

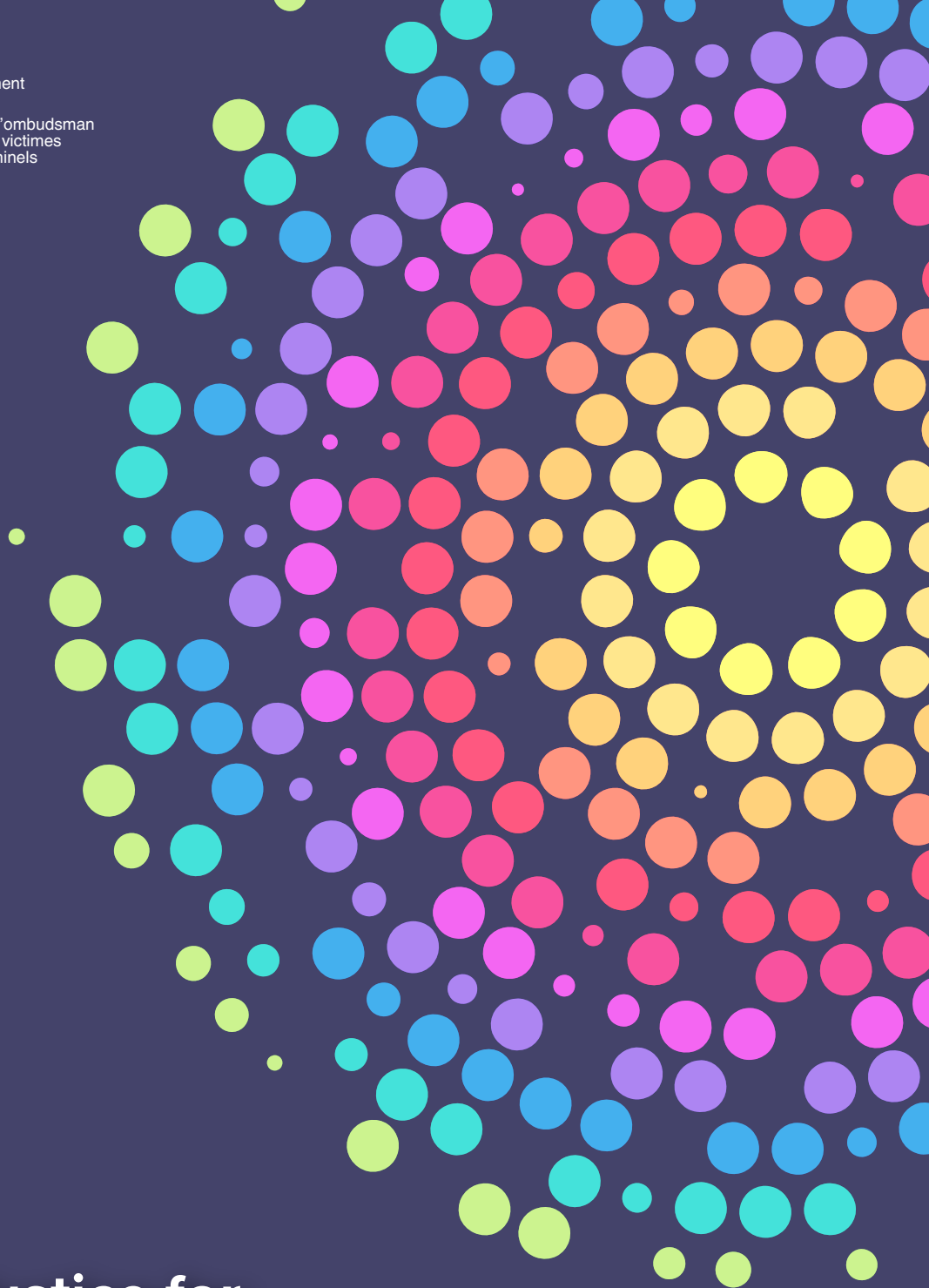


Government
of Canada

Office of the Federal
Ombudsperson for Victims
of Crime

Gouvernement
du Canada

Bureau de l'ombudsman
fédéral des victimes
d'actes criminels



Rethinking Justice for Survivors of Sexual Violence:

A systemic investigation

Office of the Federal Ombudsperson
for Victims of Crime

Canada

Land Acknowledgement

The Office of the Federal Ombudsperson for Victims of Crime (OFOVC) is located on the traditional, unceded and unsurrendered territory of the Anishinaabe Algonquin Nation, whose presence here reaches back to time immemorial. We also thank the Anishinabek, Huron-Wendat, Atikamekw, Cree, Dene, Metis, Sumas, Mathsqui, Kwantlen, Musqueam, Squamish and Tsleil-Waututh Nations whose lands we visited in conducting our investigation.

Content Notice – Sensitive and Potentially Distressing Material

We acknowledge that the content of this report includes references to sexual violence and gender-based violence (GBV). These topics can be difficult to engage with, particularly for survivors, those who have witnessed harm, and individuals who support or care for those affected.

Please take care as you read. You are encouraged to engage with the material at your own pace and in ways that feel safe and manageable for you.

If you would like to access support, consider contacting the following resources:

Victim Services Directory (to find services near you)

<https://www.justice.gc.ca/eng/cj-jp/victims-victimes/vsd-rsv/index.html>

Support services for those affected by GBV

<https://www.canada.ca/en/women-gender-equality/gender-based-violence/additional-support-services.html>

Family violence resources and services

[Find family violence resources and services in your area – Canada.ca](https://www.canada.ca/en/family-violence/resources-services.html)

Hope for Wellness Helpline (available 24/7 to Indigenous people in Canada)

www.hopeforwellness.ca, 1-855-242-3310

Canadian Resource Centre for Victims of Crime (for advocacy)

www.crcvc.ca, 1-877-232-2610

pflag Canada (for the 2SLGBTQIA+ community, family, friends and allies)

<https://pflagcanada.ca/contact/>

If you have experienced criminal victimization and you believe your rights under the *Canadian Victims Bill of Rights* have not been respected, you can contact us:

Office of the Federal Ombudsperson for Victims of Crime

www.victimfirst.gc.ca

1-866-481-8429

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Executive Summary

“Believe us. It’s that simple. When we tell you something happened, don’t blame it on what we were doing or what we were wearing or if we ‘deserved it’ or not. Regardless of what we were doing or how we were dressed, we didn’t deserve what happened to us.”¹

SISSA Survivor Survey, Response #59

Sexual violence remains one of the most underreported crimes in Canada. Despite decades of reform, only 6% of sexual assaults are reported to police.²

Survivors of sexual violence fear being disbelieved, retraumatized, and harmed if they report. This investigation was prompted by long-standing concerns raised by survivors, advocates, and legal professionals about persistent barriers to justice and the urgent need for reform.

We used a mixed methods approach to centre survivors’ experiences and identify systemic issues across the criminal justice system (CJS). We also implemented inclusion measures to allow for broad and diverse participation, while acknowledging the barriers and limitations that shaped our findings.

