An Exploration of How Rape Myth Acceptance Affects Sexual Assault Trials in Canada

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Abstract

Rape myth acceptance continues to make its way into our criminal justice system. It is expressed in sexual assault trials during cross-examinations of complainants and in a judge or jury's decision-making processes. Prejudices and biases about sexual assault and its victims infiltrates societal views about the offence and people involved; thus, affecting reporting and conviction rates. This project illustrates how rape myths are used and accepted by justice professionals during trials and how it affects sexual assault case outcomes. This is showed with landmark cases where myths were the backbone of the decision-making process in deciding the offender's guilt for the offence. Using an exploratory and descriptive analysis of the selected literature and focusing on specific cases, this project suggests that a negative cycle of rape myth acceptance is still persuasive and stems from court misconceptions into society and vice versa. While there are other reasons why low-reporting and low-conviction rates may occur, the role that rape myth acceptance plays within the court's system has a significant impact on how sexual assault cases are dealt with and especially on how they are damaging to current and future victims. While this project's primary focus is on an institutional level (the court system), it also highlights the importance of resolving this issue on a societal level as it affects everyone. Due to the negative effects of rape myth acceptance, this project also makes recommendations about how to better educate our society as well as ensure justice professionals are continuously educated and consciences about sexual assault, its victims, and its laws.

Dedication and Acknowledgments

First and foremost, I would like to thank my parents and brother for their endless love and support throughout my academic career. You built a strong foundation that helped me to succeed both personally and academically. Thank you for continuously encouraging and motivating me to work towards my goals in pursuit of achieving my dreams. Your contributions never go unnoticed.

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Definitions

Sexual Assault

Section 265(1) of the *Criminal Code of Canada* defines assault as directly or indirectly applying force onto another individual without consent, or in attempts to threaten to apply force whereby the individual has reasonable grounds to believe actions would take place, or while caring a weapon or imitation of a weapon by which impedes the individual (*Criminal Code,* RSC, 1985, c C-46, s 265(1)). This definition of assault also applies to sexual assault throughout sections 271 to 273 and section 276 of the *Criminal Code of Canada*. Section 271 defines the terms and conditions specific for a sexual assault (*Criminal Code*, RSC, 1985, c C-46, s 271). Section 272 outlines the provisions unique to sexual assault with a weapon, threats to a party, or causing bodily harm (*Criminal Code*, RSC, 1985, c C-46, s 272). Section 273 is specific to aggravated assault (*Criminal Code,* RSC, 1985, c C-46, s 273). Lastly, section 276 discusses the admissibility for evidence relating to the complainant's sexual activity (*Criminal Code*, RSC, 1985, c C-46, s 276).

Consent

Section 273.1 of the *Criminal Code of Canada* defines consent per sections 271, 272, and 273 as “the voluntary agreement of the complainant to engage in sexual activity in question” (*Criminal Code*, RSC, 1985, c C-46, s 273.1). Additionally, consent must be present at the time of the sexual encounter. Notably, section 273.1 (2)(a) through (e) outlines the circumstances where consent is not obtained. S. 265 subsection (3) defines consent or the absence of consent, and subsection (4) provides for the belief of consent. The definition begins by stating that consent cannot be obtained even when the complainant submits or does not resist, in any of the circumstances that are listed. This first statement is important because it acknowledges that in

many cases of assault or sexual assault, the victim often does not fight back, they freeze, or they do not say no to what is happening for a variety of reasons (Johnson, 2017; Patterson & Campbell, 2010; Weiss, 2010), and the law acknowledges all of that and therefore holds the perpetrator of the assault accountable for their actions.

Rape Myths

Myths about sexual assault are "prejudicial, stereotyped, or false beliefs about rape, rape victims, or rapist" (Burt, 1980, p. 217). The terminology "rape myths" is used because it highlights society's continuous use of gender roles, acceptance of violence, and misinformation about the realities of sexual assault. These myths are often protruding to an "ideal" rape. For example, only certain types of women are susceptible to being a genuine rape victim (Lonsway & Fitzgerald, 1994); therefore, excluding any other variations of sexual assault that do not meet society's or justice professionals' recognizable standards of the crime. "Rape myths are attitudes and generally false beliefs about rape that are widely and persistently held, and that serve to deny and justify male sexual aggression against women" (Lonsway & Fitzgerald, 1994, p. 134). Acceptance of such myths was assessed with a number of measures, and investigators have examined its relationship with numerous variables and interventions.

Dark Figure of Crime

The dark figure of crime refers to a grey area where the number of reported sexual assault (or any criminal) cases does not accurately correspond with the number of actual sexual assault crimes occurring. Only sexual assaults reported to police are counted within official statistics. The dark figure is the number of criminal incidents that happen without anyone knowing because they are not reported to any official source. This means the statistical data collected by law enforcement agencies do not stand for the entirety of the crime at issue (Biderman & Reiss,

1967). Thus, creating gaps and misconceptions between victims and the criminal justice system about the circumstances regarding sexual assaults.

Crime Funnel Effect

The criminal justice system is often described as a funnel as it illustrates the process from when a crime is reported to when the conviction and disposition are reached. The number of criminal incidents grows smaller as it travels through the justice system; the number of arrests does not remain the same because not every arrest results in a charge; not every charge results in a conviction; and not every conviction results in a term of imprisonment. The purpose of the crime funnel is to dismiss cases at various points of the process so that the criminal justice system does not become overwhelmed (Wentz, 2014). The effects of the crime funnel for sexual assault cases disrupt reporting and conviction rates.

Justice Professionals

Justice professionals are defined as people who through education and experience can evaluate, plan, manage, counsel, and make decisions for situations related to criminal behaviour and the criminal justice process (Law Insider, n.d.). Justice professionals also include all those involved in a courtroom setting such as the judge, defence counsel, and Crown prosecutors.

An Exploration of How Rape Myth Acceptance Affects Sexual Assault Trials in Canada

Sexual assault continues to be the most under-reported and under-prosecuted offence in the Canadian criminal justice system; thus, creating a significant dark figure of crime (Cotter, 2021). Due to the vulnerability and complexity of such an offence, official data will never be correct in knowing the true extent of sexual assault in Canada because only those reported to police are recorded. While many sexual assault offences go undetected and unreported, an improvement in reporting and prosecution is seen given the currently available data; however, it continues to be significantly lower than any other crime.

Sexual assault offences attract myths and stereotypes unlike any other offence. Women victims are blamed for the unsolicited attacks without much regard to the perpetrators. During trials, it is often the victims defending their integrity and dignity as opposed to the perpetrator having to defend their actions. Often, it is as if victims are on trial for an offence committed against them. The myths and stereotypes subject to this offence are due to precedent sexual assault cases engaging in false beliefs about women and sexual assault during decision-making processes by justice professionals. As a result, these "attitudes and views, reflected in the language of the law and the legal process, have informed and shaped societal understandings and prejudices about women subjected to sexual violence" (Stevenson, 2000, p. 344). The *Criminal Code* implemented law reforms in 1983 due to deficiencies in the existing law (Tang, 1998). The law reforms were made to shift false perspectives about sexual assault in avoiding the use of myths during trials; however, the failure to dismiss such evidence continues to be an issue in sexual assault trials.

The primary aim of this project is to educate people in society and particularly justice professionals about the truth regarding sexual assault and its victims. Through analysis of precedent cases, this project covered common myths and emphasized the current law reforms

made to address those myths. Through that analysis, this project demonstrated how the criminal justice system processes sexual assault cases given the misconceptions accepted by many justice professionals.

Research Question

The research question explored was, does the acceptance of rape myths affect justice professionals' decision-making in sexual assault cases? This question is important to study because there is a renowned issue on low reporting and convictions rates for sexual assault cases (Cotter, 2021); therefore, creating a significant dark figure of crime (Cotter, 2021). By exploring this question, myths about sexual assault were illustrated using court case examples and discussion about the effects the myths have on victims, justice professionals, and the community. These are all important to understand because the realities about sexual assault and the myths that protrude it differ; therefore, implications to increase reporting and conviction rates in Canada are essential.

Methodology

This project considered the commonalities and differences between how sexual assault cases are processed within the Canadian court's system. This project utilized a mixed methods approach as it encompassed both exploratory and descriptive research designs to meet its objective to answer the research question. A mixed-methods design focuses on the research problem to analyze real-life contextual understandings, multi-level perspectives, and cultural influences in combination with assessing quantitative and qualitative data that supports one another to generate solutions or new understandings of an issue (University of Southern California, 2019).

Exploratory research design is used in qualitative studies which use secondary data to generate knowledge and understandings of a topic. This research looked at an existing topic of sexual assault myths to produce novel ideas and hypotheses based on its findings (Swedberg, 2020). Therefore, it investigates a problem or question by exploring the gaps within the literature

of an existing topic. While exploratory research can create tentative generalizations about a topic and expand on its emerging theories (Stebbins, 2001), it does not supply conclusive results as the sample size is limited (University of Southern California, 2019).

A descriptive research design obtains information about a topic and describes what currently exists within that topic (University of Southern California, 2019). This design prominently obtains and produces its findings based on a specific problem or research question. Descriptive research "looks at the characteristics of a population; identify problems that exist within a unit, an organization, or a population; or look at variations in characteristics or practices between institutions" (Siedlecki, 2020, p. 8). Unique to the descriptive design is that it can address multiple variables, or it can explore a single variable depending on the research question (Siedlecki, 2020). While the descriptive design is limited to producing a conclusive answer or addressing "why" relationship questions, it is useful for producing new hypotheses about a particular topic; whether existing or emerging (Siedlecki, 2020; University of Southern California, 2019).

This study also included a literature review of scholarly journals, articles, and books to develop a framework and understanding of the effects of accepted rape myths that justice professionals have on sexual assault victims and the verdict of cases. Using keywords: "sexual assault", "rape", "rape myths", "rape culture", "consent", "relationships", "clothing", prostitution", "Canadian criminal courts", "justice professionals", "dark figure of crime", and "crime funnel effect" allowed for a diverse review of the literature surrounding the topic. The literature was analyzed, critiqued, and synthesized based on the findings, gaps, and themes to understand the issue of myths embedded in sexual assault trials.

