the determined rate of false reporting – which is somewhere between just two and eight per cent. When police deem cases as unfounded, the cases get closed and do not get investigated, meaning cases then don't have the chance to be prosecuted, tried, or convicted. The rate of sexual assault cases deemed unfounded by police has been internationally recognized as a crisis. This phenomenon reflects widespread discriminatory practices leading to inaccessibility to the criminal justice system for survivors. It also shapes our ability to understand data about widespread under-reporting of sexual assault, since the statistics we are working with aren't representative of survivors coming forward, against all odds.

Deficiencies in Reform Work

As it stands, the criminal justice system remains desperately in need of fundamental change. In Canada there has been much public discourse on criminal justice reform, with an emphasis on incorporating trauma-informed best practices in the work being done in this direction. Some experts recommend that a trauma-informed approach should be used through the entire criminal justice system, including sensitivity training for police officers, lawyers, judges, and other system participants. Other experts point to the documented inefficiency of sensitivity training, and that it functions instead as a strategy to let police off the hook.

The Philadelphia model was developed in 1999 by the Women's Law Project in response to an inquiry which revealed thousands of sexual assault cases dismissed by the Philadelphia Police Department. This model involves a heightened internal review process with increased supervision for police oversight on reported sexual assault cases. This includes an annual external audit of sexual assault reports deemed unfounded by police as well as a random sample of open cases, conducted by experts in law and gender advocacy. These assessments are done based on both process and outcome of investigations and are an opportunity to raise questions and provide feedback around policing practices.

In recent years, some Canadian police forces have chosen to adopt their own version of the Philadelphia model in policing oversight, including Saskatchewan, Alberta, Ontario, and Quebec. When the Calgary force began its own internal review they uncovered approximately 175 unfounded sexual-offence cases from the preceding five years. One of those cases was reopened for further investigation. While the Philadelphia model has been recognized by its founders as best practice in America, the long-term success of such models in Canada remains to be seen. In evaluating an increasing sense of trust in police, one indicator to anticipate would be an enormous spike in both reported cases of sexual assault documented by Statistics Canada as well as a substantial increase in sexual assault cases that get investigated.

Another recent movement in legislative reform is Bill C-337 in Canada. In 2017 Bill C-337, An Act to amend the Judges Act and the Criminal Code, was introduced in the House of Commons. In short, Bill C-337 would make comprehensive education about sexual assault law mandatory for future judges to be eligible for appointment to a Canadian superior court. Under this Bill the Canadian Judicial Council would be required to keep and share data with Parliament each year about the training and its attendance. After two initial readings, Bill C-337 died in the Senate in 2019 before being re-introduced as a government bill under the same title.

Heidi Illingworth with the office of the federal Ombudsman for Victims of Crime produced a thorough review of Bill C-337, highlighting critical flaws and recommendations to address them. Illingworth points out that while Bill C-337 is directed at judges who fall under federal jurisdiction, most sexual assault cases are heard by provincial judges. Similarly, Bill C-337 does not impose mandatory training on those already serving as judges. Most of all, this Bill does not address the many other participants in the criminal justice system who are significantly more influential on how cases move forward. A holistic review of this Bill also brings questions around proposed training content; such as marginalized gender inclusivity, cultural adequacy, and evaluation. To date, the Bill C-337 has passed it's first two (second) readings in the House of Commons.

Similarly, in 1983 Canada instituted federal law reform pertaining to rape, specifically to remove the previously legal requirement for accounts of rape to be corroborated. This legislation was widely celebrated, marking meaningful change to Canada's laws around sexual assault. However, in practice, an evaluation has found that most prosecutors continue to overlook this legislative change. To this day very few cases make it to court without forensic evidence corroborating accounts of sexual assault.

Alternative Routes to Justice

Survivors of sexual violence are not a monolithic group and have diverse perspectives and requirements for reparations. We see survivors continue to seek opportunities for healing outside of the criminal justice system because time and again the justice survivors need and deserve is rarely found within the systems available to us. There is much work that can be done towards improving survivors' experiences throughout the various processes within the criminal justice system, but as noted the efficiency of those efforts is unsubstantial. As such, we are looking to other avenues available in finding justice for survivors.

Recent data has found that in Canada approximately one fourth of sexual assault survivors showed more interest in exploring restorative justice processes than those of criminal justice. While this statistic highlights that restorative justice is not appealing for all survivors, considerably more people appear to be interested in this option than reporting to police. Comparably, survivors who did participate in restorative justice processes experienced increased feelings of empowerment and safety. In line with these findings, several studies call for more research and policy development focusing on civil and community-oriented processes to become more available for survivors of sexual assault.

An evaluation of survivor's post-traumatic recovery of sexual violence has recognized the critical role of support providers – either informal or community-based. In navigating options and systems post-assault, survivors indicated improved experiences and a decrease in secondary-victimization when they had access to informed support providers. In this context, support providers were essential agents in both system navigation and harm reduction for survivors through their recovery.



RECOMENDATIONS

Victims and survivors of violence continue to seek avenues of justice outside of the criminal justice system, often because this system is not consistently accessible for survivors and when it is, it is not always safe. Increased options towards justice must be readily available and socially recognized as legitimate. Research suggests that these options must include civil justice, restorative justice, community-oriented and individualized justice that can exist outside of pre-existing systems. Such avenues must be informed by harm reduction, person-centred autonomy, and be culturally safe and adequate for survivors.

As community advocates, allies and survivors calling for change, we must rigorously employ a critical lens to work being done around legal and professional reform for participants in the criminal justice system. This includes proposed training for judges, lawyers, or police. Analysis shows that such efforts are unlikely to affect widespread systemic change or increase access to justice for most survivors, especially the most at-risk. In much reform work, operations of power and socialization that contribute to the justice gap and even criminalization of survivors remain unchallenged and largely unchanged.

In our work towards increased safety, opportunities for healing, and access to justice for survivors, we must centre the experiences of those who have experienced the highest rates of sexual violence, who continue to be most at-risk, and who are disproportionately harmed through interactions with the criminal justice system. Since so very few cases get reported, let alone prosecuted or tried, there must be more emphasis and work done to address the justice gap and the majority of survivors who endure the repercussions. We must commit to a thorough understanding of the justice gap and consistently apply this lens to our advocacy and calls to action.

Finally, to effectively decrease harm and increase access to justice for survivors we support the call from Black and Indigenous leadership to defund police forces in Canada. We recognize that sustainable institutional change for survivors of sexual violence does not include inflated investment in sectors of the criminal justice system which cause the most harm. An investment in alternative channels for safety and justice would include increased research, funding, and policy initiatives around restorative justice, civil justice, and ensuring survivor-centred support is sustained in the community sector. Survivors of sexual violence deserve better than the legacy of harm they have endured. Safety, justice, and healing can exist beyond the criminal justice system.