Investigation methods ranked by level of direct engagement



These frameworks informed both the design of our investigation and our evaluation of how survivors of sexual violence are treated while navigating the CJS. In particular, we noted:

Missing and Murdered Indigenous Women and Girls

“Steps must be taken to better respond to the needs of Indigenous victims.”³

First Nations, Inuit and Métis Peoples, specifically women, girls, and 2SLGBTQIA+ people, are overrepresented as victims of crimes – violent crimes,⁴ sexual crimes,⁵ and gender-based crimes.⁶

Our investigation sought to incorporate this understanding into every aspect of our work. In undertaking our investigation, we considered the 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Calls to Justice about health and wellness, Indigenous-specific victim services, sustainable funding for Indigenous-led services, education and traditional knowledge, violence prevention and community safety.⁷

Myths and stereotypes

“A number of rape myths have in the past improperly formed the background for considering evidentiary issues in sexual assault trials.”⁸

The Supreme Court of Canada (SCC) has condemned the use of rape myths and stereotypes in sexual assault trials, recognizing their harmful effects on survivors and on judicial outcomes.

Sexual assault is a crime of power and control. Most sexual assaults occur between people who know each other.⁹

There is no single or “typical” way a survivor behaves during or after a sexual assault.¹⁰ Reactions such as freezing, delayed reporting, memory inconsistencies, emotional numbness, not telling friends, feeling shame, or maintaining relationships with perpetrators, are misunderstood as credibility issues but they are actually normal responses to trauma.

Pervasive myths and stereotypes significantly harm survivors by undermining their access to justice, safety, and healing. Myths and stereotypes reinforce stigma, silence survivors, and perpetuate systemic inequalities.

Topics of our investigation report

Our report touches on 10 broad topics:

1. Reporting and investigations

“Reporting sexual violence should not open the door to suspicion, delay, or further harm.”¹¹

Systemic, practical, and identity-based barriers make reporting unsafe, inaccessible, even unthinkable, and prevent many survivors from reporting. Many survivors do not believe anyone will take them seriously. They have an intense fear of disbelief, shame, and judgment. When they do report, many survivors do so from a deep sense of responsibility to protect others.

Survivors in rural, remote, and northern communities described additional barriers to reporting. Similarly, Indigenous, Black, and 2SLGBTQIA+ survivors, and survivors with disabilities experience additional and intersectional barriers to reporting.

While some survivors had poor experiences with police, others noted improvements in police communication and access to case-related information.

2. *R v. Jordan*

“I don’t think there is anything worse for a victim than to have a trial stayed.”¹²

*R v. Jordan*¹³ created a regime with specific time frames that protect the right of an accused to a trial within a reasonable time. It has had unintended devastating consequences for survivors and their families. Serious sexual assault charges, even against children, are being stayed, sometimes after survivors have already endured painful cross examinations or disclosure of private records.

The current approach to *R v. Jordan* is compromising access to justice, violating the rights of victims of crime, and undermining public confidence in the judicial system in Canada.

3. Therapeutic records

“It was the worst part about the entire awful thing... I disclosed other sexual abuse including incest that I never wanted anyone to know about. I was suicidal and severely depressed and desperately wished I had either never done counselling or never reported. In the future I will advise other sexual assault victims to pick one or the other, never both.”¹⁴

Therapeutic interventions can help people who have experienced trauma. Survivor therapeutic records contain personal information that many people would not want shared with anyone, particularly with the person who harmed them.

The third-party records regimes were enacted to require courts to conduct a balancing exercise before producing complainants’ private records in cases of sexual assault.¹⁵

The risk of those records being disclosed in court means that many survivors felt like they had to choose between justice or getting mental health

help. The threat of an aggressor gaining access to a survivor’s therapeutic records is a risk to the health and safety of survivors.

We believe the current records regime causes disproportionate harm to survivors compared to the potential benefit for the accused.

4. Cross-examination and trial fairness

“To put a bulldog there to rip the person to shreds is barbaric.”¹⁶

Despite important amendments to the *Criminal Code*, myths and stereotypes still underlie some line of questioning of cross-examination. Some survivors reported that cross-examination was worse than the sexual assault itself and that even with a conviction they regret ever having reported.

Cross-examination can be profoundly traumatizing for children, who often have to testify twice because of preliminary hearings. Child and youth advocacy centres provide child-friendly and safe spaces for children to testify and should be more widely accessible.

Complainants with disabilities and with communication needs can experience profound harms from cross-examination. Their *Charter* right to equality is at risk when they don’t have access to adequate communication aids.

5. Testimonial aids

“Make testimonial aids an automatic practice for all victims of sexual assault (not just children) and enshrined in Crown guidelines.”¹⁷

Testimonial aids are tools provided in the *Criminal Code* that help victims and witnesses participate in the process more safely, reduce trauma, and enable the truth-seeking function of the court. The Supreme Court of Canada indicates that testimonial aids *“facilitate the truth-seeking function by allowing a complainant to be able to give evidence more fully and candidly.”*¹⁸

The *Canadian Victims Bill of Rights* (CVBR) provides the right to request testimonial aids. However, if survivors are not aware of them, they don't know they can request them.

Access to testimonial aids varies across the country, depending on jurisdiction and location. Survivors and stakeholders shared that testimonial aids should be automatically offered.

6. Victim impact statements, corrections and parole

“Even my victim impact statement was redacted. It was all blacked over. That was my last hope to be heard. I read it like a prayer to the Creator in hopes I would at least be heard by the Creator.”¹⁹

A Victim Impact Statement (VIS) is a statement from a survivor written prior to sentencing, presented to the Court. It becomes part of the evidence which must be considered by the judge in determining the sentence of the accused.

The VIS regime in Canada has led to increased victim participation, increased victim satisfaction with the criminal justice system, and increased acceptance among criminal justice professionals of victim input.

Victim Impact Statements are often redacted, which limits or eliminates the authenticity of the survivor's voice. We believe that redactions of victim impact statements should be limited.

Survivors often have little information about their rights during and after sentencing. They don't know that they have to register with Correctional Service Canada (CSC) or the Parole Board of Canada (PBC) to get information about federal offenders. The onus is on victims and survivors – those who have suffered harm – to navigate a complicated system. We believe that survivors should receive proactive information about their rights during and after sentencing.

7. Restorative and transformative justice

“We see and hear of a need for restorative and transformative justice approaches as options for survivors and as creative responses to survivors' access to justice needs.”²⁰

Restorative justice (RJ) is an approach to justice that seeks to repair harm. RJ is a voluntary and consent-based approach, and can allow survivors to participate more safely, on their terms.

RJ offers many alternative approaches. Many RJ programs have drawn their principles from Indigenous legal traditions, which have been used by Indigenous peoples to resolve disputes for thousands of years.²¹ RJ values are consistent with and have been informed by the beliefs and practices of many faith communities and cultural groups in Canada.

RJ remains largely inaccessible to survivors of sexual violence due to provincial and territorial policies that prohibit its use.

Some advocates have concerns that RJ shifts gendered violence back into the private sphere. Others believe it is a much better alternative to the criminal justice process and that survivors should be offered options and information to make informed decisions about what is best for them.

8. Independent legal advice and enforceable rights

“When I was debating about reporting the rape, I researched online and found that BC had an amazing service to provide victims of sexual crimes with up to three hours of free legal advice. I took advantage of that and it was amazing. Phenomenal. The lawyer was so completely helpful and understanding – I can't even think of all the words to say how supported I felt by them.”²²

Victims have rights under the CVBR and the *Canadian Charter of Rights and Freedoms*. Victims need access to independent legal advice and representation to protect and assert their rights.