Sections 265(1), 271, 272, 273, and 276 of the *Criminal Code of Canada* provide the description, provisions, and punishments for committing sexual assault offences at various degrees specific to adult perpetrators and victims. These five sections are all relevant to the criminal offence of sexual assault.

Additionally, four landmark cases were selected to illustrate the consistent use and acceptance of rape myths in sexual assault trials throughout a 20-year time frame in Canada. These cases date from 1999 to 2019 and demonstrated the progression and lack of changes to rape myth acceptance over the years when dealing with sexual assault cases. Case analysis compares events by which have occurred and recur throughout similar cases (Mahoney, 2004). This form of research design can use primary sources to support secondary analysis. Primary data used in this project includes publicly accessible court cases through the free legal online database CanLll, for the cases of *R v. Ewanchuk* (1999), *R v. Adepoju* (2014), *R v. Wager* (2015), and *R v. Barton* (2019). These four cases were selected for their pivotal impact on sexual assault law and that they continue to be used as precedents in current sexual assault cases and judgements.

Secondary statistical analysis on statistics material about sexual assault reported rates and conviction rates in Canada through the years 2004 to 2019 were utilized. Statistics Canada's public database provides statistical data from the Uniform Crime Report (UCR), which is official data collected by police agencies. Statistical analysis of a secondary source consists of reviewing and analyzing quantitative data to pull conclusions in support or rejection of a theory. Data was also collected and analysed through the publicly available General Social Survey (GSS) for Victimization, which is unofficial data collected anonymously by victims of crime. This data helped to distinguish and compare both official and unofficial sexual assault rates in Canada.

Limitations

Given the complexity of a mixed-methods research design, it is subject to limitations of how to apply multiple methods together appropriately to explore a research problem (University of Southern California, 2019).

The scope of this study compared a small sample of cases from Canada and only narrowed in on one perspective of sexual assault trials. This one perspective included only the myths that protruded in these cases that illustrated sexual assault myths in practice. Additionally, the cases examined for the purpose of this project are between heterogeneous relationships only, limiting the scope to a male and female duo. This can lead to "ambiguous findings that inhibit a valid conclusion" (University of Southern California, 2019, para. 50). There are reasons why convictions rates for sexual assault crimes are low beyond the scope of rape myths. The purpose of this project was to examine the role that rape myths play in sexual assault trials, not to conclude a causal relationship; thus, leaving room for other interpretations surrounding the topic.

Furthermore, this project is limited in its scope and depth as it was an undergraduate honours project with only eight months to complete; therefore, dismissing time to explore other factors that contribute to sexual assault trials.

Ethical Approval

For this project, ethical approval from Mount Royal University's Human Research Ethics Board was not required as only secondary research was conducted to complete this project.

Statistics

Publicly available statistics obtained through Statistics Canada for the years of 2009 until 2019 illustrated the consistencies and changes in sexual assault offence rates for reporting, charges laid, and convictions. To understand the complexities and disproportionality of sexual assault offences, police-reported data through Uniform Crime Reporting Surveys and the General Social Survey for self-victimization were also included. By analyzing both types of data, the dark figure of crime surrounding sexual assault offences becomes prevalent as incidents go unreported or filtered out by the criminal justice process. These statistics explored the relationship between rape myths, limited reporting by victims, and convictions of sexual assaults.

Experience of violence for certain types of offences such as sexual assaults are gender-based offences. Women are more likely to experience higher rates of violence compared to males (Cotter & Savage, 2019) and they account for 87% of sexual assault victims based on self-reported incidents (Murphy-Oikonen et al., 2022). Given earlier research and data collection, most incidents of gender-based violence, specifically sexual assault offences are committed by men against women and involve a power imbalance between the two parties known to each other (Cotter & Savage, 2019). Furthermore, other aspects such as age, race, and sexuality pose risk factors for increasing the likelihood of an individual experiencing sexual violence. Indigenous women are at a greater risk for sexual victimization at a rate three times higher than their non-Indigenous counterparts (Murphy-Oikonen et al., 2022).

Police-Reported Data

Statistics Canada gathers its police-reported crime information through its annual Uniform Crime Reporting Survey (UCR) completed by all Canadian police services (Moreau et

al., 2020). The police-reported data collected by the UCR reflects only incidents which were reported to the police.

2009-2014 Statistics

Sexual assault is a gendered violent crime primarily targeting young females making reporting rates and case retention in the criminal justice system significantly low. This can be due to the protruding myths about sexual assaults making victim's less likely to report to police. Between 2009 and 2014, only five percent of sexual assault offences were reported to police in Canada (Rotenberg, 2017), and of those cases, the criminal court system saw approximately 26,000 cases; however, under half of them (46%) resulted in a guilty verdict (Rotenberg, 2017).

These early statistics highlight the use of protruding rape myths when laying charges and proceeding to court. For every five offences reported to police, only one instance went to court (Rotenberg, 2017). Courts alluding to myths contradict the realities of sexual assault, for example, "the vast majority (87%) of sexual assaults are perpetrated by someone known to the victim" (Rotenberg, 2017, para. 68). However, given the data, 64% of stranger incidents ended up in court while 47% of acquaintance incidents resulted in the same proceedings (Rotenberg, 2017). When the data shows the use of myths in court actions, there is an understanding of a relationship between myths and low reporting of incidents by victims to police.

The 2009 to 2014 data for conviction rates is consistently low with the police-reported crime rate. The data suggest that during most sexual assault offences there was another offence that also occurred during the same incident (Rotenberg, 2017). While sexual assaults were in trials, a conviction may not have been acquired on the count of the sexual assault itself as "for every one in five sexual assault cases, the conviction is for an offence such as the sexual assault" (Rotenberg, 2017, para. 29). Therefore, it was the most serious offence in the case that resulted

in a conviction, which consisted of prominently only 9% stemming from a sexual assault offence.

The timing when an offence is reported to the police also affects conviction rates. The UCR data shows that sexual assault offences that were immediately reported to police (i.e., the same day) proceeded to court more frequently than incidents that were later reported. Over half of the cases reported immediately to the police resulted in court appearances, whereas 34% appeared after a week of the incident and 19% appeared after over a year of the incident (Rotenberg, 2017). The reporting to conviction ratio is consistent in its results. Offences reported the same day accounted for 56% of cases resulting in a guilty finding compared to 43% of cases which had delayed reporting of at least a week (Rotenberg, 2017). As sexual assaults rely on obtaining timely physical and psychological evidence, a delay in reporting to police "impedes the collection of forensic evidence which may be lost over time or may undermine the witnesses' memories which can affect their credibility" (Rotenberg, 2017, para. 40). As a result of delays, the likelihood of conviction significantly decreases the longer the victim waits to report to police.

2019 Statistics

Since 2014, there has been a significant increase in annual police-reported incidents of sexual assault. "In 2019, there were more than 30,900 police-reported sexual assaults" (Moreau et al., 2020, para. 6). This increase in reporting of all sexual assault levels (level 1, level 2, and level 3) has been noticeable across Canada apart from Nova Scotia (Moreau et al., 2020). Even between 2018 and 2019, there was a 7% increase in reporting to police marking this as the "fifth consecutive increase since 2015" (Moreau et al., 2020, para. 6). Due to the evolution in perspectives surrounding sexual assault and the increase in public discussion about the

vulnerable topic, Moreau et al. (2020) suggest this to "have had an impact on the willingness of victims to report sexual assault incidents to police" (para. 7).

In comparison to the data found in the UCR of 2009 and 2014, sexual assault incidents previously and in 2019 were most often classified as a level 1 sexual assault under section 271 of the *Criminal Code of Canada* (i.e., without a weapon or without causing bodily harm) (Moreau et al., 2020). However, the difference lies within the likelihood of a level 1 sexual assault proceeding to court and the accused being found guilty. The data in 2009 and 2014 show sexual assaults causing injury were the "strongest legal predictor of a positive legal outcome - with respect to harsher conviction rates and sentencing penalties" (Rotenberg, 2017, para. 60). While this remains true for current trials, judges are now more likely to convict offenders when no injury is present to the victim due to the changes in perspectives and implications in sexual assault law.

A contributor to the increase in victim reporting, charges laid, and convictions, stem from a change in the definition of "founded" criminal incidents by Statistics Canada from Canadian police agencies (Moreau et al., 2020). Prior to 2017, most sexual assault cases were "unfounded" meaning that if the incident did not include physical evidence, then it was less credible as police did not believe that it occurred or were attempted (Moreau et al., 2020). However, given the public shift in perspective, the legal community also accepted the new perspective and therefore more incidents are being classified as "founded" meaning that regardless of credible evidence confirming an incident, that incident is determined to have occurred or were attempted (Moreau et al., 2020). The changes in definitions have significantly aided in the increase of police-reported sexual assaults by victims.

Furthermore, the #metoo movement in late 2017 had a significant impact on the discussion of sexual assaults in Canada and globally. The movement began due to cases involving celebrities accused of sexual assault or misconduct or victimized of the offence receiving widespread media attention (Rotenberg & Cotter, 2018). While the movement did not reflect an increase in sexual assault offences, it did affect an increase in reporting offences to police and a positive shift in police practices about handling such offences. During the year of the campaign, police agencies saw a 13% increase in reporting by victims and declared most incidents as founded (Rotenberg & Cotter, 2018). While the movement increased reporting rates, charges laid remained stable and conviction rates continued to be significantly low. After the initial spark of the movement, charges declined from 36% to 29% (Rotenberg & Cotter, 2018). Cases filtered out of the criminal justice system; therefore, not making it to the courtroom or resulting in a conviction. This was due to a lack of evidence supporting a connection between the accused to the allegation of events (Rotenberg & Cotter, 2018). However, the #metoo movement was a pivotal factor in reshaping the discussion and procedures for sexual assault offences.

