Examining Attrition Rates for Reported Sexual Assault Cases

JANE URSEL, RICHELLE READY, AND JESSICA GOMES

ABSTRACT

Canada's criminal sexual assault laws were revised repeatedly by Parliament in the 1980s and the 1990s to temper the impact of discriminatory thinking on processes used and principles applied.[1] These revisions were designed to make the process less of an ordeal for complainants and to make convictions easier to obtain. Yet according to a study by Daly and Bohours,[2] the percentage of complaints that did not result in conviction (attrition rate) actually rose between 1970 and 2005. This article presents the preliminary results of an analysis of all reported cases of sexual assault involving youths and adults reported to the police department in 2015 and 2016 in a mid-sized Canadian prairie city. We are exploring the attrition that occurs at the police level, the most frequent reasons for attrition and the characteristics of cases that do proceed to prosecution. This is the first study of its kind in Canada, in which we have access to all reported cases and can follow these cases through the criminal justice system from first report to final disposition. This article will provide descriptive statistics on attrition at the police level for 1029 cases reported in the years

1 Sheila McIntyre et al., "Tracking and Resisting Backlash Against Equality Gains in Sexual Offence Law" (2000) 20:3 Can Woman Studies 72.

2 Kathleen Daly & Brigitte Bouhours, "Rape and attrition in the legal process: a comparative analysis of five countries" in Michael Tonry, ed, *Crime and Justice: A Review of Research*, Vol 39 (Chicago: Chicago Univeristy Press 2010) 565.

2015 and 2016. We will conclude with a brief discussion of alternatives to the mainstream justice system in light of consistently high attrition rates.

I. INTRODUCTION

Three theoretical frameworks support our approach: feminist legal theory, legal pluralism, and critical criminology. While feminist legal theory has many strands, each one examines broad structural patterns in order to illuminate the forces, especially laws that create and support sex inequality, together with other forms of oppression and injustice.[3] Additionally, it has "always been informed by, and grounded in, the need to engage strategically with law to improve social conditions for women."[4] Of particular interest to this paper is feminist legal theorists' exploration of alternative approaches to the criminal justice system specifically, restorative justice and Tort law.[5]

Our second framework, legal pluralism posits that complex decision-making passes through layers of legal orders prior to final disposition with each layer governed by different formal and informal norms and rules.[6] By considering whether and how sexual assault complaints are governed by layers of idiosyncratic institutional-level decision-making as the complainant moves through the criminal justice system, we should gain insight into why high-order formal law reforms have not had the expected effect at the institutional level.

---

3 GR Painterm, "Feminist Legal Theory" in James D Write, ed, *International Encyclopedia of the Social & Behavoral Sciences*, 2nd ed (Amsterdam: Elsevier, 2015) 918; Emily Snyder, "Indigenous Feminist Legal Theory" (2014) 26:2 CJWL 365; Sherene Razack, *Looking White People in the Eye* (Toronto: Toronto University Press, 1998).

4 Susan B Boyd & Debra Parkes, " Looking Back, Looking Forward: Feminist Legal Scholarship in SLS" (2017) 26:6 Soc & Leg Stud 735 at 738.

5 Melanie Randall, "Restorative Justice and Gendered Violence? From Vaguely Hostile Skeptic to Cautious Convert: Why Feminists Should Critically Engage with Restorative Approaches to Law" (2013) 362 Del LJ 461; Estelle Zinsstag & Marie Keenan, eds, *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions*, 1st ed (New York: Routledge Taylor and Francis Group, 2017).

6 Colleen Sheppard, "Equality Through the Prisim of Legal Pluralism" in Colleen Sheppard & René Provost, eds, *Dialogues on Human Rights and Legal Pluralism* (New York: Springer, 2013).

Finally, critical criminology identifies and examines the harms created by the criminal justice system to discrete populations, such as victims.[7] Some research has shown that the police may be prime contributors to secondary victimization, by, for example, signaling to sexual violence complainants that they do not believe them. However, Spencer et al have recently revealed how police officers' views on how judges and Crowns operate "can serve as a key strategic alliance for reforming a system that too often contributes to the harm of victims."[8] Additionally, they observe that some police officers attempt to help complainants avoid secondary victimization rather than being the perpetrators of this phenomenon. For example, some officers may persuade complainants not to move forward with charges not because they do not believe the assault occurred but because they know that very few cases of sexual violence are successfully prosecuted in court and the process can be long and re-victimizing with little reward. Using a critical criminology framework, we may discern how police, Crown attorneys and judges offer resistance on an individual or institutional level that may reinforce discrimination.