The CVBR is a significant advancement for victims and survivors of crime in Canada, marking a culture change in Canada's legal framework. The broad range of rights it endows, along with its primacy over other legislation, gives it the potential for considerable impact. Consistently applied, it would provide victims with a stronger voice in the criminal justice system.

Like rights for people accused of a crime, victim rights should be firmly entrenched in policy and practice, consistent and reliable, no matter who is providing the service or where the survivor lives.

Indigenous children, Black children, children with disabilities, racialized children, 2SLGBTQIA+ children, children in care, and children living in rural and remote places face even greater hurdles accessing their rights and are at risk of secondary trauma in the criminal justice process.

9. Access to services

“I wish the RCMP had a list of supports to give survivors. The responsibility to orient myself and search for help after a traumatic crime has taken so much time and energy. I wish there were more supports for victims to teach us how to build a team and how to ask for help.”²³

We heard tremendous positive feedback about service providers who sat with survivors through a trial,²⁴ advocated for them, explained things, listened, and treated them with dignity. In interviews with survivors, several people said they believed the service providers had saved their lives.²⁵

Support services for survivors are struggling to keep up with the increase in demand with minimal funding. Survivors of sexual violence should always have access to support services that treat them with dignity and respect – regardless of sex, gender identity, race, culture, language preference, age, geographic location, dis/ability,

or other characteristics – consistent with the principles of procedural justice. When victims lack support, they may face significant trauma. A lack of support can also impact their decision to engage in the criminal justice process.

Children are an equity-seeking group similar to other marginalized groups.²⁶ Whether or not a child has access to justice should not depend on their individual identity or where they live. Child and youth advocacy centres are a vital and evidence-informed model that provide coordinated, trauma-informed support to children navigating the criminal justice system that should be more widely accessible.

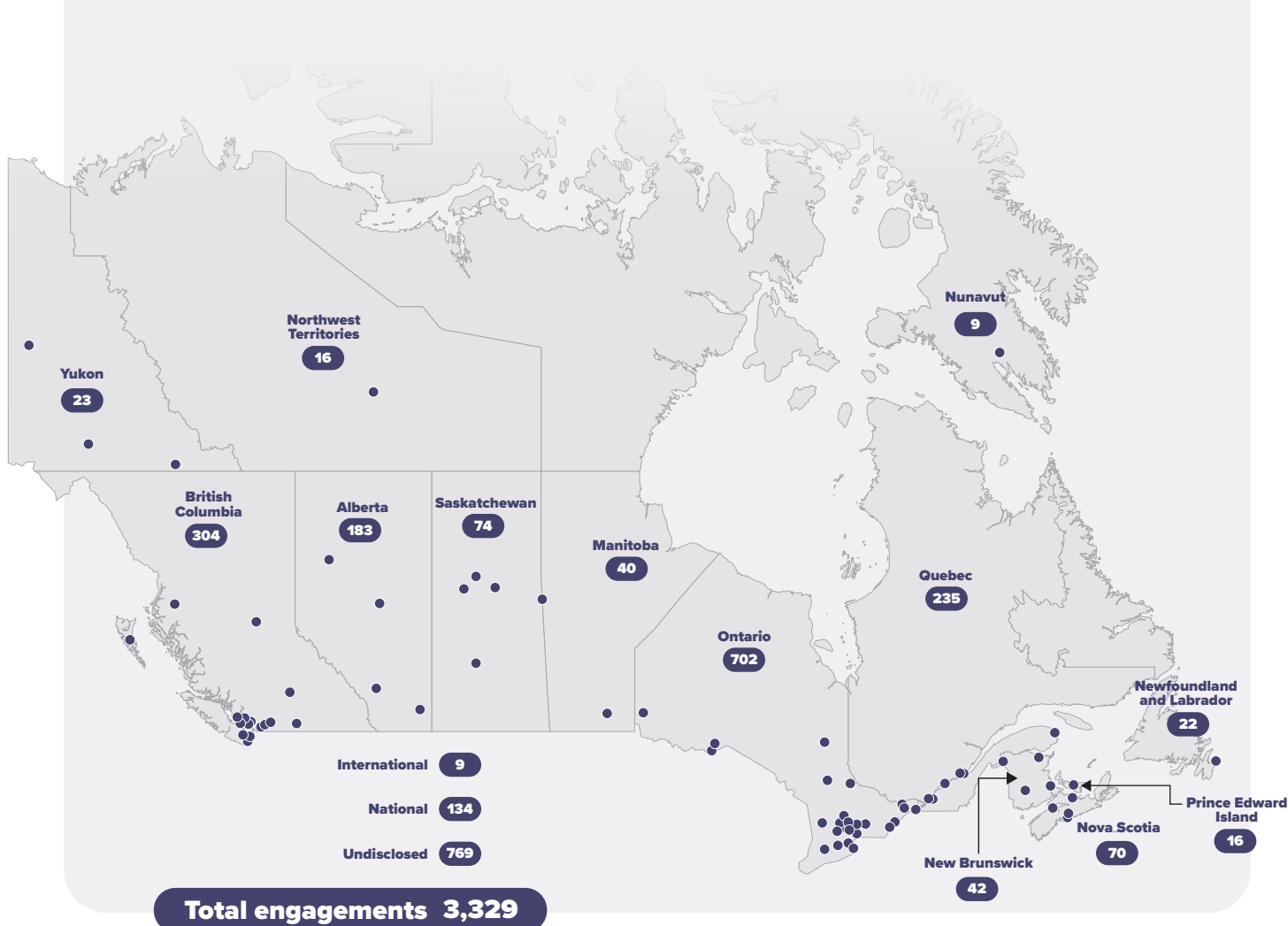
10. Data and accountability

“Data collection needs to be improved, and we need to collect data consistently. It is hard to identify gaps without reliable data.”²⁷

Police-reported crime data and victimization surveys have advanced our understanding of victims' issues across Canada. However, there are big gaps in publicly available data. Data gaps can allow problems to stay undetected.

Enhanced data collection that is accessible and inclusive can help create meaningful solutions and ensure systemic change for the criminal justice system. By capturing disaggregated data and ensuring evidence-based approaches and practices, we can better understand and serve communities, achieve efficiencies, and advance accountability.

There are also important calls to increase the quality of data through an intersectional lens. The Assembly of First Nations released a [National First Nations Justice Strategy](#) in June 2025 that calls for sovereignty over data and efforts to increase the quality of data through an intersectional lens.



Sexual violence has no place in our society

Many improvements have been made over the years to the criminal laws, programs, and services for survivors of sexual assault. Lawmakers are careful in their consideration of equity, justice, and human rights when amending and creating laws and policies. We heard from many inspiring people who want to make the system better.

We also know that even with good laws and policies, there are often unintended impacts that are invisible and even unimaginable to lawmakers.

We know that depending on where a person lives in Canada, laws and policies are applied differently. We know that depending on a person's identity or status, laws and policies are applied differently. We know that there is still work to do to address the MMIWG Calls to Justice.

We can do better.