Overall, Canada has seen an improvement in police-reported sexual assault incidents; however, the crime still has a dark figure as the number of offences reported continues to underestimate the true extent of sexual assault in Canada (Moreau et al., 2020). As more myths become excluded from Canadian law, the likelihood of victim's reporting sexual assault to police should increase. Data why victims do not report incidents to police is best highlighted in the General Social Survey for victimization.

General Social Survey (GSS) on Victimization

Sexual assault is a grossly unreported violent crime to the police due to the nature of the offence and its effect on victims. Therefore, "a large part of violent crime that disproportionately

affects women is less likely to be reflected in official data" (Cotter, 2021, para. 20). Statistics Canada conducts a victimization survey every five years through the General Social Survey (GSS) focusing on self-reported data throughout Canada (Conroy & Cotter, 2017; Cotter 2021). Due to the vulnerability of sexual assault offences, the GSS victimization data is "essential for providing further insight into the nature and extent of sexual assault" (Conroy & Cotter, 2017, para. 4). While the self-reported victimization survey aids in obtaining more data and a better understanding of the number of offences taking place in Canada, the crime is still highly unknown within its limits to the dark figure.

2014 Statistics

The 2014 GSS was specific to victimization in sexual assault offences. The survey results found 22 incidents of sexual assault per every 1,000 Canadians aged 15 and older, making approximately 636,000 incidents in that year (Conroy & Cotter, 2017). The GSS found that the number of self-reported incidents in 2014 was consistent with that of the survey conducted a decade earlier in 2004 (Conroy & Cotter, 2017). This implies that sexual assault offences continue to be a prominent issue as there has been no indication of a decrease in offences for an entire decade, meaning women are still at high risk to be victimized.

The GSS asked questions about sexual attacks, unwanted touching, and sexual activity where the victim was unable to consent (Conroy & Cotter, 2017). These questions are consistent with sections 271-273 of the *Criminal Code of Canada*; therefore, all levels of sexual assault are included on the victimization survey. The results found that 20% of incidents were sexual attacks, 71% of incidents of unwanted touching, and 9% of incidents where the victim could not consent due to drugs, intoxication, manipulation, or non-physical force (Conroy & Cotter, 2017). This data is consistent with that of police-reported data to which most sexual assault offences are

a level 1 offence. The results showed that rarely are victims unable to consent or obtain a form of physical injury which is contradictory to the myths accepted by society.

Following, the survey found that the vast majority (87%) of sexual assault offences were committed against women by men, meaning that 555,000 of the 636,000 incidents in 2014, were reported by women (Conroy & Cotter, 2017). While men are also susceptible to being victims of sexual assault, women are six times more likely to be targeted by this type of violent crime (Conroy & Cotter, 2017), making it a gendered crime. Additionally, it is common for women to experience more than one incident of sexual assault in their lifetime. Among the female victims within the 2014 survey, 24% reported two incidents and 26% reported three or more incidents (Conroy & Cotter, 2017). In accordance, almost half of the victims were between the ages of 15 to 24 years old (Conroy & Cotter, 2017). Furthermore, the survey highlighted Indigenous women are three times more likely to be targeted than their non-Indigenous counterparts, this accounts for every 1 in 5 Indigenous women (Conroy & Cotter, 2017).

The survey also presented information on why victims are less likely to report sexual assault incidents to police. Victims claimed to have "low confidence in the police and were less satisfied with their personal safety from crime" (Conroy & Cotter, 2017, para. 47). Victims may also be deterrent from reporting to police if the assault was committed by someone known to them. In 52% of the incidents self-reported in 2014, the offender was a friend, acquaintance, or partner to the victim (Conroy & Cotter, 2017). This can make reporting difficult for victims as they may not want to disrupt a close relationship. Other reasons for not reporting were the victims believing that the incident was minor, they believe there to be a lack of evidence relating to no physical harm or injury present, and they did not want others to find out about their

victimization (Conroy & Cotter, 2017). In more recent years, sexual assault continues to remain one of the most underreported crimes and highly represented among the dark figure of crime.

2019 Statistics

The 2019 GSS obtained self-reported victimization data for all violent crimes; therefore, specific data relating to only sexual assault offences are within this survey. It is important to consider the information in the victimization survey to understand the nature of sexual assault offences as official statistics obtained through police data still are unrepresentative of the extent of the crime (Cotter, 2021). Even with a five-year gap between surveys, sexual assault remains a dark figure of crime as reporting rates continue to be low.

Sexual assault offences were the main difference in victimization rates between men and women with women's rates being five times as high (Cotter, 2021). In 2019, there were 30 incidents of sexual assault per every 1,000 Canadians (Cotter, 2021). This is an increase in self-reported incidents since the earlier GSS in 2014. This increase is either due to more sexual assault offences are taking place in Canada or more victims are taking part in the GSS. While the 2019 data does not delve into specific statistics about distinct aspects of sexual assault as the earlier survey provided, the data remains relatively consistent in terms of low reporting measures and victims' reasoning for not reporting to police.

The survey found that sexual assault continues to be less likely unreported than any other crime; therefore, overall having the lowest reporting rate to the police (Cotter, 2021). The data continued to represent women are more likely of being a victim of sexual assault. Barriers to victims reporting sexual assault incidents lie within the "concerns about perpetrators not being held responsible, an understanding of what constitutes sexual assault, feelings of shame and

embarrassment among victims, and a perception that victims will not be believed" (Cotter, 2021, para. 75). Therefore, rape myths lie within the bulk of unreported incidents by victims.

Overall, self-reported victimization rates are consistent over the decades. Both surveys suggested a lack of trust in the police to handle sexual assault cases which is consistent with the limited police-reported data above. A significant factor given both surveys is that victims' fear in reporting is still consistent. These responses by victims should indicate to the criminal justice system that further implications need to be established to make victims feel safe to report a sexual assault offence to the police.

Crime Funnel Effect

The criminal justice process filters out cases at various stages so that the legal system does not become overwhelmed but also as incidents naturally progress through the justice system (from arrest to charges to no charges). "This phenomenon is referred to as 'attrition'" (Rotenberg 2017, para. 7). Reasons for attrition include, incidents being unreported, the victim does not want to offer a testimony, the offender's identity being unknown, or the offender was not guilty beyond a reasonable doubt (Bryden & Lengnick, 1997).

While attrition occurs at various stages of the criminal justice process, it is significantly more frequent at an early stage when police do not file a complaint as a crime or in the end-stage where a conviction is not obtained (Gregory & Lees, 1996). This is particularly true for sexual assault cases (See Appendix A). Given the statistics discussed above, attrition begins when victims decide not to report a sexual assault incident to police (Grubb & Turner, 2012). Without a complaint, the criminal justice system cannot become involved. As it is common for sexual assault cases to never make it into the criminal justice process, when they do enter the system there are still occurrences where attrition filters them out. Notably, a study conducted by Gregory

& Lees (1996), “found that the attrition rate was substantially higher for cases in which the suspect and the complainant had some prior acquaintance or history than in case of attacks by strangers” (p. 12). This alludes to the idea that rape myths can make their way into the attrition decision-making process of the criminal justice system. The protruding rape myths and the nature of the offence make it challenging to charge and convict; therefore, resulting in low conviction rates (Grubb & Turner, 2012; Rotenberg, 2017).

To minimize the opportunity for attrition in sexual assault cases, a variety of implications must be proven throughout the criminal justice system. The justice system must increase its confidence among victims for them to report to the police and allow the justice system to become involved. Following, the use of rape myths in the court setting must be excluded from defence strategies and decision-making processes. With fewer cases filtered out from the criminal justice system, an increase in reporting, charges laid, and convictions can occur.

Criminal Code of Canada Provisions

Summary and Indictable Offences

In Canadian criminal law there are two classifications of offences: summary and indictable. Summary offences are 'less serious' offences (Department of Justice, 2021a) or described as petty crimes. If an individual is convicted of a summary offence, they are punishable to a fine less than $5000 or an imprisonment term of two years less a day or less (*Criminal Code,* RSC, 1985, c C-46, s 787(1)).

Indictable offences are the more serious offences. An individual charged with an indictable offence is susceptible to more serious punishments if convicted (Department of Justice, 2021a). Imprisonment terms are at the federal level with sentences of imprisonment exceeding two years plus a day or longer. Sexual assault as per s. 271 is a hybrid offence which means that the Crown decides if they want to prosecute the offence as summary or indictable. Sections 272 and 273 of the *Criminal Code* are indictable offences; therefore, any individual convicted under such sections is subject to the following provisions.

S. 271

A level 1 sexual assault offence includes any form of non-consensual bodily contact for sexual purposes (Rotenberg, 2017). Anyone found guilty of the indictable offence is subject to a term of imprisonment for no longer than ten years if the victim is an adult (*Criminal Code,* RSC, 1985, c C-46, s 271). If convicted on a summary offence, the imprisonment term does not exceed 18 months (*Criminal Code,* RSC, 1985, c C-46, s 271). A level 1 sexual assault does not carry a mandatory minimum sentence.

S. 272

A sexual assault with a weapon includes whether the person carries, uses, or threatens to use the weapon, threatens to cause bodily harm to others, threatens to cause bodily harm to the victim or is a party to the offence is guilty of a level 2 sexual assault offence (*Criminal Code*, RSC, 1985, c C-46, s 272 (1)(a)(b)(c)(d)).

If the person is guilty of an indictable offence using a restricted or prohibited firearm or committed the crime for the association of a criminal organization, then the mandatory minimum imprisonment term for a first offence is five years, any subsequent offence carries a seven-year mandatory minimum sentence; however, the total imprisonment term maximum is 14 years (*Criminal Code*, RSC, 1985, c C-46, s 272(2)). For any other case involving weapons or threatening bodily harm, the term of imprisonment is a maximum of 14 years (*Criminal Code*, RSC, 1985, c C-46, s 272(2)(b)).

S. 273

Aggravated sexual assault is the most serious offence for sexual assault crimes. "Everyone commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures, or endangers the life of the complainant" (*Criminal Code*, RSC, 1985, c C-46, s 273(1)).