To date there have been a limited number of studies of attrition rates in Canada and even fewer examining attrition rates at the police level. Johnson's work[9] using uniform crime reporting data and other available statistical data identifies important trends in the processing of sexual assault cases but that work does not offer insight into why those trends occurred. Surprisingly little social science research has been done in Canada on how police practices and investigations affect the high attrition rates for sexual assault. Only three qualitative studies have been published based on sexual violence data collected in the last two decades that help explain trends in

---

7 Claire Renzetti, "Feminist perspectives" in Walter S DeKeseredy and Molly Dragiewicz, eds, *Routledge Handbook of Critical Criminology*, 2nd ed (New York: Routledge, 2018); Carol Smart, *Feminism and the Power of Law,* 1st ed (New York: Routledge, 1989).

8 Dale Spencer et al., "'I think It's Re-Victimizing Victims Almost Every Time': Police Perceptions of Criminal Justice Responses to Sexual Violence" (2018) 26:2 Crit Criminol 189 at 190.

9 Holly Johnson "Limits of a Criminal Justice Response: Trends in Police and Court Proccessing Sexual Assualt" in Elizabeth A. Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women's Activism* (Ottawa: University of Ottawa Press, 2012) 613 [Johnson, "Limits of a Criminal Justice Response"].

police work.[10] The only quantitative studies on police processing have been limited to consideration of how police officers conclude that a complaint was unfounded and therefore ceased investigation.[11]

A larger number of qualitative studies have been published on complainant's experiences with the Canadian criminal justice system.[12] These studies quite consistently reveal similar reasons for not reporting or withdrawing a complaint including: shame/embarrassment: fear of not

---

10 Teresa DuBois, "Police Investigation of Sexual Assault Complaints: How Far Have We Come Since Jane Doe" in Elizabeth Sheehy, ed, *Sexual Assualt in Canada: Law, Legal Practice and Women's Activism* (Ottawa: Ottawa University Press, 2012) 191; Holly Johnson, "Why Doesn't She Just Report It? Apprehension and Contradicions for Women Who Report Sexual Violence to the Police" (2017) 29:1 CJWL 36 [Johnson, "Why Doesn't She Just Report It"] ; Spencer et al., *supra* note 8.

11 Department of Justice Canada, *Highlights from a Preliminary Study of Police Classification of Sexual Assault Cases as Unfounded*, by Tina Hattem in *Just Research*, Issue No 1 (Ottawa: Department of Justice, 2007), online (pdf): <https://www.justice.gc.ca/eng/rp-pr/jr/jr14/jr14.pdf > [perma.cc/WEK6-35UR] [Hattem, "Highlights of Preliminary Study"]; Robin Doolittle, "Unfounded: Why Police Dismiss 1 in 5 Sexual Assault Claims as Baseless" *Globe and Mail* (3 February 2017), online: <https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/> [perma.cc/642D-LG5J].

12 Department of Justice Canada, *A Survey of Surivors of Sexual Violence in the Northwest Territories*, by Melissa Lindsay, Catalogue No J2-404/2014E-PDF (Ottawa: Department of Justice Canada, 2014), online (pdf): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_04/rr13_04.pdf> [perma.cc/FR2Y-XPGH] [Lindsay, "North West Territories]; Department of Justice, "A Survey of Surviors of Sexual Violence in Three Canadian Cities" by Melissa Lindsay, Catalogue No J2-403/2014E-PDF (Ottawa: Department of Justice, 2014), online (pdf): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr13_19/rr13_19.pdf> [perma.cc/QN7M-D9YY] [Lindsay, "Three Canadian Cities"]; Elizabeth Cormack & Tracey Peter, "How the Criminal Justice System Responds to Sexual Assault Survivors: The Slippage between 'Responsibilization' and 'Blaming the Victim'" (2005)17:2 CJWL 383; Daly & Bouhours, *supra* note 2; DuBois, *supra* note 10; Janice Du Mont, Deborah White & Margaret J McGregor, "Investigating the Medical Forensic Examination from the Perspective of Sexually Assaulted Women" (2009) 68:4 Soc Science & Medicine 744; Department of Justice, *Survey of Sexual Assault Survivors*, by Tina Hattem (Ottawa: Department of Justice Canada, 2000), online (pdf): <https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr00_4/rr00_4.pdf> [perma.cc/7UBY-RP26] [Hattem, "Survey of Sexual Assault Surviors"]; Johnson, "Why doesn't she just report it", *supra* note 10 ; Cheryl Regehr et. al., "Victims of Sexual Violence in Canadian Criminal Courts" (2008) 3:1 Victims & Offenders 99; Vicki Vopni, " Young Women's Experiences with Reporting Sexual Assault to Police" (2006) 25:1 Can Women's Studies 107.