Endnotes

- 1 SISSA Survivor Survey, Response #59
- 2 Statistics Canada conducts the General Social Survey on Canadians' Safety every 5 years. It is a large victimization survey that collects self-reported data on criminal victimization from all provinces and territories. It includes questions on whether people reported a crime to police.
- 3 Policing Services. (2025, April 2). *Guiding principles for sexual assault investigations - Province of British Columbia*.
- 4 Perreault, S. & Canadian Centre for Justice and Community Safety Statistics. (2022). *Victimization of First Nations people, Métis and Inuit in Canada*. Government of Canada, Statistics Canada.
- 5 The Assembly of First Nations (AFN). (2025b, May 22). *Murdered & Missing Indigenous Women & Girls - Assembly of First Nations*. Assembly of First Nations.
- 6 Heidinger, L. & Canadian Centre for Justice and Community Safety Statistics. (2022). *Violent victimization and perceptions of safety: Experiences of First Nations, Métis and Inuit women in Canada*. Government of Canada, Statistics Canada.
- 7 National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Calls to Justice. (2019). Calls to Justice 1.5, 1.6, 1.9, 4.7, 5.3, 5.5 (iii), 5.11, 5.13, 5.24, 9.1, 9.2, 14.6, 14.8, 14.13.
- 8 *R v. Osolin*, 1993 CanLII 54 (SCC), [1993] 4 S.C.R. 595, at para 670
- 9 Canadian Women's Foundation. (2024, August 16). *Sexual Assault & Harassment | Violence prevention | Canadian Women's Foundation*.
- 10 *R v. D.D.*, 2000 SCC 43, at para. 65
- 11 SISSA Consultation Table #09: 2SLGTBQ+ English
- 12 SISSA Survivor Interview #39
- 13 *R v. Jordan.*, (2016) SCC 27 (CanLII)
- 14 SISSA Survivor Interview #461
- 15 Heather Donkers, An Analysis of Third Party Record Applications Under the Mills Scheme, 2012-2017: The Right to Full Answer and Defence versus Rights to Privacy and Equality, 2018 41-4 *Manitoba Law Journal* 245, 2018 CanLII Docs 192.
- 16 SISSA Survivor Survey, Response #21
- 17 SISSA Survivor Survey, Response #404; SISSA Stakeholder Survey, Response #228
- 18 *R v. Levogiannis*, 1990 CanLII 6873 (ON CA), at para 35; *R v. J.Z.S.*, 2008 BCCA 401 (CanLII)
- 19 SISSA Survivor Interview #439
- 20 SISSA Stakeholder Interview, Response #34
- 21 Canadian Intergovernmental Conference Secretariat (CICS). (2018). *Principles and guidelines for restorative justice practice in criminal matters*.
- 22 SISSA Survivor Survey, Response #192
- 23 SISSA Survivor Survey, Response #222
- 24 SISSA Survivor Survey, Response #222
- 25 Summary of themes from multiple SISSA interviews and survey responses.
- 26 SISSA Stakeholder Interview, Response #027
- 27 SISSA Stakeholder Interview #169

Foreword by the Ombudsperson

We all know there is a problem. Survivors of sexual violence have repeatedly described instances of revictimization in the criminal legal system. We've had decades of recommendations and reforms, but we've heard "*The more things change, the more they remain the same.*"¹

Our libraries, newspapers, and courtrooms are filled with stories of secondary victimization, where survivors who have asked for justice have been further harmed in the legal system.

The harm is so well recognized that police officers and Crown attorneys regularly caution survivors against reporting or pursuing charges. The administration of justice is in open disrepute.²

We all want to do better. Across the criminal legal system, there are many thoughtful and compassionate police officers, Crown prosecutors, defence lawyers, and judges doing their best to balance the needs of survivors with the rights of the accused to a fair trial. These are constitutional rights that must be protected in a free and fair society.

"When will the Charter protect us?"

SISSA Survivor Survey, Response #837



Survivors of sexual violence also have constitutional rights. Their *Charter* rights to life, liberty, and security of the person, equality and equal protection of the law need much greater recognition.

We feel a sacred responsibility to honour what we have heard, knowing that we can never capture all that needs to be said, and we will inevitably have gaps in our analyses that leave needs unaddressed. Even so, I'm in awe of the thousands of people who have contributed their lived expertise to help us better understand harms caused by the criminal justice system (CJS) and imagine a more just and compassionate future.

Thank you.

Dr. Benjamin Roebuck
Federal Ombudsperson for Victims of Crime

Foreword by the Lead Investigator

To all the survivors who shared your experiences with me:

I am so grateful to each of you. I feel honoured that you entrusted me with your experiences and your raw emotions. It took a lot of strength to share some very difficult memories, and you did so with grace and sincerity. Some of you travelled significant distances to meet me in person. Some of you brought support people with you. Many of you felt a lot of pain in the retelling, but you kept going. You got it out, and you did it so clearly.

Some of you spoke on behalf of young children, who couldn't speak for themselves. Some of you spoke on behalf of victims of trafficking, who couldn't speak for themselves. Many of you had to take time off work and arrange for childcare to meet with me. Some of you spoke from within the confines of a prison and were still able to share your experiences with dignity.

I don't take any of it for granted. It took a lot of thoughtfulness to wrap your complex experiences up into a one-hour interview with me. I learned so much from all of you. You shared selflessly, to make things better for other people. **Your voices matter, and you are the heart of this report.**

Thank you.

I am also grateful to those stakeholders, academics, advocates, lawyers, police officers, victim support workers, friends, and family members, who met with us. You have compassion and you work hard to make a difference. Many of you are also survivors. You see the gaps, you experience vicarious trauma, you feel so frustrated that change is slow despite speaking out and pointing out the problems, over and over and over again. Yet you persevere. Survivors have spoken to me about you. They told me **you are their lifeline: without you they would not have been able to carry on.** Despite all the barriers, you make such a difference to those you support.

Thank you.

We hope that this investigation will elevate and centre the voices of survivors, and the voices of advocates. Together we can make change happen.

Hoori Hamboyan
Principal Investigator, OFOVC

A note on language

In alignment with principles of equity, diversity, and inclusion (EDI), every effort has been made to ensure that the language used in this document is inclusive, respectful, and free from bias.

This includes the use of gender-neutral terms, culturally sensitive references, and person-first language wherever appropriate.

References to individuals' gender identities reflect the self-reported gender of those involved, as shared during interviews, intake processes, or official documentation. The use of gendered language (e.g., he/him, she/her, they/them) is intended to respect and accurately represent how individuals identify themselves.

We recognize that language is constantly evolving, and that inclusive communication requires ongoing reflection and adaptation. If any terminology used in this document appears outdated or non-inclusive, it is unintentional, and we welcome feedback to support ongoing learning and improvement in our equity, diversity, and inclusion practices.

We know that words can fail to capture some lived experience. We also know that people who have experienced sexual violence do not all self-identify as survivors, complainants, or victims. We respectfully use this language in the following ways:

- » **Survivor:** a person who has experienced sexual violence
- » **Complainant:** a survivor bringing a claim of a sexual offence in the CJS
- » **Victim:** a legal term describing the rights of complainants in the CJS

The *Canadian Victims Bill of Rights* (CVBR) defines a victim as “an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence.”³ The rights apply to all interactions with the CJS from the time an offence is reported to the police.⁴

- » **Criminal justice system vs. criminal legal system:** In our interviews, it was common for survivors to refer to the “criminal legal system” in recognition of the lack of justice they have experienced. Our report will use both terms depending on the quotes, perspectives, or legal frameworks we are discussing. We acknowledge this resistance, while still hoping for a future when survivors experience justice.
- » **Sexual violence:** This covers a broad range of sexual offences and other sexualized forms of aggression. Our investigation focuses primarily on criminalized sexual offences, including all forms of sexual assault, sexual offences against children, sexual harassment and sexual exploitation through trafficking.