Those guilty of an indictable offence require a mandatory minimum sentence of five years for a first offence and a mandatory minimum sentence of seven years for any subsequent offences (*Criminal Code*, RSC, 1985, c C-46, s 273(2)(a)(i)(ii)). Those who are guilty who use a restricted or prohibited firearm are given the same punishment whether it was the first or subsequent offence, are subject to a maximum of life imprisonment (*Criminal Code*, RSC, 1985, c C-46, s 273(2)(a)(b)).

Key Cases

The cases selected for this project supplied real-life examples of the use of rape myths to educate justice professionals and society on how the acceptance of rape myths in courts affect victims and trial outcomes. The cases selected range within a 20-year timeline and showed gaps in knowledge between justice professionals and the realities of sexual assaults, and to dissect if changes have occurred over the years or if the issue still is present and unresolved.

Each case shows how justice professionals used rape myths and accepting them as part of their defence or decision-making process for verdicts in sexual assault trials. The myths raised within these cases concern victim-blaming, credibility issues of the complainant, and/or sexual history of the complainant.

These cases are important because they are often precedents in new cases of sexual assaults in Canada. As precedent cases, today's sexual assault trials attempt to avoid the errors of law that were made in past decisions by dissenting to the rationales made in those previous cases when deciding on a verdict.

R v. Ewanchuk, 1999 1 SCR 330

R v. Ewanchuk, 1999 is a landmark case referred to countlessly in today's sexual assault trials because it was the first case where the Supreme Court of Canada (SCC) considered the negative impact of rape myths at trial. Due to the case using rape myths and false assumptions about sexual assault, it was in this seminal case that the SCC defined sexual assault for all following cases to prevent the misuse of the term. Sexual assault was defined where in circumstances of a sexual nature, the sexual integrity of the victims is violated (*R v. Ewanchuck,* 1999, 1 SCR 330).

In the Supreme Court of Canada case *R v. Ewanchuk, 1999,* a 17-year-old girl attended a job interview in Mr. Ewanchuck's van when he then closed the van door making the complainant

believe it was locked. “The accused initiated a number of incidents involving touching, each progressively more advanced than the previous, notwithstanding the fact that the complainant plainly said, “no" on each occasion” (*R v. Ewanchuk*, 1999, 1 SCR 330, para 1). The complainant complied with some acts Mr. Ewanchuck initiated, but she did so out of fear.

In the lower court, the trial judge acquitted the accused by accepting the defence of implied consent (*R v. Ewanchuk*, 1999, 1 SCR 330), meaning that the accused believed the victim had consented to the sexual act and the judge believes the consensual exchange occurred: therefore, dropping the trial as there is belief that no sexual assault took place. The Crown appealed the acquittal to the Alberta Court of Appeal (*R v. Ewanchuk*, 1999, 1 SCR 330) but they upheld the acquittal by a majority. Following this, the Crown appealed to the Supreme Court of Canada as they believed “the trial judge erred in his understanding of consent in sexual assaults and whether his conclusion that the defence of “implied consent” exists in Canadian law is correct” (*R v. Ewanchuk*, 1999, 1 SCR 330, para. 1). The majority decision of the Supreme Court of Canada allowed the appeal and ruled that “stereotypical assumptions lie at the heart of what went wrong in this case” (*R v. Ewanchuk*, 1999, 1 SCR 330, para. 103), and that these false assumptions no longer find a place in Canadian law. The Supreme Court of Canada entered a conviction and Ewanchuck was sentenced to one-year imprisonment (“Ewanchuck Sentenced”, 2000).

R v. Adepoju, 2014 ABCA 100

This case involved the complainant inviting the accused to stay at her house until he found a permanent accommodation and she said that the relationship between them was to remain platonic during this time (*R v. Adepoju*, 2014, ABCA 100). The accused ignored her request and went ahead to kiss the complainant. She said he could have one kiss but that “she did

not want to engage in any sexual activity" (*R v. Adepoju,* 2014, ABCA 100, para. 2). The accused persisted by pulling her pants and panties off despite her verbal and physical resistance of "holding her legs in a defensive position" (Craig, 2018, p. 196). "After struggling and resisting his advances for about 15 to 20 minutes" (*R v. Adepoju,* 2014, ABCA 100, para. 2), the complainant eventually "gave in" to the accused, where he then continued with vaginal intercourse (Craig, 2018).

During the trial, evidence of text messages exchanged between the two parties proved the accused's awareness that the activity was non-consensual. One of his text messages stated: "I had to force you, you didn't wanna do it" (*R v. Adepoju*, 2014, ABCA 100, para. 3). While this evidence was presented at the trial, the judge only considered the sexual activity that occurred after the complainant stopped resisting the accused's actions (Craig, 2018). The accused was acquitted because, according to the judge, the Crown "failed to prove lack of consent beyond a reasonable doubt" (Craig, 2018, p 197). The Crown appealed the trial judge's decision to the Alberta Court of Appeal, where the majority allowed the appeal and entered a conviction as "calling the unwanted advances "persistence" perpetuated a rejected myth that "no" means "try harder" (*R v. Adepoju*, 2014, ABCA 100, paras. 11-13).

R v. Wager, 2015 ABCA 327

In *R v. Wager, 2015,* the accused, a 29-year-old male, met a 19-year-old woman at a house party in 2011 where they found themselves in a bathroom alone together (Grant, 2017). In the complainant's testimony, she "alleged that the accused forced her into engaging in sexual intercourse and oral sex after locking her in a bathroom with him" (Craig, 2018, p. 199). The accused argued that the sexual activity was consensual (Grant, 2017).

The accused was acquitted primarily due to Justice Camp's flawed decision-making process based on myths about sexual assaults. On numerous occasions, Justice Camp put the complainant on trial as opposed to the defendant, asking her questions of why she let the sexual activity happen, she should have been more careful because she was intoxicated, and he infamously said, "Why couldn't you just keep your knees together" (Craig, 2018; Grant, 2017, paras. 26-27).

The Crown appealed the acquittal to the Alberta Court of Appeal due to the Judge's lack of understanding of sexual assault laws including consent and restrictions under s. 276 of the *Criminal Code of Canada (R v. Wager*, 2015, ABCA 327*)*. Additionally, the Crown argued that long-discredited sexual myths were a part of Justice Camp's judgment (*R v. Wager*, 2015, ABCA 327). The Court of Appeal ordered a new trial; however, Wager was acquitted (Grant, 2017). As a result of his ruling, a complaint against Justice Camp's professional conduct was submitted to the Canadian Judicial Council (Grant, 2017). The outcome of that complaint is explained later in this project.

R v. Barton, 2019 SCC 33

While the Supreme Court of Canada case of *R v. Barton, 2019,* concerned the charge of "first-degree murder in the death of an Indigenous woman" (*R v. Barton*, 2019, SCC 33, para. 1), the rape myths of sex work, racism, and evidence in court of sexual history under s. 276 of the *Criminal code of Canada,* all played a significant role within this trial.

During the trial, Barton testified about his previous sexual experiences with the victim, including an event that took place the night before her death (*R v. Barton*, 2019, SCC 33). The accused based his defence for consent upon an 'honest but mistaken belief', as he believed the victim had consented to rough sex in earlier interactions between the two parties (Women's

Legal Education and Action Fund [LEAF], 2020). This defence lies on the accused's subjective perception that an event does not render consent. Consent law emphasizes how previous consent does not apply to current events.

All justice professionals involved in this trial failed to protect the deceased victim. Firstly, the Crown and the defence continuously referred to the victim as a "native prostitute" which the trial judge allowed (*R v. Barton*, 2019 SCC 33). At no point during the trial did the judge give a warning to the jury to disregard evidence of stereotypical assumptions about Indigenous women, or women working in the sex trade, and the judge did not advise the jury upon mistakes of law (LEAF, 2020). Concerning the testimony of earlier sexual history, "the Crown did not object, nor did the trial judge order a separate hearing to consider the admissibility and permissible uses of this evidence" (*R v. Barton*, 2019, SCC 33, para. 2) as it should have.

Additionally, the jury was never informed that "consent to a given form of sexual touching does not extend to the use of any conceivable degree of force by one's sexual partner" (LEAF, 2020, para 3), which aided in causing the victim's death as deadly force was used. The court dismissed the appeal and ordered a new trial on the charges for murder and manslaughter (*R v. Barton*, 2019, SCC 33).

The "Ideal" Rape

The 'ideal' rape myth paints a picture-perfect constructed scenario that creates false assumptions about sexual assault. "Ideal victims of sexual assault are recognized as those who are authentic and credible and, therefore, deserving of help, assistance, and resources of the criminal justice system" (Randall, 2010, p. 408). An 'ideal' rape may consist of the victim being a morally upright white woman who was forcefully through a physical struggle penetrated by a stranger through a random attack in a public place (DuMont et al., 2003). Any assault that includes a complainant who differs in any way from that construct, will likely have her report questioned.

Sexual assault offences are unique to each incident and person. None of the cases presented above involved the same way of a sexual assault; therefore, confirming that incidents are not consistent with society's assumptions and beliefs about what an 'ideal' sexual assault and victim look like. In most sexual assaults, the victim and the offender know each other as opposed to being strangers. In 2018, 44% of women were targeted by a male friend or acquaintance; however, this does not include the amount of victimization within intimate relationships (Cotter & Savage, 2019).

While victims can differ, the majority of victims are women. Sexual assault is the main divide between men and women for experiencing violent victimization. Women's rates of victimization are over five times higher compared to men; thus, 50 women experience victimization per 1,000 women compared to 1 male victimization per 1,000 men (Cotter, 2021).

However, regardless of the information available about sexual assault, victims continue to have difficulty in obtaining 'ideal' victim status as society views them negatively for engaging in presumably risky behaviour, this includes sex work, mental illness, low-income status, and those who frequent the night scene (DuMont et al., 2003). These beliefs stem from myths and

stereotypes and therefore negatively impact justice professionals' decision-making process including certain types of complainants as more likely to have consented and skeptical towards others as they are less worthy of belief (Bryden & Lengnick, 1997). Myths about the 'ideal' rape undermine the authenticity of victims as they are assumed to respond to a sexual assault in a reasonable manner (Randall, 2010); therefore, influencing the process and decisions within trials.

