

Sexual Assault and the Justice Gap

--- Andrea Turcotte, Sexual Assault Counsellor at Women's House Serving Bruce & Grey

Sexual assault is one of the least reported crimes. Statistics Canada states that **only 50 out of every 1,000 assaults are reported to police**. Of the 50 reported, approximately 5 will result in a criminal conviction.

In a 2020 report by the St. John's Status of Women Council, 'Survivors of Sexual Violence and the Criminal Justice System', the author suggests the significant under-reporting by survivors, as well as the many cases that are deemed unfounded once reported, lead to a lack of true understanding of the level of sexual violence perpetrated. This leads to substantial issues for survivors, both in the criminal justice system, and in society at large.

Survivors and allies consistently focus attention on the re-victimization that occurs throughout the legal process. Survivors repeatedly contend with victim-blaming, disbelief, implicit or overt discrimination, neglect, or interrogation at virtually every step. This re-victimization leaves survivors feeling unsupported by the system, frequently expressing regret at their decision to report, and often experiencing a significant amount of additional harm beyond that already experienced as a result of the sexual assault.

Rape myths that persist in the legal system (and society in general) create substantial issues for sexual assault survivors, despite consistent rejection by the Supreme Court. Some of these myths are:

- that a woman who is perceived as promiscuous is more likely to have consented
- that women who wait to report are lying about the assault
- if a woman doesn't fight back, or have physical injuries, it was not assault
- if a woman was under the influence of alcohol or substances it was her fault
- that it is not assault if it occurs in the context of an intimate partner relationship
- sexual assault is often (or only) committed by strangers and occurs in dark, dangerous places

None of these myths are true, but they play a significant part in how survivors are treated as they seek support and justice from the legal system. Greater understanding of sexual violence statistics, consent, trauma responses, and the ongoing impact of trauma can help to dispel these myths.

Recently, in Ontario, a sexual assault survivor was charged with, and pled guilty to, violating the publication ban in her own case. **This resulted in the woman paying a fine of \$2000 and an additional victim surcharge of \$600**. The survivor emailed court transcripts to close family and friends who were already aware that she was the victim in this case, and already knew the name of the perpetrator. The perpetrator was made aware that this had happened and contacted police, who then charged the woman. The purpose of a publication ban is to protect the victim. In this case, the perpetrator was able to use it to exert further power and control over the victim, and engage the criminal justice system to cause her further harm.

A majority of sexual assault survivors fall into what the report describes as the justice gap, where populations who are at

the highest risk of sexual violence and who also face inherent and amplified systemic barriers are the least likely to receive justice. Indigenous women are most at risk of sexual violence and deficient responses from the criminal justice system due to their marginalization in society. Other examples of marginalized groups disproportionately impacted include racialized, disabled, homeless or impoverished women, and those who have used alcohol or substances. Narrowing this justice gap involves moving towards a more trauma-informed criminal justice system that would be more responsive to sexual assault survivors. Additional training should guide those in the system to a fuller awareness that criminal trials need to provide all participants, including sexual assault survivors, with impartiality and fairness, which would then generate more justice-oriented results.

Canadian statistics show that 16% of sexual assault cases are classified as unfounded, as opposed to the 2-8% of cases that are found to be false reports. When a case is deemed unfounded, it is not investigated. This leaves a survivor no avenue for justice through the legal system, and once again feeling unheard and not believed.

The 'Canadian Framework for Collaborative Police Response to Sexual Violence', developed by advocates and several police services in Ontario, outlines guidelines for a collaborative response to sexual violence. The document is endorsed by both the Ontario Association of Chiefs of Police and the Canadian Association of Chiefs of Police. A key component of this collaborative response is the creation of **Advocate Review Teams** that include members from community sexual assault centres. These external review teams undertake formal independent reviews of sexual violence reports, and should be the final stage for any sexual violence investigations not cleared by charge. In communities with Advocate Review Teams, recommendations made by the Team are presented to the relevant leaders of police services for implementation.

This document also discusses sexual assault police investigation guidelines, and clearly lays out the importance of trauma-informed support and collaboration throughout the entire process, so that survivors can have as supportive an experience as possible while navigating the legal system.

Moving this collaboration from theory to practice is an ongoing work-in-progress. A March 18th 2021 CBC headline read **'Dramatic rise in sexual assault reports doesn't lead to similar rises in charges.'** The rise in reports is generally believed to be largely driven by a greater awareness and openness sparked by the #MeToo movement. Advocates and allies continue to support survivors and seek opportunities to work in collaboration with police services and the legal system to increase safety and support, thereby closing the justice gap for sexual assault survivors.



Women's House
Serving Bruce and Grey



Survivors repeatedly contend with victim-blaming, disbelief, implicit or overt discrimination, neglect, or interrogation at virtually every step. This re-victimization leaves survivors feeling unsupported by the system, frequently expressing regret at their decision to report, and often experiencing a significant amount of additional harm beyond that already experienced as a result of the sexual assault.