A note on gender

We aim to use an inclusive lens while still recognizing that sexualized violence is gendered.⁵ Anyone can be a target of sexual violence, and all experiences of sexual violence can involve complicated gender-based power dynamics.⁶ We will discuss the gendered impact of sexual violence in society, but it is clear that women, girls and gender diverse people experience higher rates of sexual violence than men and boys, and the criminal legal system continues to disadvantage female and gender diverse survivors.

At the same time, sexual violence experienced by men and boys is often minimized, and men report having difficulty finding support services that are responsive to the impact of sexual violence on lived experiences of masculinities.⁷

Strengthening responses to gender-based violence is vital to achieving greater gender equality.

OFOVC Mandate

The Office of the Federal Ombudsperson for Victims of Crime was established in 2007 through an Order-in-Council. It operates at arm's length from the Department of Justice.⁸

The Ombudsperson is appointed by the Governor-in-Council and serves as a Special Advisor to the Minister of Justice and Attorney General of Canada and the Minister of Public Safety.

The Office has exclusively federal jurisdiction. It reviews complaints from victims of crime about their interactions with federal victim services and helps to ensure policymakers understand systemic issues that negatively affect victims of crime.

» **Powers:** The Ombudsperson has authority to make recommendations to government and to require a response.⁹ This helps to ensure accountability and transparency.

CANADIAN VICTIMS BILL of RIGHTS



An Act for the Recognition of Victims Rights

Whereas crime has a harmful impact on victims and on society;

Whereas victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity;

Whereas it is important that victims' rights be considered throughout the criminal justice system;

Whereas victims of crime have rights that are guaranteed by the Canadian Charter of Rights and Freedoms;

Whereas consideration of the rights of victims of crime is in the interest of the proper administration of justice;

Whereas the federal, provincial and territorial governments share responsibility for criminal justice;

Whereas, in 1988, the federal, provincial and territorial governments endorsed the Canadian Statement of Basic Principles of Justice for Victims of Crime and, in 2003, the Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

RIGHT TO INFORMATION

Every victim has the right, on request, to information about

- (a) the criminal justice system and the role of victims in it;
- (b) the services and programs available to them as a victim, including restorative justice programs; and
- (c) their right to file a complaint for an infringement or denial of any of their rights under this Act.

Every victim has the right, on request, to information about

- (a) the status and outcome of the investigation into the offence; and
- (b) the location of proceedings in relation to the offence, when they will take place and their progress and outcome.

Every victim has the right, on request, to information about

- (a) reviews under the Corrections and Conditional Release Act relating to the offender's conditional release and the timing and conditions of that release; and
- (b) hearings held for the purpose of making dispositions, as defined in subsection 672.1(1) of the Criminal Code, in relation to the accused, if the accused is found not criminally responsible on account of mental disorder or unfit to stand trial, and the dispositions made at those hearings.

RIGHT TO PARTICIPATION

Every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim's rights under this Act and to have those views considered.

Every victim has the right to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered.

RIGHT TO RESTITUTION

Every victim has the right to have the court consider making a restitution order against the offender.

Every victim in whose favour a restitution order is made has the right, if they are not paid, to have the order entered as a civil court judgment that is enforceable against the offender.

*As passed by the House of Commons
on February 23, 2015*

RIGHT TO PROTECTION

Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system.

Every victim has the right to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to protect the victim from intimidation and retaliation.

Every victim has the right to have their privacy considered by the appropriate authorities in the criminal justice system.

Every victim has the right to request that their identity be protected if they are a complainant to the offence or a witness in proceedings relating to the offence.

Every victim has the right to request testimonial aids when appearing as a witness in proceedings relating to the offence.

Rt. Hon. Stephen Harper, P.C., M.P.
Prime Minister of Canada

Partners and Contributors

We wish to properly recognize those who contributed to this report; there are so many. Whether by granting us an interview, completing a survey, participating in a consultation table, or providing a written submission, your input was invaluable. We are grateful to all of you for generously lending us your voice. Your willingness to share made it possible for us to learn, reflect, and carry this work forward with greater understanding. We have dedicated a section of this report – Gratitude – to honour and acknowledge your contributions with the respect you deserve.

The EAC was composed of 16 members from across Canada, including survivor-advocates, legal professionals, clinicians, frontline anti-violence workers, and academics. The EAC played a central role in guiding the investigation, offering insights on emerging issues, identifying gaps, and validating findings.

The time and expertise of these amazing individuals ensured that voices of survivors remain at the forefront and that a diverse range of perspectives and expertise were included in our investigative process.

Our Expert Advisory Circle

An **Expert Advisory Circle (EAC)**, chaired by Sunny Marriner, has been convening to support this investigation, enhancing its effectiveness and inclusivity.

<u>Sunny Marriner</u>	Violence Against Women Advocate Case Review
<u>Corinne Ofstie</u>	Association of Alberta Sexual Assault Services
<u>Deepa Mattoo</u>	Barbra Schlifer Commemorative Clinic
<u>Janet Lee</u>	The Journey Project
<u>Jessica Bonilla-Dampney</u>	Sexual Assault Centre Hamilton & Area
<u>Joanna Birenbaum</u>	Birenbaum Law Office
<u>Kimberly Mackenzie</u>	Territorial Nurse Practitioner (Northwest Territories)
<u>Maggie Fredette</u>	Centre d'aide et de lutte contre les agressions à caractère sexuel de l'Estrie
<u>Mandy Tait-Martens</u>	Ontario Native Women's Association
<u>Naomi Parker</u>	Luna Child and Youth Advocacy Centre (Calgary)
<u>Nneka MacGregor</u>	WomenatthecentrE
<u>Pam Hrick</u>	Women's Legal Education and Action Fund (LEAF)
<u>Rita Acosta</u>	Mouvement contre le viol et l'inceste
<u>Robert S. Wright</u>	African Nova Scotian Justice Institute
<u>Tanya Couch</u>	Survivor Safety Matters
<u>Valerie Auger-Voyer</u>	Ending Sexual Violence Association of Canada

Realizing the requests for support and the demands you and your respective organizations face, words cannot express how thankful we are to each of you for your advice and contribution.

We were honoured to have Sunny Marriner serve as Chair of the EAC. Sunny brings extensive experience in community and legal responses

to sexual violence and has served as an expert witness in sexual assault trials and human rights tribunals. In 2016, she established Canada's first **Violence Against Women Advocate Case Review** program, which has since spread to communities across Canada.