Rape Myths

Rape myths are beliefs about sexual assault that contribute to victim-blaming, perpetrator absolution, and rationalizing sexual violence against women (Edwards et al., 2011). These beliefs stem from social acceptance and have found their way into the criminal justice system affecting legal decisions. Individuals may find themselves subconsciously adhering to myths. In a study conducted by Edwards et al. (2011), they found through various scales to measure rape myths both male and female respondents (25% to 30%) agreed with most myths; however, males were more likely endorse these myths. Based on the perceptions of this study, the results are consistent with police reported and GSS data presented above. While males are more often the perpetrators of sexual assault offences, it would make sense that they more often endorse rape myths compared to females who are more likely victimized by this crime.

Rape mythology was first acknowledged in the 1970s (Grubb & Turner, 2012) and advocates have long worked to debunk these assumptions in society. While there are a variety of rape myths that are accepted by society, most are rooted in victim-blaming. Victim-blaming is the idea that the victim is responsible for her victimization instead of the perpetrator who commits the offence. Myths contribute by enforcing the falsehood that victims ask to be raped, they enjoy the experience, or they lie about their experience (Buddie & Miller, 2001). These "ideologies are so pervasive that they also factor into the discretionary decisions made by police or prosecutors and as such have an enormous impact on conviction rates and prosecution of cases" (Grubb & Turner, 2012, p. 445). Myths remain myths because they contribute to false and prejudiced assumptions that discredit the reality of sexual assault and its impact on victims. Common rape myths include:

"**Myth**: If someone gets really drunk, it's their own fault if they end up getting raped. They should have kept themselves safe.

Fact: People have the right to drink alcohol without getting raped. Having sex with someone who is very drunk, drugged or unconscious is rape – and it is always the rapist's fault.

Myth: Women often lie about rape because they regret having sex with someone or because they want attention.

Fact: Stories in the media can give the impression that women often lie about sexual violence. In fact, false allegations of rape are rare. Most people who never tell the police.

Myth: If someone didn't scream or try to fight their attacker off, it wasn't rape.

Fact: There are many reasons why someone might not scream or struggle. In fact, many people find that they cannot move or speak at all – this is a very common reaction. Some rapists also use manipulation or threats to intimidate or control the other person. No matter whether someone 'fights back', if they didn't freely consent to sex then it is rape.

Myth: If you are in a relationship with someone, it's always OK to have sex with them.

Fact: Everyone has the right to say 'no' to any type of sexual activity at any time – including with their partner. Consent must be given and received freely every time. Rape in a relationship is illegal" (Rape Crisis England and Wales, n.d., paras. 7-16).

To grasp a better understanding of how rape myths have become accepted in society and how Canadian law applies to them, an exploration into three specific myths will be presented in this paper. The myth of implied consent and s. 265 of the *Criminal Code*, victim credibility concerning resistance and intoxication, and myths of sex work and sexual history, and evidence admissibility under s. 276 of the *Criminal Code* will be explored in detail.

Implied Consent

The myth of implied consent and the defence of an honest but mistaken belief is used as a defence in many sexual assault cases. “Implied consent refers to the notion that women indicate sexual consent through their unrelated, every day, benign behaviour” (Burgin & Flynn, 2021, p. 335). This notion suggests that it is the victim’s fault for behaving in a particular way by which a perpetrator interprets as that they are consenting to participate in any sexual activity. Taking into consideration each element of the implied consent myth, simply put, if the victim acted differently then she would not have been sexually assaulted (Burgin & Flynn, 2021). While it should not be the fault of the victim for her everyday behaviour, but the perpetrator who misperceives the behaviour, gender bias, and discriminatory views about victims continue to be prevalent in our criminal justice system (Tang, 2000). The false perception of implied consent by undermining the perpetrator’s understanding of consent and advising victims to be careful of their behaviours to avoid sexual assault.

The implied consent myth was present in *R v. Ewanchuk, 1999* where belief in consent may have begun when the victim agreed to come to his trailer after the interview. As Ewanchuk persisted with many sexual activities to which the victim said she did not want to participate, she eventually stopped resisting and the sexual activity continued due to Ewanchuk’s consistent attempts. Ewanchuk’s belief that consent was obtained occurred at this moment because the victim’s behaviour suggested she was consenting when in fact she never gave consent, she only stopped saying ‘no’; whereas the law acknowledges that the absence of no does not equate to consent (*R v. Ewanchuck,* 1999, 1 SCR 330).

Ewanchuk was acquitted in the lower court on the defence of implied consent (*R v. Ewanchuk,* 1999, 1 SCR 330). Misunderstanding of consent and bias were present by the trial judge; thus, this case suggests that “women are expected to resist the accused’s initial sexual

advances, but they are also expected to give in to persistent demands" (Tang, 2000, p. 685). This idea conveys negative understandings of consent as "initial negative answers from the complainant in the form of 'no' should not be taken seriously by men" (Tang, 2000, p. 685). However, the accused cannot rely on the complainant's silence or lack of behaviour to conduct sexual activity (Tang, 2000); thus, implied consent is no longer a defence in Canadian law.

Section 265(3) of the *Criminal Code of Canada* defines consent and section 265(4) limits the scope to the defence of an honest but mistaken belief where the accused failed to take reasonable steps to ensure the complaint's consent (*Criminal Code*, RSC, 1985, c C-46, s 265(4)). Consent is as a voluntary agreement by the complainant to engage in sexual activity (*Criminal Code*, RSC, 1985, c C-46, s 265(3)).

For the defence of an honest but mistaken belief to be justified, the accused must prove to the court that he took reasonable steps in obtaining voluntary consent from the complainant. The "defence must be clearly grounded in evidence put before the court to support defence, to indicate how this mistake might reasonably have arisen" (Randall, 2011, p. 19). The reasonable step provision holds that "if the belief is found to be mistaken, then honesty of that belief must be considered" (Randall, 2011, p. 19). Therefore, an accused is honest if his belief of consent was not tainted by any of the factors set out in section 265(3) of the *Criminal Code* (Randall, 2011*).* If, however, the complainant expressed not wanting to take part in any sexual activity such as the victim in *R v. Ewanchuk, 1999,* did, then the accused must provide evidence to the court where he honestly believed consent was obtained before continuing with his sexual advances (Randall, 2011). The Supreme Court in *Ewanchuk* did not uphold his defence of an honest but mistaken belief. As a result, he was convicted.

Victim Credibility

Victim credibility plays a significant role in sexual assault trials. Credibility refers to being believed or reliable. Unfortunately, protruding myths aim to discredit a victim's story making her appear uncredible. The criminal justice system has historically tried to discredit victims by protruding to false beliefs and viewing women as liars surrounding concerns about sexual assault offences (Edwards et al., 2011). Referring to the 'ideal' rape, the parties involved in court attempt to paint victims as either 'good' or 'bad'. Essentially these labels assess the likelihood of conviction based on how credible the victim's allegations will appear in court which can negatively affect case advancement through the criminal justice system (Campbell et al., 2015). There are factors found to have damaged victim credibility including, demographics such as age, race, and gender, moral character, voluntary intoxication, inconsistent statements, mental illness, delayed reporting, sexual history with the perpetrator, and prostitution (Campbell et al., 2015). Factors of sex work and sexual history are explored later in this project.

Victim credibility is where victims engage in risk-taking behaviour which is often "viewed as contributing to her sexual violation" (Campbell et al, 2015, p. 31). Two examples of risky behaviour are discussed, including token resistance where victims "allow" the perpetrator into the victim's home, and voluntary intoxication. The cases of *R v. Adepoju, 2014* and *R v. Barton, 2019* will illustrate these examples.

Token Resistance

"Traditional sexual scripts note that women are the gatekeepers of sexuality and should provide some "token resistance" by saying "no" when they actually intend to have sex, to maintain their wholesomeness" (Angelone et al., 2018, p. 3191). This belief contributes to men's misunderstanding of consent and therefore is prevalent in situations where women consent to a kiss but deny further sexual activity, but men misperceive consent because they believe sexual

intercourse is agreed upon because kissing was agreed to (Shafer et al., 2018). This exact situation was in *R v. Adepoju, 2014* where the victim agreed to kiss the accused who was temporarily living in her home, the accused then believed the kiss equalled consent to engage in sexual intercourse. While the victim resisted the advances, she eventually stopped physically resisting, and the perpetrator was acquitted due to belief in consent (*R v. Adepoju*, 2014, ABCA 100).

The assumption and expectation of resistance in sexual assault offences are constructed based on myths that have been socially and falsely accepted in courtrooms. "In most cases, women do resist sexual violence perpetrated against them, often in creative and indirect ways" (Randall, 2010, p. 221). The victim in *R v. Adepoju, 2014,* physically held her legs up defensively to convey resistance; however, not all forms of resistance by victims will be to such a physical degree. Other forms of resistance may consist of small gestures or verbal resistance. While token resistance may help to support victim credibility because many victims engage in some form of physical resistant to a sexual advancement, the "Supreme Court of Canada stipulated that resistance was not required to prove a sexual assault" (Randall, 2010, p. 416), because not all victims will engage in any form of resistance; therefore, it is not a factor that diminishes victim credibility either.