being believed; fear of the offender; no family support; no confidence in the criminal justice system; felt there was not enough evidence; or, a previous bad experience.[13]

From these studies and anecdotal information we know some attrition occurs because the police believe the complaint is unfounded[14] or no suspect can be found or, following investigation, the police conclude there is insufficient evidence to lay a charge. Other times, complainants have second thoughts about participating and withdraw or the initial complaint is made by a third party but the complainant declines to participate. At each stage, different actors make decisions that determine attrition rates but existing research does not identify who is making the decision and what factors influence their decision making. Our study is a first attempt to systematically identify the decision makers and record some of the factors influencing their decisions.

II. Police Attitudes, Actions and Attrition

Johnson[15] examined police responses to sexual assault victims/complainants and the impact this may have on their decisions about reporting or withdrawing a complaint. Johnson conducted a study of 36 female sexual assault survivors whose assaults were reported to police in a mid-sized Canadian city.[16] She analyzed their experiences, "from the decision to report to the police through to their interactions with front line officers and sexual assault investigators."[17] Johnson reports that "while some police officers delivered procedural justice in the form of a professional non-judgemental response, others acted on "real rape" {myths} ... of sexual assault and conveyed disbelief, skepticism, and a poor understanding of the effects of trauma."[18]

---

13 *Ibid.*

14 DooLittle, *supra* note 11.

15 Johnson, "Why Doesn't She Just Report It", *supra* note 10.

16 *Ibid.*

17 *Ibid* at 44.

18 *Ibid* at 37.

In early 2017, the Globe and Mail's *Unfounded* series reviewed sexual assault investigations practice at 870 police forces across the country.[19] Especially troubling was Doolittle's findings that, on average, police forces across the country dismissed sexual assault complaints as unfounded and therefore did not conduct any investigation in almost 20 per cent of cases.[20] As a result of the Doolittle article and the concurrent # MeToo movement police changed the definition of unfounded incidents and sexual assaults classified as unfounded dropped from 14% in 2017 to 7% in 2022.[21] Unfortunately, there was a rise in cases classified as uncleared (i.e. unsolved by police) from 48% in 2017 to 59% in 2022.[22] Cases designated as uncleared because of a number of factors including no accused identified, case still open and under investigations, complainant declines to proceed or insufficient evidence to proceed to a charge.[23] This paper will examine the factors that lead to attrition at the police level in this mid-sized prairie city.

III. METHODS

This is a quantitative study that collects data on all cases of sexual assault against youth (aged 12-17yrs.) or adults which were reported to the police. This is a population study rather than a sample and the only cases that were not followed through the system were those referred to a different jurisdiction. Three data collection schedules have been developed based on consultation with local agencies serving sexual assault survivors, police staff in the sex crimes unit and prosecutors in a specialized prosecution unit in the city in which the data was collected. Before the schedules were finalized we did a pilot review of approximately 20 police files to ensure we were capturing the necessary information to understand the process of attrition at the police level.

---

19 Doolittle, *supra* note 11.

20 *Ibid.*

21 Statistics Canada, *Recent trends in police-reported clearance status of sexual assault and other violent crime in Canada 2017 to 2022*, by Shanna Conway, in *Juristat*, Catalogue No 85-002-x (Ottawa: Statistics Canada, 2024), online (pdf): <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2024001/article/00006-eng.pdf?st=7u-2VMJv> [perma.cc/42UR-9MXH].

22 *Ibid.*

23 *Ibid.*

The first, victim-schedule collects all available information from police files on the victim/complainant report of the incident and the victim/complainant characteristics, such as their age, sex, ethnicity. We also code numerous variables on the nature of the assault, such as, the location of the assault, number of victims and/or suspects and the relationship between victim/s and suspect/s. Further, we also record a number of variables on the investigation, such as whether there was a DNA sample, number of interviews, etc. In total on the victim-schedule we collect 74 variables.