Thank you to our partners and collaborators

Ontario Ministry of the Attorney General

Canadian Association of Social Workers North Shore Restorative Justice Society

Yukon Victim Services Statistics Canada Child and Youth Advocacy Centre

OFOVC's Academic Advisory Circle Association of Alberta Sexual Assault Services

Indigenous Service Canada Women and Gender Equality Canada Parole Board of Canada

Mothers against drunk driving Canada WomenatthecentreE Gymnasts for Change Canada

Violence Against Women Advocate Case Review Office of the Correctional Investigator

Victimology Research Centre – Algonquin College Correctional Service Canada

CAVAC Outaouais The Canadian Centre to End Human Trafficking

Department of National Defence Birenbaum Law Office Ottawa Victim Services

Survivor Safety Matters LUNA Child and Youth Advocacy Centre

Public Health Agency of Canada OFOVC's Frontline Service Provider Advisory Circle

University of Ottawa Faculty of Law Mouvement contre le viol et l'inceste

Public Prosecution Service The Journey Project Canadian Bankers Association

SACHA – Sexual Assault Centre (Hamilton and Area)

The New Society Institute Women's Legal Education and Action Fund (LEAF)

Barbra Schlifer Clinic Ontario Native Women's Association

Canadian Centre for Child Protection Ending Sexual Violence Association Canada

OFOVC's First Nations, Inuit and Métis Advisory Circle

Government of Northwest Territories Royal Canadian Mounted Police

CAVAC Financial Transactions and Reports Analysis Centre of Canada

Centre d'aide et de lutte contre les agressions à caractère sexuel

Public Safety Canada Sexual Misconduct Support and Response Centre

Victim services, Yukon Territorial Government Sports Canada

Lead Counsel, ILA and representation program

Introduction

“A fundamental shift is necessary. After decades of systemic failures, it is evident that the system is deeply flawed and in desperate need of reform. To truly address this crisis, we must prioritize the voices of survivors. When the needle isn’t moving, it’s time to look around the room and figure out whose ideas, talents and perspectives are missing. To be clear, that means that when it’s time to decide how to respond to this inquiry, it is not enough to have gathered evidence from us and then decide on action items without us. It is time to centre our experiences and expertise in order to create a justice system that is truly victim-centred and effective.”¹⁰

SISSA Written Submission #01

Sexual violence is a profoundly harmful experience. For many survivors, this harm is compounded by the way they are treated within the CJS. Survivors who have contacted our Office describe feeling retraumatized, dismissed, and unsafe in a system meant to protect them. Their human rights are too often overlooked, their dignity compromised, and their voices sidelined.

In February 2024, the Federal Ombudsperson for Victims of Crime advised the Government of Canada that the Office was launching a national

systemic investigation on how survivors of sexual violence are treated in the criminal legal system.¹¹ This investigation was prompted by long-standing concerns raised by survivors, advocates, and legal professionals about persistent barriers to justice and the urgent need for reform.

Why Now?

Survivors and advocates have been calling for change for decades. The #MeToo movement launched widespread nation-wide conversations and media reports about barriers to reporting and the hurdles survivors face when they do report. There was an increase in calls to our Office about troubling experiences with the CJS for survivors of sexual assault. In addition, since the decision of the SCC in *R v. Jordan*,¹² an increasing number of sexual violence cases have been dismissed for delay.¹³ For some, this creates immediate safety risks.¹⁴

Legislative changes to publication bans in 2023¹⁵ have also made it easier for survivors to talk about their experiences in the legal system. In the coming years, Canada will face a wave of survivor-driven accountability that was partially silenced under previous rules.¹⁶

Structure of the report

This report is composed of chapters that stem from themes and issues raised during the course of our investigation. Each chapter can be read on its own and begins with a two-page highlight section outlining the issue at hand, key statistics, takeaways, and recommendations.

Guiding frameworks

This investigation was guided by a rights-based and survivor-centred approach drawing on domestic legal obligations and established principles of fairness. These frameworks informed both the design of our investigation and our evaluation of how the CJS treats survivors of sexual violence.

Canadian Victims Bill of Rights

The *Canadian Victims Bill of Rights* (CVBR)¹⁷ is a quasi-constitutional law passed in 2015. The CVBR provides victims rights to information, participation, protection, seek restitution, and provides a mechanism to file complaints when these rights are violated.

As a federal complaints mechanism for victims of crime, we help to ensure the primacy of the CVBR is respected and upheld.

Section 21 of the CVBR states:

To the extent that it is possible to do so, **every Act of Parliament** enacted — and **every order, rule or regulation** made under such an Act — before, on or after the day on which this Act comes into force **must be construed and applied** in a manner that is **compatible with the rights under this Act**.¹⁸

The following expectations established in the preamble of the CVBR guide our investigation:

1. Charter rights: Are victims' rights guaranteed by the *Canadian Charter of Rights and Freedoms* fully considered before being balanced against the rights of the accused?

- » How are these *Charter* rights being interpreted?
- » Are the *Charter* rights of victims fully considered before they are balanced with the rights of the accused under section 1 of the *Charter*?

2. Consideration of victim rights is in the interest of the proper administration of justice.

- » How are courts and criminal justice agencies respecting Parliament's direction to consider victim rights as part of the proper administration of justice?

3. It is important for victim rights to be considered throughout the criminal justice system.

- » Are victim rights to information, participation, and protection being considered from first contact with police through to sentence expiry in cases with a conviction?

4. Victims of crime and their families deserve to be treated with courtesy, compassion and respect, including respect for their dignity.

- » Would a reasonable person consider the treatment of survivors of sexual violence and their families in the criminal legal system to be courteous, compassionate, respectful, and mindful of their dignity?

We ask: *Is it possible to do better?*

Procedural fairness

In thinking about our investigation, we also drew on the principles of procedural fairness, outlined in the Canadian Association of Parliamentary Ombudsman's Guide, *Fairness By Design* (2022). Under administrative law principles, public services are required to serve the public in a way that provides a fair process, fair treatment, and fair decisions.¹⁹

This framework emphasizes three dimensions of fairness:



Fair Process: must be used when public organizations make decisions that will impact certain people, groups, or organizations. Fair process requires:

- » Standard 1: Participation and being heard
- » Standard 2: Impartiality and integrity

Fair Decision: must be taken by public organizations to follow rules, be equitable and use fair discretion, in combination with fair policies and processes. Fair decisions require:

- » Standard 3: Lawful and fair rules
- » Standard 4: Reasoned decisions
- » Standard 5: Equity

Fair Service: People must be treated fairly by public organizations when accessing programs and services. This includes being respectful, accessible and responsive as well as accountable. Fair service requires:

- » Standard 6: Accessibility and responsiveness
- » Standard 7: Accountability

These dimensions are operationalized through **seven fairness standards**, which informed our evaluation of the criminal justice system’s treatment of survivors.

Fair Process	Fair Decision	Fair Service
Standard 1: Participation and Being Heard Advance notice for decisions, provides information about decisions, reasoning and the process, timely decisions, opportunities to be heard, a process for appeals and reviews. Standard 2: Impartiality and Integrity Conflict of interest policy/ training, impartial decisions, independent decision maker for appeals and reviews, and high ethical standards.	Standard 3: Lawful and Fair Rules Follow the laws and use fair rules to come to decisions and services. Standard 4: Reasoned Decision Training and resources for decision makers, fair and reasonable discretionary decisions. Standard 5: Equity Consider equity when designing programs and policies, look for diverse perspectives and have the organization be diverse.	Standard 6: Accessibility and Responsiveness Service delivery models be accessible, training for responsive and people-centred service providers, collaborate with Indigenous populations to create and deliver services, follow privacy and manage information as required. Standard 7: Accountability Ability to continuously improve, complaint process that is accessible and effective, feedback and complaints welcomed and apologize when needed.