Voluntary Intoxication

Voluntary intoxication is when an adult knowingly and willingly becomes intoxicated by alcohol and/or drugs. This is legal and adults have the right to choose whether to consume substances; however, if a victim was intoxicated when she was assaulted, this behaviour infers assumptions about female sexuality and influences perpetrators, bystanders, and the criminal justice system (Grubb & Turner, 2012). In effect, intoxicated victims are blamed for "letting" the

assault happen and shamed for stepping outside gender expectations. “Social settings in which alcohol is consumed are common contexts for sexual assaults” (Jozkowski et al., 2021, p. 2); however, studies have found that engaging in these activities views victims as less credible (Morabito et al., 2019). Alcohol effects the brain, and social cues may be misinterpreted by perpetrators and bystanders who fail to intervene because of their underlying beliefs and acceptance of rape myths. In a study conducted by Schuller and Wall (1998) intoxicated women were “viewed as more sexually responsive, easier to seduce, and more likely to engage in foreplay and intercourse compared to her nondrinking counterpart” (p. 556). This suggests that many, including justice professionals, believe that intoxication calls for sexual activity regardless of consent.

In the case of *R v. Wager, 2015,* both parties were intoxicated at a social event. The accused claimed that the sexual activity was consensual; however, the victim testified that she was forced (Grant, 2017). Throughout the first trial, Justice Camp made decisions based on rape myth acceptance as he continuously blamed the victim for being intoxicated and claimed it is the victim’s responsibility to not be sexually assaulted (Craig, 2018). In a study by Schuller and Wall (1998), “when both parties were drinking, participants were more likely to question the validity of the rape, view the victim negatively, and judge the assailant as more likeable” (p. 557). The results of this study are consistent with the decision-making process in *R v. Wager, 2015,* as Justice Camp continuously put the onus of the responsibility for the crime on the victim (whereas the justice system calls for the Crown to prove the defendant guilty), referred to the victim as the accused, and cheered when Wager was acquitted (Craig, 2018; Grant 2017). Overall, voluntary intoxication tends to be a widely accepted rape myth among society and

within the criminal justice system making victims lack credibility and potentially preventing them from reporting their victimization in these circumstances.

Sex Work and Sexual History

Sex work is often viewed as a victimless crime raising beliefs that "girls who prostitute enjoy their work," "girls who have sex a lot may as well get paid for it," "girls who work in brothels are in no physical danger," and "most prostitutes who get beat by their pimps deserve it" (Menaker & Franklin, 2018, p. 313). Another misconception of sex work is the belief that it is impossible to sexually assault a woman who has sex for a living. This myth is accepted by both society and the criminal justice system; thus, placing blame on the victim and creating excuses for defendants charged with sexual assault (Sprankle et al., 2017). The stigmatization of sex work removes blame from the perpetrators; therefore, deterring victims to report incidents of sexual assault because of prejudice and discrimination by justice professionals (Sprankle et al., 2017).

Furthermore, sex work myths affect the validity of consent. Due to the legal financial exchange for sexual services between adults, those who purchase sex may hold the belief that consent means consent to do anything to the sex worker simply because they paid for it (Sprankle et al., 2017). This belief reflects the implied consent myth. While an individual can purchase sex, it does not imply that the sex worker is consenting to all sexual activity per the customer's request. The laws of consent continue to apply in this context. In *R v. Barton, 2019*, the sex worker consented to engage in sexual activity with Barton; however, she did not give consent to rough sex in this encounter (LEAF, 2020). All the justice professionals involved in the trial held false beliefs about sex work. The victim was constantly referred to as a prostitute; therefore, only being negatively viewed by this behaviour as opposed to seeing her as a victim of

sexual assault and murder. While sex work is legal in Canada, it is not regulated in a way that protects workers from danger and does not protect them to be victimized by the criminal justice system.

Sexual history refers to any previous sexual activity a person has, and it is often brought into court as means of equating having a sexual history with being less believable and less credible. This myth claims that consent does not need to be continuously obtained, while the law is clear that it is continuous. "Sexual consent attitudes are socially constructed based on previous sexual experience" (Kilimnik & Humphreys, 2018, p. 197). The context of this myth applies to both platonic or intimate relationships and in sex work. People believe that if a complainant has a sexual history either because she is in a relationship or is a sex worker then she is more likely to have consented to the sexual activity in question; therefore, undermining her credibility (Dufraimont, 2019). Given the laws of consent, sexual history is irrelevant; however, some may continue to hold the false belief and apply it within their defence regardless of its admissibility. In *R v. Barton, 2019*, the accused used the victim's sexual history as part of his defence saying that he believed consent was obtained due to their previous sexual history together (LEAF, 2020); therefore, implying that rough sex was always assumed within their relationship. Whereas the legal definition of consent requires that consent be obtained in every interaction and consent cannot be retroactive or assumed.

S. 276 of the Criminal Code of Canada

Historically, the law allowed evidence of the victim's prior sexual history in court; however, in 1982 the Supreme Court of Canada enacted section 276 of the *Criminal Code of Canada* to prohibit the admissibility of this evidence as an action to discredit rape myths and dispel its equation with victim credibility (Defraimont, 2019). Section 276 makes sexual history

evidence inadmissible in inference to sexual activity given the nature that the complainant is more likely to have consent or that she is less worthy of belief (*Criminal Code*, RSC, 1985, c C-46, s 276 (1)(a)(b)). The use of this section is important in sexual assault cases as accused often try to rely on the victim's sexual history as part of their defence.

Court Misconceptions

Sexual assault trials "are designed to ascertain whether the state can through a fair process prove beyond a reasonable doubt that an accused committed the sexual offence with which he has been charged" (Craig, 2018, p. 11). In the process of criminal trials, evidence and culpability must be proven by the Crown; however, given the complexities of most sexual assault cases, convictions are difficult to obtain. These trials require victims to answer questions about their sexual integrity repeatedly (Craig, 2018), to contradict the continuous use of rape myths and stereotypes presented by police and in court.

Throughout the years, the judiciary has been criticized for making stereotypical decisions and comments that adhere to biases that disadvantage the victims (Eyssel & Bohner 2011; Stevenson, 2000). While these biases may stem from society's views of sexual assault, the stereotypes voiced in the courtroom lead to acquittals due to the presence of rape myths. Due to the complexities of sexual assault offences, there are often aspects of uncertainty within the offence. People tend to "rely on stereotypes when making judgments under conditions of uncertainty" (Craig, 2018, p. 206); therefore, beliefs of rape myths may influence the perspective that justice professionals hold about sexual assault and its victims (Kim & Santiago, 2020).

Defence Lawyers

Defence lawyers represent their clients in accusations of an offence. A common strategy used by defence is to undermine the victim's credibility by doubting her truthfulness and reputation (Krahé et al., 2008). This is done during the cross-examination of the victim's testimony. "Rather than allowing victims to tell their story, the structure of the justice system seemingly allows the defence to control the flow of dialogue" (Laxminarayan, 2012, p. 393);

therefore, comments referring to rape myths and stereotypes are clear within trials and negatively characterises victims. Oftentimes it is as if the victim is on trial as opposed to the accused.

In the cross-examination of *R v. Adepoju*, *2014*, the defence repeatedly questioned the victim about not resisting or crying out for help.

"**Defence:** …eventually you stopped saying no, and you opened up your legs and the sex act occurred; correct?

Victim: Yes.

Defence: You didn't scream?

Victim: No.

Defence: You didn't cry?

Victim: No.

Defence: You didn't go lock yourself in the bathroom?

Victim: No.

Defence: Well, you did let him have sex with you; right?

Victim: Eventually, yes.

Defence: You stopped saying no.

Victim: But I didn't say yes.

Defence: You stopped saying no, and you used body language complying with the sexual act; correct?

Victim: I - I guess I did." (Craig, 2018, pp. 36-37).

Often cross-examinations try to present the sexual assault occurred because of the victim's fault. As transcribed above, the defence counsel alludes to the sexual assault being the victim's fault due to her lack of resistance by not screaming for help. Defence is more inclined to

believe that their client is falsely accused; therefore, they try to ensure an acquittal (Craig, 2018). Overall, for defence, questioning the victim's credibility countlessly is their strongest strategy to achieve an acquittal, even though the law is clear that the absence of "no" does not imply consent.

Crown Prosecutors

Crown prosecutors are the legal representative of the state; they bring a case before the court against an accused by presenting evidence of their guilt. Due to the protruding use of rape myths in cross-examinations by defence, the Crown should intervene and object to these tactics to avoid aggressive questioning and prevent discriminatory stereotypes about sexual assault and its victims (Craig, 2018). While the Crown is in the victim's corner, they are still predisposed to bias especially when it concerns the likelihood of conviction. The prosecution's decision to proceed with charges is weighted against a variety of factors including seriousness of the offence, evidence, degree of harm, defendant culpability, cost of adjudication, and the likelihood of a conviction (St. George & Spohn, 2018).

When circumstances are uncertain, such as in most sexual assault offences, the prosecution tends to rely on the prediction of how the judge and jury will respond to the evidence available; therefore, adhering to rape myths (St. George & Spohn, 2018). Due to these factors, prosecutors may believe some cases are more likely than others to receive a conviction; therefore, pursuing only the cases with more 'valuable' evidence.

Juries

Because juries are lay people from society, they can hold biases and adhere to myths too. In a recent mock jury study by Tinsley et al, (2021), found that jurors are likely to expect specific reactions from the victim; therefore, without such distress present at trial, the victim may be

viewed as negative and less credible. While society and jurors have accepted rape myths, these biases find their way into the court such as questioning the victim's credibility when delayed reporting occurs, when there is a lack of physical injury, intoxication, how she was dressed prior to the assault, and if she displays a calm demeanor during the trial (Dinos et al., 2015).

Rape myth acceptance affects how information about a case is processed and interpreted; therefore, resulting in biased verdicts by juries (Dinos et al., 2015; Temkin et al., 2018). In sexual assault trials, especially those with a lack of physical evidence, juries must still make a judgment based on all the presented evidence (Dinos et al., 2015). This often defaults to stereotypical thinking and acceptance; thus, judging the victim's credibility of the event against her own words to that of the juror's prejudices and false beliefs about sexual assault.

Judges

Judges are the finders of fact and hold the most power in courtrooms. When they do not apply the sexual assault laws and rules regarding evidence correctly, this increases the use of rape myths and stereotypes that can influence the trial's outcome and sentencing, and contribute to the victim's trauma (Craig, 2018). They set the tone in the court and without challenging myths, without challenging harmful defence tactics or Crown biases, the tone of the trial proceeds negatively. Most judges are not properly trained about sexual assault and many engage in victim-blaming by holding false beliefs about sexual assault and its victims. "The adjudication of sexual assault cases has long contended that the full protection of the law is only afforded to 'ideal victims'" (Dick, 2020, p. 135).