The second, suspect-schedule collects data on the suspect from the police files which includes age, sex, ethnicity, prior record, number of suspects, etc. In total the suspect-schedule collects 51 variables. The third schedule is designed to collect data at the court level which combines victim and accused schedules into case data. This may involve multiple cases from one incident if multiple suspects are involved and elect to be tried separately. For the purposes of this paper we are examining findings from the victim and suspect schedules to identify the reasons for attrition at the police level. For example, one reason for attrition, at a given point in time, is the lack of an identified accused. If at a later date the accused is located and charges are laid, we can record this, if it occurs in the 4 year span of the study.

Finally, our study has to balance the need for sufficient information with the responsibility for security. Thus, names were all given alpha-numeric codes, essential to be able to match up victim and accused at the court level. Matching up can be complicated in circumstances in which a multiple suspect case could result in split cases with separate hearings/trials or in multiple victim cases in which some victims participate in the process and others drop out. An additional security measure involves the collection and storage of all data on secure, off-line computers in secure, locked facilities at the police station, the court and the University.

IV. Findings

In 2015 there were 517 cases of sexual assault reported to the police and in 2016 there were 525 cases reported, for a two-year total of 1,042 cases. In the overwhelming number of cases (94%) the victims were female. In both years there were some cases involving multiple victims, 526 victims in 2015 and 539 victims in 2016. Police were able to identify suspects in

62% of the cases or 319 suspects in 2015 and 67% of the cases or 352 in 2016. These cases involved a number of different abuse categories for example domestic sexual assault occurring in an ongoing intimate relationship, youth who were sexually assaulted by an adult or by a youth peer. The largest category, however, was adult sexual abuse. Table 1, below identifies the different categories of abusive relationships.

Table 1: Number of Cases by Type of Abuse 2015–2016

Type of Abuse	Total	Percentage
Adult Sexual Assault	614	59%
Child Sexual Assault	348	33%
Adult/Child	250	24%
Youth/Peer	98	9%
Domestic Sexual Assault	69	7%
Historical Sexual Assault	11	1%
Total	1042	100%

In the Canadian *Criminal Code* (CC),[24] sexual assault is classified into three categories depending on the nature and severity of the assault:

- Level 1 sexual assault (s. 271): assault of a sexual nature that violates the sexual integrity of the victim;[25]
- Level 2 sexual assault (s. 272): assault of a sexual nature that involved a weapon, threats to a third party or bodily harm to the victim;[26]
- Level 3 sexual assault (s. 273): aggravated sexual assault involved wounding, maiming, disfiguring or endangering the life of the victim.[27]

The majority of cases in 2015 and 2016 were level 1 assaults. This is consistent with Statistics Canada's report that the vast majority of cases (98%) were classified as level 1.[28] In these two years 999 or 94% were level 1 assaults with the majority 55% or 585 cases involving penetration. There were 61 cases or 6% that were level 2 and only 4 cases were level 3 assaults.

---

24 *Criminal Code*, RSC 1985, c C-46.

25 *Ibid*, s 271.

26 *Ibid*, s 272.

27 *Ibid*, s 273.

28 Conway, *supra* note 21.

V. Vulnerability and Victimization

Gilson[29] identifies that "women are typically considered more vulnerable than men." She states that "the bodies of women and sexual minorities have historically been subject to systemic violation, exploitation, objectification and commodification."[30] Statistics Canada affirms that sexual assault is a highly gendered crime. Police-reported sexual assaults in Canada, in 2022, indicates that women and girls accounted for 9 in 10 victims (90%), and the vast majority (96%) of accused persons were men and boys.[31] Our study is consistent with national statistics with women and girls accounting for 94% of survivors and men and boys accounting for 95% of accused. Also consistent with national statistics we found that the majority of survivors 55% knew their assailant.

While sexual assault can occur at any age the majority of survivors in this study were girls or young women.



In addition to age and gender constituting vulnerability to assault our data indicates a number of other vulnerabilities identified among survivors

29 Erin Cunniff Gilson, "Vulnerabiltiy and Victimization: Rethinking Key Concepts in Feminist Discourses on Sexual Violence" (2016) 42:1 Signs: J of Women in Culture and Society 71 at 75.