We also drew on principles of **procedural justice**, which emphasize the importance of voice, dignity, neutrality, and trust in institutional processes. While closely related to procedural fairness, procedural justice focuses more explicitly on how individuals experience fairness in practice, particularly in interactions with legal and institutional actors.

Honouring the National Inquiry into Missing and Murdered Indigenous Women and Girls

This investigation was also informed by the 231 Calls for Justice issued by the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG). These Calls reflect the lived experiences of First Nations, Inuit, and Métis women, girls and 2SLGBTQIA+ people, including those who are victimized by sexual violence.

At the outset of our investigation, we undertook a targeted review to identify how our work could contribute to addressing these Calls. An alignment

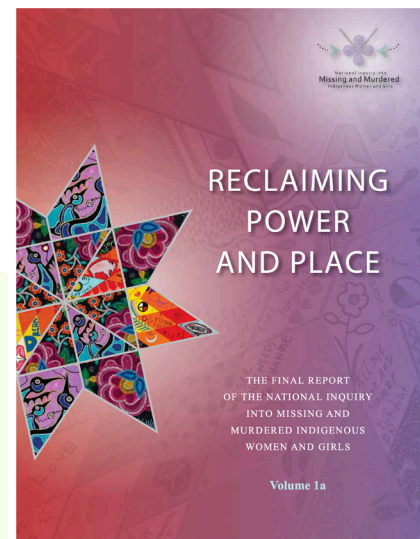
table outlining relevant Calls for Justice and corresponding findings from this investigation is provided in [Annex C](#). This includes Calls addressing sustainable funding for survivors supports, trauma-informed justice responses, culturally safe corrections, distinction-based data collection, and the need for accessible, Indigenous-led services.

By grounding our investigation in these Calls for Justice, we aim to honour the leadership of Indigenous survivors and families and reinforce the obligation of governments, institutions, and justice actions to respond with sustained, systemic action.



Motherly Love

Drawing/Painting by
Dee-Jay Monika Rumbolt



Methodology

We used a mixed methods approach to centre survivors’ experiences and identify systemic issues across the CJS. This included collecting both qualitative and quantitative data, as well as conducting a legal and media review. We also implemented inclusion measures to allow for broad and diverse participation, while acknowledging the barriers and limitations that shaped our findings.

Scope and upcoming special releases

When we initially launched this investigation, our Office planned to focus specifically on the

experiences of survivors of sexual assault within Canada’s CJS. However, early engagement with survivors and stakeholders quickly revealed experiences and systemic issues that extended beyond our original intent. In response, we widened our scope from sexual assault to sexual violence more broadly, capturing a wider spectrum of survivors’ experiences.

We also heard compelling testimony on three intersecting themes that warrant distinct and focused attention:

- » Sexual violence experienced by survivors of human trafficking
- » The transfer of sexual assault cases from the military system to civilian
- » The experiences of criminalized survivors of sexual violence

Investigation Methods





Cross-Canada Engagement

International 9

National 134

Undisclosed 769

Total 3,329

Nunavut

9

Iqaluit

Quebec

235

Ontario

702

Québec City

Valcartier
Trois-Rivières

North Bay

Timmins

Sudbury

Montréal

Laval

Gatineau

Ottawa

Fredericton

Akwesasne

Seelys Bay

Kingston

Welland

St. Catharines

Saugeen Shores

London

Brantford

Edmundston

Gaspé

Bathurst

Moncton

Kentville

Charlottetown

Eskasoni

Millbrook

Dartmouth

Halifax

Newfoundland
and Labrador

22

St. John's

Prince Edward
Island

16

Nova Scotia

70

New Brunswick

42

Due to the complexity and distinct nature of these issues, rather than compress them into this report, we have chosen to produce a series of **special thematic releases**. These forthcoming publications stem directly from the data, and insights gathered during our investigation, ensuring that these voices continue to inform reform efforts and public understanding in a focused and meaningful way.

We are especially grateful to organizations that co-facilitated targeted consultations on these topics, including the **Canadian Centre to End Human Trafficking** (CCTEHT), the **Sexual Misconduct Support and Resource Centre** (SMSRC), the **network of Canadian CYACs** (including Luna in Calgary) and the **Office of the Correctional Investigator** (OCI). Their contribution and collaboration were critical to ensuring that the voices of survivors were meaningfully included.

Survivor engagement

Interviews

We conducted interviews with **107** survivors of sexual violence who responded to our public call for participation. Outreach was conducted through a [press release](#), social media, our website, and stakeholder networks. Survivor interviews were held early in the investigation to inform subsequent consultations.

Interviews were semi-structured and flexible,²⁰ inviting participants to share their experiences in their own words. Survivors were interviewed virtually, by phone, or in-person, depending on their preference.

We also conducted interviews in two federal prisons in collaboration with the Office of the Correctional Investigator, speaking with 13 incarcerated women and gender-diverse individuals about pathways to criminalization as well as with staff of those institutions.

To protect privacy and safety, interviews were not recorded, and no identifying notes were kept. Participants provided written or verbal consent and were provided a resource list and self-care guidance following each interview.

Survey

We received **1,000 responses** to an anonymous online survey for adult survivors of sexual violence in Canada.²¹ The survey explored experiences with police, courts, sentencing and corrections, as well as issues related to the transfers of military sexual assault cases, non-disclosure agreements (NDAs), testimonial aids, victim impact statements, victim rights, and restorative justice.

We heard from survivors in every province and territory, from urban, rural and remote communities. Many had experienced multiple forms of sexual violence.

Table 1*Survivor Demographics (N = 1,000)*

	n	%
Province or territory		
Alberta	116	11.6
British Columbia	137	13.7
Manitoba	18	1.8
New Brunswick	9	0.9
Newfoundland and Labrador	5	0.5
Northwest Territories	5	0.5
Nova Scotia	39	3.9
Nunavut	2	0.2
Ontario	422	42.2
Outside of Canada	2	0.2
Prince Edward Island	7	0.7
Quebec	199	19.9
Saskatchewan	29	2.9
Yukon	10	1.0
Total	1,000	

Community Type		
Urban	751	75.1
Rural	190	19.0
Remote or Northern	54	5.4
Prefer not to answer	5	0.5
Total	1,000	

New to Living in Canada < 5 Years		
No	850	85.5
Yes	144	14.4
Prefer not to answer	6	0.6
Total	1,000	

Identify as a person with a disability*		
No	498	49.8
Yes	447	44.7
Prefer not to answer	55	5.5
Total	1,000	

* Our question was "Do you identify as a person with a disability? (Sensory, physical, pain-related, mental health-related, cognitive, or other disability)"

Table 2*Survivor Demographics (N = 1,000) **

Age Groups		
16-17	3	0.3
18-24	121	12.1
25-34	290	29.0
35-44	283	28.3
45-54	165	16.5
55+	129	12.9
Prefer not to answer	9	0.9
Total	1,000	

Gender Identity		
Woman	909	90.9
Man	35	3.5
Non-binary	64	6.4
Prefer to self-identify (e.g. agender, genderqueer)	8	0.8
Prefer not to answer	9	0.9
Total	1,000	

Identify as 2SLGBTQIA+		
No	590	59.0
Yes	361	36.1
Prefer not to answer	49	4.9
Total	1,000	

Sexual and Gender Diversity		
Straight or heterosexual	606	60.6
2S Two-Spirit	18	1.8
Lesbian	37	3.7
Gay	16	1.6
Bisexual	213	21.3
Transgender	28	2.8
Queer	112	11.2
Sexual/gender diverse community	61	6.1
Prefer not to answer	49	4.9
Total	1,140	

* Participants could choose more than one category for certain questions. Participants could skip any questions.