Recent requirements under the *Judges Act* now include continuing education about sexual assault law and its social context (Department of Justice, 2021b); however, while this may help to reduce the use of myths and stereotypes in the courtroom, it may not be enough. Due to rape

myth acceptance and lack of education, some judges have difficulty applying the law accurately; therefore, negatively approaching victims. These difficulties were present in the *R v. Wager, 2015* case that resulted in an inquiry into Justice Camp's conduct

The Justice Camp Inquiry

In March of 2017, Justice Robin Camp "became the first federally appointed judge to be recommended for removal by the Canadian Judicial Council (CJC) for conduct in a sexual assault case" (Dick, 2020, p. 133). The misconduct stemmed from various comments he made towards the victim about her credibility in the *R v. Wager, 2015* case, and other biases and inaccurate application of the law. His comments were false beliefs about sexual assault as he continued to refer to the victim's lack of resistance and blamed her for the assault. Justice Camp asked the vulnerable victim "why didn't [she] just sink [her] bottom down into the basin so he couldn't penetrate [her]" and "why couldn't [she] just keep [her] knees together" (Cairns-Way & Martinson, 2019, p. 383). Additionally, Justice Camp shared his belief that sex and pain can go together, and it is not always a bad thing (Cairns-Way & Martinson, 2019).

These comments undermine the seriousness of the offence and initiate victim-blaming as Justice Camp continued to infer that the victim could have prevented the sexual assault and that the accused is not culpable. He also called the victim the accused throughout the trial. As a result of these comments, Justice Camp retraumatized the victim and she later stated in an interview that "he made me hate myself and he made me feel like I should have done something...that I was some kind of slut" (Craig, 2018, p. 204).

Complaints about Justice Camp's behaviour during the trial started in November 2015 when four law professors reviewed the transcripts of the case and complained to the CJC (Cairns-Way & Martinson, 2019). A month later, the CJC review panel and the Alberta Minister

of Justice filed a formal complaint against Camp and the process moved to a formal inquiry (Cairns-Way & Martinson, 2019). The inquiry began in September 2016 and lasted five days (Cairns-Way & Martinson, 2019) where testimonies were given by Justice Camp and others who spoke to his professional character. During his testimony, he expressed to the CJC that other judges are engaging in the same misconduct; however, they have yet to receive punishment for their actions (Dick, 2020). The defence presented by Camp diminishes his sympathy and accountability for his actions as he was quick to transfer the blame onto other Justices as opposed to apologizing for his misconduct. Other testimonies during the inquiry highlighted that since the inquiry, Justice Camp had "undergone sensitivity training and counseling with a superior court judge, psychologist and expert in sexual assault law" (The Canadian Press, 2016, para. 13); therefore, suggesting that his training would improve his conduct if he were to remain on the bench. Additionally, Camp's lawyer argued that "removing Camp would send the wrong message to other judges who seek to improve themselves" (The Canadian Press, 2016, para. 16). In November 2016, the committee unanimously voted to remove Camp from the bench as his efforts post-trial did not excuse his behaviour (Cairns-Way & Martinson, 2019; The Canadian Press, 2016). In March 2017, Camp officially resigned from his position as a judge (Cairns-Way & Martinson, 2019).

While Justice Camp was removed from the bench, years later the Law Society of Alberta reinstated Camp to allow him to practice law again in Alberta; however, not in the position of a judge (Anderson, 2018). The Law Society of Alberta recognized his efforts and therefore viewed that reinstating Camp is a positive decision for the profession and the public (Anderson, 2018). Camp stated that he "does not intend to practice criminal law" (Anderson, 2018, para. 22); however, he will continue to practice other types of law.

Unconventional Decision-Making

Court misconceptions about sexual assault stem from false beliefs and adhering to societal stereotypes and myths about sexual assault and its victims. However, how do these misconceptions affect decisions made during trials? Confirmation bias is a key factor in the process that justice professionals use when making decisions. This is especially true in sexual assault trials as myths and stereotypes are often used to confirm existing biases. Confirmation bias is the tendency to accept new evidence that confirms a person's existing beliefs. People tend to "favour information that supports their social stereotypes and attitudes" (Jones et al., 2001, p. 557). For example, if a judge has pre-existing beliefs about sexual assault and he believes that it should conform to the 'ideal rape' scenario, consequently, these beliefs will persuade the finding of fact and decision-making process which often results in acquittals.

This was clear in *R v. Wager, 2015* as Justice Camp vocally included and believed rape myths and allowed his false beliefs to affect his decision-making process by incorrectly applying the law and the acquittal.

Furthermore, confirmation bias arises due to psychological theories about morals, societal, and political motivations by which individuals reject information that is not consistent with their existing beliefs and tend to convince others to accept their beliefs; thus, keeping a sense of control during a situation (Kappes et al., 2020; Lidén et al., 2019). During sexual assault trials, defence lawyers may use myths during their cross-examinations to undermine the victim's credibility. This may influence both the jury and the judge to adhere to common myths or develop an acceptance of new myths; therefore, negatively affecting their decision-making process. As a result, the defence may obtain an acquittal which could increase their self-esteem and sense of control as others have confirmed their biases whether intentionally or unintentionally. Decision-makers may consider only information presented during a case;

therefore, poorer decisions may be rendered as evidence is not fully considered and the decision-maker connects themselves to the stereotypes that give support to false or misleading information that shapes and affects the outcome of a situation (Hernadez & Preston, 2013; Nikolić, 2018). For example, in *R v. Adepoju*, *2014* information about the offence were considered by decision-makers after the victim stopped resisting the attack. Only the information that adhered to myths and stereotypes changed the entire decision-making process which resulted in a poor verdict for the case.

It is important to understand that decision-makers are humans like the rest of individuals, they may intentionally or unintentionally accept myths and stereotypes "that lead to mistakes in the perspective of observing problems and negatively affect the effectiveness of decision-making" (Nikolić, 2018, p. 44). To overcome confirmation bias, individuals within society, and especially justice professionals should be aware of their own biases and how that may affect their ability to judge. Self-awareness and the ability to remove one's biases are important within the criminal justice system as myths and stereotypes are present throughout steps within the process and with certain offences. Additionally, decision-makers should consider judging an event from a distinct perspective (Nikolić, 2018). Through this technique, they may be able to notice other relevant information to an offence that was blocked out by their biases. A considerable technique for justice professionals is to critically reconsider past decisions (Nikolić, 2018). By analyzing the negative effects of past judgments, it may inspire a shift in perspective and a better understanding of an offence for future trials.

While confirmation bias can negatively affect decision making in sexual assault trials, it is important to understand that decision-makers "can only consider a limited number of information at one moment; that he/she has to make a decision in a limited period of time, and

also that a decision-maker cannot possess all of the relevant pieces of information" (Nikolić, 2018, p. 46). While this claim does not negate the unconventional decision-making process that is used during trials, it proves that the courts' system must develop better ways to present relevant information and reject myths about sexual assault to obtain an effective process and outcome.

The Damage of Rape Myth Acceptance on Victims

The effects of a sexual assault offence on its own are damaging enough for victims. When the criminal justice system accepts rape myths when dealing with victims, it further adds to their trauma. One of many sexual assault complainants stated, “the bulk of my rape trauma is not the result of sexual assault itself, but of the brutality of the legal system” (Craig, 2018, p. 4). While there are ways that rape myths acceptance by the criminal justice system can affect victims, the most profound way it can cause further damage is by engaging in secondary victimization. “Secondary victimization refers to the societal reactions in response to a primary victimization that may be perceived as a further violation of rights or entitlements by the victim” (Laxminarayan, 2012, p. 392). Given this definition, society, including justice professionals, accept rape myths by not believing the victim and engaging in victim-blaming. This creates further trauma for victims as they tend to exhibit a higher risk for mental health issues (Patterson, 2011).

The criminal justice process is already a high-risk setting for victims as they must recall their victimization and reencounter their offender. When courtroom behaviour regularly discredits a victim through questioning, blaming, and accusation, the psychological effects can be detrimental to the victim (Laxminarayan, 2012). Victims can experience anxiety, depression, and post-trauma stress; however, these issues may not arise at once and will develop over time. Due to the potential delay in post-trauma response, the victim’s experience of the sexual assault may be ignored, minimized, or not recognized by others; therefore, resulting in a lack of empathy and understanding which can decrease the likelihood of the victim’s recovery (Mason & Lodrick, 2012). The criminal justice system as a whole and the court system lacks proper training on how

to address sexual assault victims' needs during trials to ensure they do not risk secondary victimization.

While severe mental health issues can arise for victims and can be exacerbated by rape myth acceptance in courts, other psychological effects such as a decrease in victims' self-esteem and trust in the legal system can occur due to the negative attitudes in criminal proceedings (Orth, 2002). These psychological variables are shown by both the statistical data collected in the Uniform Crime Report and the General Social Survey for Victimization discussed earlier in this project. The police-reported data highlights the trend of underreported sexual assault offences which are confirmed by the victimization survey where victim expressed their lack of trust in the legal system because of secondary victimization. While complainants are aware that the criminal justice system is not designed for healing, they do know it should not construct a ‘second rape’ (Craig, 2018) and revictimize complainants.

Discussion

Through reviewing and analysing the data, the results show how the utilization of rape myths in the courtroom can negatively affect reporting and conviction rates. Given both the UCR and GSS data, a dark figure of crime for sexual assault offences has remained consistent over the decades. With particular attention to the GSS data, victims have expressed their lack of willingness to report incidents due to the false beliefs surrounding sexual assault and its victims, especially during trials. Furthermore, as highlighted through court transcripts and case discussions, the use of myths by justice professionals is common and it continues to undermine the best interest of the victims. Overall, the results highlight how prevalent rape myths are in sexual assault cases.