30 *Ibid.*

31 Conway, *supra* note 21.

in our data set. Pearce states that "the layering of vulnerabilities leads to less support from both the wider society and the agents of the state [and] results in the greater likelihood of being targeted as victims."[32] Our study does indeed indicate a definite layering of vulnerabilities among the survivors in 2015-16, including ethnicity, addictions and mental health.

In Canada numerous studies document that Indigenous women and girls are more likely to be victims of violent crime including sexual assault than non-Indigenous women and girls.[33] In our study 53% or 537 of the survivors were Indigenous, 41% or 410 were of European origin (identified in tables as white) and 6% or 63 were other ethnicities. Thus, Indigenous women and girls who are a minority in our city are greatly over represented as survivors of sexual assault.

When information was available we also coded for other vulnerabilities, such as, mental health issues or physical disabilities. We also included involvement with Child and Family Services (CFS) as a vulnerability because many studies report that involvement with CFS is a risk factor for victimization and /or conflict with the law.[34]

Five hundred of the survivors were identified as having one or more vulnerabilities. Of these individuals 372 identified a single vulnerability and 128 identified multiple vulnerabilities. By far the most frequently recorded

---

[32] Maryanne Pearce, *An Awkward Silence: Missing and Murdered Vulnerable Women and the Canadian Justice System* (PHD Thesis, University of Ottawa, 2013) at 256 [unpunlished], online (pdf): <https://www.collectionscanada.gc.ca/obj/thesescanada/vol2/OOU/TC-OOU-26299.pdf> [perma.cc/35RU-MWW3].

[33] Native Women's Association of Canada, What their stories tell us: Research Findings from the Sisters in Spirit Initiative (Six Nations of the Grand River: Native Women's Association of Canada, 2010), online (pdf): < https://nwac.ca/assets-knowledge-centre/2010_What_Their_Stories_Tell_Us_Research_Findings_SIS_Initiative-1.pdf> [perma.cc/CEV3-6GNT].

[34] Julia M.Kobulsky et al., "Comparing the prevalence of sexual behaviors and vicitmization among adolescents based on child welfare system involvement"(2022) 134 Child Abuse & Neglect 1; Martine Hébert et al., " Child sexual abuse as a risk factor for teen dating violence: Findings from a representative sample of Quebec youth" (2017) 10:1 J Child Adolescent Trauma 51; Magan K. Mass, Bethany C. Bray & Jennie G Noll, "Online Sexual Experiences Predict Subsequent Sexual Health and Victimization Outcomes Among Female Adolescents: A Latent Class Analysis" (2019) 48:5 J Youth and Adolescence 837.

vulnerability was involvement with CFS. Table 2 below identifies the type of vulnerabilities recorded.

Table 2: Victim Vulnerabilities

Victim has…	2015-2016 (N=500)	
	#	%
CFS Involvement	256	51%
Addictions	25	5%
Mental Health	45	9%
Intellectual Disability	17	3%
Sexual Exploitation	12	2%
Physical Disability	15	3%

With regard to ethnicity a frequent question we are asked is what is the ethnicity of the accused in relation to the survivor. In order to match the survivor's ethnicity to the suspect's ethnicity we had to exclude a large number of cases either because no suspect was identified 17% of the cases, or the ethnicity of the suspect was not known, or the ethnicity of the survivor was not known. Given these exclusions we were able to match survivor and suspect ethnicities for 222 or 41% of Indigenous survivors and 218 or 53 % of survivors identified as white or European origin. This matching process indicates that the majority (57%) of Indigenous survivors were assaulted by a suspect identified as Indigenous and the majority of white survivors 60% were assaulted by a suspect identified as white.

Table 3: Indigenous Survivors Matched with Suspect Ethnicity

Suspect Identity	Police ID	Percentage
Indigenous	126	57%
White	61	27%
Black	17	8%
Asian	5	2%
Indo-Canadian	11	5%
Central/South American	2	1%
Total	222	100%

Table 4: White Survivors Matched with Suspect Ethnicity

Suspect Ethnicity	Police ID	Percentage
White	131	60%
Indigenous	33	15%
Black	19	9%
Asian	11	5%
Indo-Canadian	22	10%
Central/South-American	2	1%
Total	218	100%