The connection between the results and the literature confirms the prevalence of bias. It was found that bias can severely affect judgments especially when all circumstances are unknown, which is a common factor within sexual assault cases. Furthermore, the literature explains how everyone in society, including justice professionals, is subject to biases whether through consciousness or unintentionally. However, the unfortunate result of such biases towards sexual assaults is that it tends to lessen the seriousness of the offence when put on trial. As a result, this creates a full circle of impacting reporting rates due to lack of justice for victims, which therefore affects conviction rates due to lack of cases involved in the criminal justice system.

This project was able to answer the research question – how do rape myths affect justice professionals' decision-making processes in sexual assault trials? If myths and the acceptance of those myths were absent, the likelihood of increased reporting and conviction rates could be assumed. However, justice professionals continue to accept certain false beliefs. The results from this project illustrated rape myth acceptance. However, with more research, law reforms, and

educating more judges, an improvement of how sexual assault cases are handled can lead towards a just direction.

Sexual assault continues to be an offence that is difficult to understand and process within the criminal justice system. Though law reforms have been created over the years, the handling of sexual assault cases remains a challenge for justice professionals as they continue to accept rape myths. It is important for victims to feel safe and protected within the justice system; however, when rape myth acceptance continues to be present, it diminishes their trust in the legal system which therefore will contribute further to the dark figure of crime for sexual assault offences. While the legal system may never be perfect in handling sexual assault cases, many changes can be implemented to improve the court process.

Implications for Change

The implementation of new law reforms including section 276 of the *Criminal Code of Canada* and the reasonable steps provision have been valuable in addressing certain sexual assault cases in courts; however, they continue to require improvement in their application by justice professionals. Section 276 discusses the inadmissibility of a complainant's sexual history. While there are certain grounds for the admissibility of such evidence, attorneys and judges must carefully consider its use. Defence lawyers are insistent on using this evidence and judges may miss its inappropriate application.

Another law reform is the reasonable steps provision created in Bill C-49. This bill intends to criminalize sexual assault offenders through objective and subjective standards whereby they fail to engage in a series of 'steps' to obtain consent (Sheehy, 2017). Like applying section 276 of the *Criminal Code*, the reasonable steps provision is not often implemented in trials correctly when trying to prove accusations. Overall, the execution of the law reforms has

not been perfect and requires continuous effort by justice professionals in ensuring awareness and proper use during trials.

There have been positive effects to training and education for changing attitudes towards sexual assault; however, short-term training has a limited impact in changing rape myth acceptance (Kim & Santiago, 2020). Therefore, continuous training and education should be essential for all justice professionals, especially those involved in the courts' system. For example, in the United Kingdom, judges who hear sexual assault cases must complete the 'serious sexual offence seminar' every three years (Craig, 2018). The purpose of the seminar is to identify and address current legal, evidential, procedural, societal, and sentencing issues, in addition to staying updated with the current law (Craig, 2018). This practice has shown great promise in handling sexual assault offences and their victims. Due to Canada also being a common law system, the seminar approach may be equally effective considering sexual assault laws and trials are like that of the United Kingdom.

Eliminating the acceptance of rape myths "involves a multi-pronged and interrelated approached aimed at changing social norms, reducing gender inequalities, and educating not only lawyers and judges but also the public" (Craig, 2018, p. 222). Both women and men should receive long-term education about sexual assault as it continues to be a prevalent gender-based offence. A study of university women conducted by Edwards et al (2011), found that students who took part in sexual assault awareness workshops or programs were less likely than males to endorse rape myths. This suggests that sexual assault programs could decrease rape myth acceptance within society. Educational programs should begin before puberty (i.e., before teenagers typically begin dating) and continue throughout grade school and university (Edwards et al., 2011).

Furthermore, other people in society must be included in any efforts to reject rape myths. The media should have a responsibility in reporting about sexual assault in a manner that is "factual and devoids rape myths" (Edwards et al., 2011, p. 770). Overall, sexual assault complainants should not "bear the burden of participating in an individualized process to respond to a social problem" (Craig, 2018, p. 223), it should include efforts of the institutions and society to combat the issue.

Bill C-3

Bill C-3, *An Act to amend the Judges Act and the Criminal Code* was introduced by Parliament in September 2020 (Department of Justice, 2021b). The bill has four clauses, and the purpose is for continuous education for judges about sexual assault and for judges to apply reasoning for their decisions for sexual assault offence verdicts (Department of Justice, 2021b). Each clause highlights the procedures that judges, and the Canadian Judicial Council (CJC) must adhere to. This includes education on sexual assault law and social context, the CJC hosting seminars for continuous education, the CJC must submit an annual report of judges who attend the seminars and the details of the seminars, and lastly, requiring judges to explain their decisions in proceedings (Department of Justice, 2021b).

This will help to improve overall confidence for the public and sexual assault victims by deciding on cases under the law as opposed to rejected rape myths (Department of Justice, 2021b). The more effective society and the criminal justice system are at reducing its usage of rape myths, an improvement in victims' trust of the legal system can occur. This could cause the dark figure of crime to shrink due to increased reporting rates and conviction rates for sexual assault offences.

Conclusion

The myths and stereotypes about sexual assault and its victims need to be debunked and rejected in society. Its usage within the Canadian criminal justice system, and particularly the courts' system, is highly unacceptable as it has notably decreased victims' trust within the system causing a ripple effect; thus, contributing to the dark figure of crime.

With many offences, attrition is a common occurrence within the criminal justice system. This not only highlights an inaccurate number of sexual assaults that occur but for those cases that make it to later steps within the process (i.e., trials), most are funneled out because of an acquittal based on protruding myths. Unlike other offences, sexual assault highly relies on testimonies as opposed to physical evidence. This has its disadvantages as myths tend to appear during cross-examinations and decision-making processes by justice professionals and juries.

The implication of myths stems from a lack of understanding by society and justice professionals about sexual assault, its victims, and its laws. Due to this, many exhibit and adhere to prejudices and biases regarding sexual violence. Sexual assault is one of the only offences where victims are continuously blamed for a crime committed against them. Victim-blaming is inevitable if individuals and especially justice professionals do not educate themselves about the realities of sexual assault.

Within this project, suggestions towards an understanding of sexual assault realities were discussed. While law reforms are created and implemented, proper execution of those laws within trials of the laws have been severely lacking. Law reforms are a good starting point to improve how sexual assault cases are dealt with in the criminal justice system, early and continuous education for society and justice professionals must be established and should be mandatory. It is with the hope that with the implementation of Bill C-3, rape myths are rejected within the courtroom and appropriate verdicts can result. Without changes to the criminal justice

process and the court's environment for sexual assault offences, rape myths will continue, and the dark figure of crime will remain significantly unknown.

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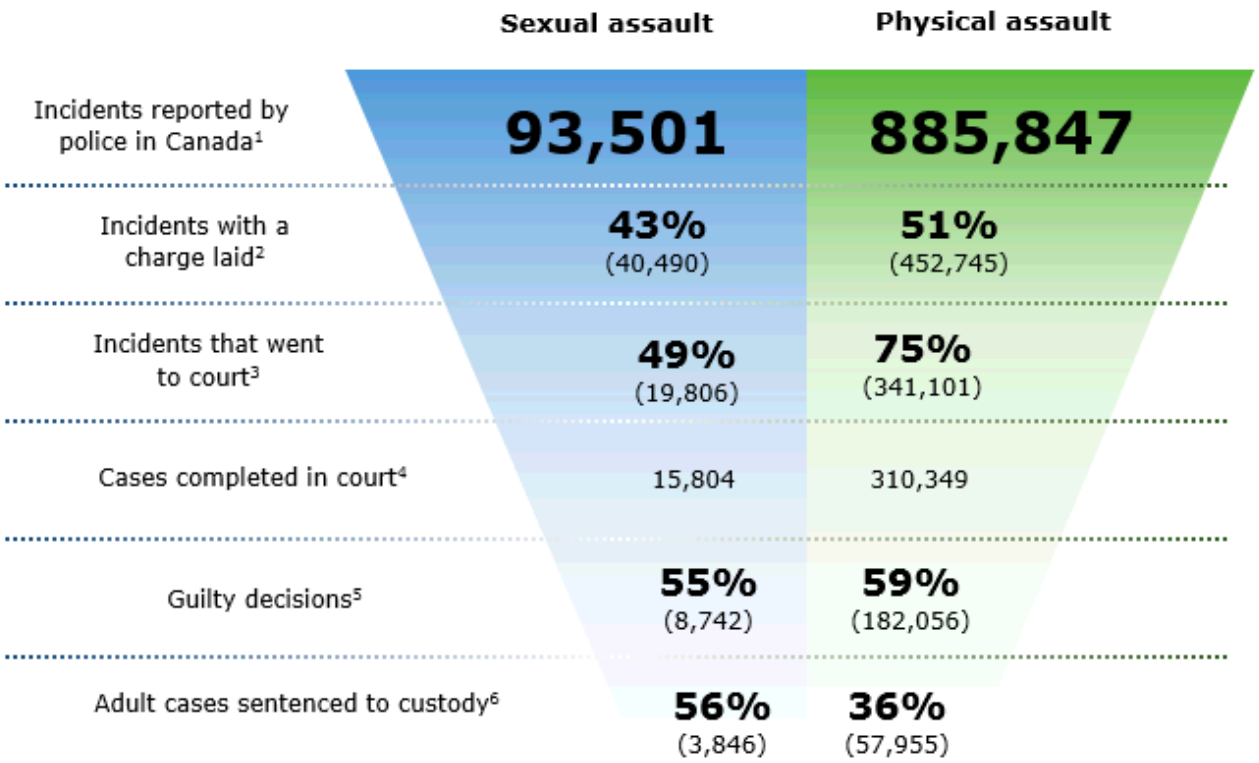
Appendix A

Retention of criminal incidents in the criminal justice system, sexual assault versus physical assault, Canada, 2009 to 2014



(Rotenberg, 2017, figure 2)