VI. ATTRITION AT THE POLICE LEVEL

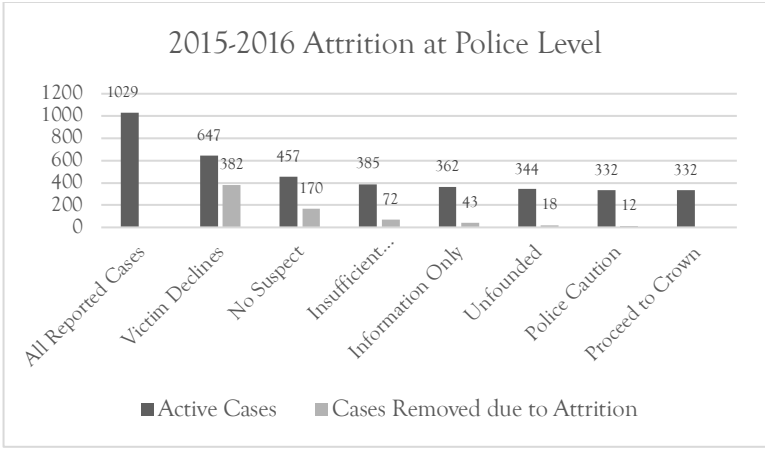
Legal Pluralism theory addresses the fact that there are many decision makers that determine the outcome of cases within the CJS. This article reports on the first stage of decision making, i.e. decisions that occur at the police level. Our findings indicate that the greatest loss of cases occurs at this first stage of the criminal justice process. We found that only one third of the reported cases proceed to the prosecutor's desk. Much of the public narrative about attrition at the police level attributes the attrition to police decision making, for example, they don't believe the complainant. DooLittle's[35] Globe and Mail report in 2017, which reviewed 870 police forces across the nation, found that on average 20% of cases were dismissed as unfounded. Further, she found that there was quite a range of unfounded dismissals from 2% in some communities to 50% in others.[36] Her findings certainly supported the public narrative of police as an impediment to cases proceeding.

In order to calculate attrition in our data set 13 cases had to be excluded from the total of 1,042 reported cases, 7 because they were referred to a different jurisdiction and 6 cases were listed as pending at the time data collection was concluded. This leaves us with 1,029 completed cases to explore the sources of attrition.

---

35 *Supra* note 11.

36 *Ibid.*



As chart 2 indicates the largest source of attrition, 37% results from the complainant declining to proceed with the complaint. The second largest attrition, 17% was due to no suspect being identified and/or found. The smallest attrition involving complainant decision making rather than police decision is the 4% of the cases identified as "information only." These are cases in which a complainant contacts the police to inform them that they have observed some assaultive behaviour is occurring, for example groping on a bus, but they have no further information. In total 595 cases or 58% of case attrition results from factors other than police decision making. Police decision making accounts for the attrition of 103 cases or 10% of reported cases. Police recorded 7% of cases to have insufficient evidence, 2% unfounded, 1% resolved through police caution.

Our study indicates that the type of abuse also has an impact on attrition. Notably, sexual assault within a domestic assault case has the lowest attrition rate. Table 3 identifies the attrition rate by type of abuse.

Table 5: Attrition Rate by Type of Abuse

Type of Abuse	Not Proceeding	Victim Decision/No Suspect*	Police Decision
Adult Sexual Assault	433	369 (85%)	64 (15%)
Child Sexual Assault	242	209 (86%)	33 (14%)
Domestic Sexual Assault	16	13 (81%)	3 (19%)
Historical Sexual Assault	6	4 (67%)	2 (33%)
Total	697	595 (85%)	102 (15%)

* Includes 1) victim who did not disclose, 2) victim declined to proceed, 3) information only, and 4) no suspect.

Based on earlier research on domestic violence cases,[37] we have been aware that a very small percentage of persons abused in a domestic relationship report sexual assault as part of the abusive behaviour. This low reporting rate is despite the fact that interviews with women in shelters and other domestic violence services indicate that at least a third of them report sexual assault and the use of a weapon as a frequent component of the abusive behaviour.[38]

37 Jane Ursel, Leslie M Tuttie & Janice leMaistre, *What's Law Got to Do with It? The Law, Specialized Courts, and Domestic Violence in Canada* (Toronto: Cormorant Books Inc., 2008).

38 Jane Ursel, Address (Delivered at the National Judicial Institute, Montreal, January 2024).

Table 6: Women's Experience of Assault and Official Criminal Justice Statistics

Nature of Assault	Women's[39] Report	WFVC[40]	CCJS[41]
Rape	41%	1%	2%
Assault with a weapon	42%	15%	12%

The data in table 6 indicates that, in general, survivors of D.V. are likely to minimize the severity of the assault especially sexual assault or the use of a weapon when reporting their abuse. However, it is possible that when survivors in a domestic relationship have overcome all of the barriers to reporting a sexual assault they are committed to ending the relationship and seeing the matter through the criminal justice system CJS. This may explain why the attrition rate for survivors of sexual assault in a domestic relationship have such a low attrition rate compared to all of the other categories of survivors in our study.

There are other factors that correlate with attrition. If the assault was reported by a third party, not the victim, the attrition rate increases. Also, if the victim was intoxicated at the time of the assault the attrition rate increases. Factors associated with a lower attrition rate are: 1. The victim reported the assault themselves; 2. The victim resisted; 3. The suspect was a stranger; 4. The use of a weapon during the assault.

When we examine the factors associated with attrition it seems to mirror the myths about sexual assault. As indicated in the Supreme Court

---

39 The Women's Report (unpublished), referred to as "The Healing Journey" was a longitudinal, Canadian study with a convenience sample of 665 women who had been abused by intimate partners and had sought shelter and/or counseling in the provinces of Alberta, Saskatchewan, and Manitoba. This project was led by author, Jane Ursel.

40 Jane Ursel & Christine Hagyard, "The Winnipeg Family Violence Court" in Jane Ursel, Leslie M Tutty & Janice LeMaitre, eds, *What's Law Got To Do With It: The Law, Specialized Courts and Domestic Violence in Canada* (Toronto: Cormorant Books, 2008) 95.

41 Statistics Canada, *Family Violence in Canada: A Statistical Profile 2004*, by Jodi- Anne Brzozowski,Catalogue No 85-224-XIE (Ottawa: Statistics Canada, 2004), online (pdf):<canadiancrc.com/PDFs/PHAC_2004_family_violence_profile_e.pdf>[perma.cc/9JMT-H2JH].

of Canada's decision in *R v Barton,* myths are very much alive in the CJS and in society as a whole.[42] The court opens its decision in *Barton* with a recognition that:

> Without a doubt, eliminating myths, stereotypes, and sexual violence against women is one of the more pressing challenges we face as a society. While serious efforts are being made by a range of actors to address and remedy these failings both within the criminal justice system and throughout Canadian society more broadly, this case attests to the fact that more needs to be done.[43]

Among the many myths about sexual assault is the belief that if the victim was intoxicated they were "asking for it" and therefore would not be believed. Among the myths about a "real victim" is the idea that they fought back, there was a weapon used and that suspects are usually strangers. Since the greatest source of attrition at the police level is victim reluctance to continue this suggests that the victim/survivor has also internalized these myths. For people who work in this field it has long been understood how myths about sexual assault serve to silence those who have been assaulted and is, in part, a reason for such low reporting rates. Further, our data indicates that the impact of these myths extend even after a person has reported their assault to the police. This toxic messaging continues to erode a complainant's confidence that they will be believed and so they decline to proceed.

VII. DISCUSSION

Confronting sexual assault is a challenge filled with conundrums. We live in a society that objectifies women as sexual objects and then surrounds the objectification with myths about women and men's sexuality. These myths serve to insulate men from accountability and blame women for their victimization. Our study suggests that women who have reported their assault to the police also internalize these myths, deciding at some point not to proceed with their case within the CJS. Further, we find that perpetrators avoid detection by selecting vulnerable victims. Studies have shown that if perpetrators are not arrested and convicted, they become chronic

---

42 *R v Barton*, 2019 SCC 33 para 1 [*Barton*].

43 *Ibid.*

offenders.[44] Fiinally, we have an adversarial justice system which is heavily dependent on the testimony of the complainant. It is a system that depends on vulnerable individuals, recounting the most intimate details of the assault at a time they feel most vulnerable in a formal and often alienating setting, i.e. the police station or court. For complainants whose cases do proceed to court, they are then subject to cross-examination, which is often humiliating.

The challenge is how do we hold perpetrators accountable without revictimizing the complainant. In view of high attrition, low conviction rates and survivors' accounts of their experiences with the CJS some legal scholars are beginning to explore alternatives to the formal criminal justice system. Over the last 20 years there has been a lively debate within the literature about the appropriateness of a restorative justice process for sexual assault cases.[45] Some author's see RJ as a alternative to the CJS which, given the right circumstances and thoughtful protocols, can give survivors a voice, validation and a better sense of resolution.[46] Other researchers feel that RJ is best used as a component of rather than an alternative to the CJS.[47] Miller and Iovanni studied the impact of post conviction RJ concluding that RJ

---

44 David Lisak & Paul M Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists" (2002) 17:1 Violence and Victims 73; Steven J Collings, "Agression: A Discriminant Analysis of Predictors in a Non-Forensic Sample" (1994) 24:1 South African J of Psychology 35; PC Ouimette, "Psychopathology and Sexual Aggression in Nonincarcerated Men" (1997) 12:4 Violence and Victims 389.

45 Department of Justice, Research and Statistics Division, *Restorative Justice and Sexuak Violence: An Annotated Bibiliography*, by Natacha Bourgon & Kyle Coady (Ottawa: Department of Justice, 2019), online (pdf): <https://www.justice.gc.ca/eng/rp-pr/jr/2019rsd-rr2019/2019rsd-rr2019.pdf> [perma.cc/JN74-KN6S]; Zinsstage & Keenan, *supra* note 5; Randall, *supra* note 5.

46 Kathleen Daly, "Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases" (2006) 46:2 Brit J Crim 334; Shirley Jülich & Fiona Landon, "Achieving justice outcomes: Participants of project restore's restorative process", in Estelle Zinsstag & Marie Keenan, eds, *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions*, 1st ed (New York: Routledge Taylor and Francis Group, 2017); Clare McGlynn, Julia Downes & Nicole Westmarland 2017, "Seeking Justice for Survivors of Sexual Violence: recognition, voice and consequences" in Estelle Zinsstag & Marie Keenan, eds, *Restorative Responses to Sexual Violence: Legal, Social and Therapeutic Dimensions*, 1st ed (New York: Routledge Taylor and Francis Group, 2017).

47 Susan L Miller & LeeAnne Iovanni, "Using Restorative Justice for Gendered Violence: Success With a Postconviction Mode" (2013) 8:4 Feminist Criminology 247.

for serious sexual crimes should be a supplement to the traditional CJS rather than an alternative.

Some researchers are skeptical of RJ in sexual assault cases. They identify a range of concerns and problems with restorative justice in cases of domestic violence and sexual assault.[48] An interesting study by Marsh & Wager[49] explored public and survivors' views of restorative justice in cases of sexual violence. They found that the public was generally favourable to restorative justice. However, 70% of survivors who had entered the CJS were against the idea of restorative justice as an alternative to court, in comparison to 45% of survivors who had not reported their assault.[50]

Finally, some researchers are exploring the use of Tort law to sue for compensation for the harms done either as an alternative to the CJS or in combination with the CJS.[51] To sue for compensation assumes the survivor could hire a lawyer to pursue their case, however, often survivors do not have the resources to do so. Unless the state would provide legal assistance in these cases it is an option beyond the reach of most survivors.

In conclusion, other than Tort law there is no established RJ option for survivors in the jurisdiction of this study. However, there is substantial discussion among legal practitioners and service providers in this jurisdiction about providing a range of options in addition to the mainstream CJS for survivors. There is the hope that if a range of options

---

48 Annalise Acorn, *Compulsory Compassion: A Critique of Restorative Justice,* (Vancouver: UBC Press, 2004); Ruth Busch, "Domestic violence and restorative justice inititives: who pays if we get it wrong" in Heather Strang & John Braithwaite, eds, *Restorative Justice and Family Violence* (Cambridge, UK: Cambridge University Press, 2002) 223; M Eve Hanan, "Decriminalizing Violence: A Critique of Restorative Justice and Proposal for Diversionary Mediation" (2016) 46 NML Rev 123.

49 Francesca Marsh & Nadia M Wager, " Restorative justice in cases of sexual violence: Exploring the views of the public and survivors" (2015) 62:4 Probation J 336 at 348.

50 *Ibid.*

51 Hildur Fjóla Antonsdóttir, "Compensation as a means to justice? Sexual violence survivors' views on the tort law option in Iceland" (2020) 28 Fem Leg Stud 277; Bruce Feldthusen, "The Civil Action for Sexual Battery: Therapeutic Jurisprudence?" (1993) 25 Ottawa L Rev 203; Robyn Holder & Kathleen Daly, "Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors" (2018) 24:1 Intl Rev of Victimology 25.

were available to survivors more may be willing to this report their assault and hopefully more perpetrators could be identified and held accountable.