Table 3*Survivor Demographics (N = 1,000) **

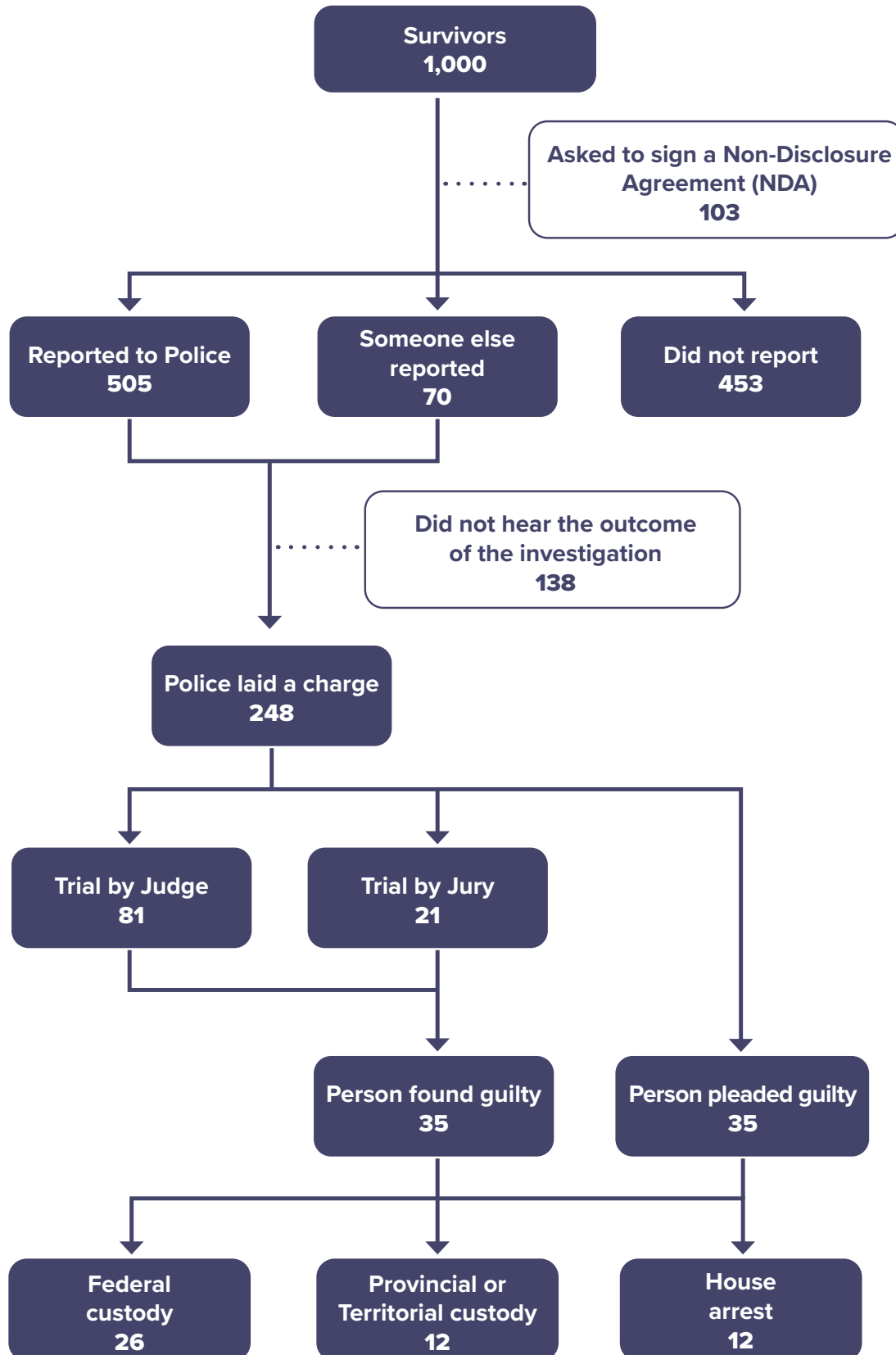
Ethnicity Breakdown		
Caucasian (White)	853	85.3
Black	30	3.0
First Nations	73	7.3
Inuit	4	0.4
Métis	37	3.7
Arab	8	0.8
Chinese	17	1.7
Filipino	6	0.6
Japanese	6	0.6
Korean	3	0.3
Latin American	19	1.9
South Asian (East Indian, Pakistani)	17	1.7
Southeast Asian (Vietnamese, Cambodia)	6	0.6
West Asian (Lebanese, Iranian, Syrian)	10	1.0
Other population group	2	0.2
Prefer not to answer	28	2.8
Total	1,121	

First Language Learned		
English	719	71.9
French	244	24.4
Indigenous language	11	1.1
Chinese	4	0.4
Spanish	10	1.0
Punjabi	2	0.2
Arabic	2	0.2
Tagalog	1	0.1
Other language	37	3.7
Prefer not to answer	13	1.3
Total	1,043	

* Participants could choose more than one category for certain questions. Participants could skip any questions.

Survivors Survey Respondents' Path Through the CJS

Flowchart of outcome (n = 1,000)



Stakeholder engagement

In addition to survivor voices, we engaged with **more than 1,400 stakeholders** through a combination of:

- » **681 stakeholder interviews** with Crown attorneys, defence lawyers, judges, police officers, victim services, academics, advocates, and legal experts. We heard from lawyers for sexual assault complainants, civil lawyers, Justices of the Peace, therapy and counselling professionals, sexual assault centres, health care providers, child protection workers, child and youth advocacy centres, First Nations, Inuit, and Métis service providers, survivor-advocates and legal advocacy centres.
- » **36 virtual consultation tables**, with a total of **315 participants** across Canada.²² These sessions explored barriers to justice, intersectional challenges, promising practices, and recommendations for reform. Tables were organized by professional role, population group, or context (e.g., human trafficking, military survivors).
- » Our anonymous **stakeholder survey** received **450 responses** from professionals working in justice and victim services. The survey addressed counselling and therapy records, the impact of *R v. Jordan*, legal reforms, testimonial aids, subpoena practices, and the CVBR.
- » We also met with various Cabinet Ministers, Members of Parliament, Senators, and heads of federal agencies or departments.

Number held	Consultation Tables
Legal Perspectives	
1	Law Enforcement
1	Crown Attorneys
2	Independent Legal Advice (ILA)
1	Women's Advocacy and Non-Governmental Organizations (NGOs)
3	Restorative Justice and Alternative Justice Models
Services for Survivors	
6	Independent Sexual Assault Centres
3	Victim Services
1	University and College Campuses
Population Groups	
2	First Nations, Inuit, and Métis
2	Black and Racialized Communities
3	Children and Youth
1	Newcomers
1	People living with disabilities
1	2SLGBTQIA+
1	Men and Boys
Contexts	
6	Human Trafficking
1	Military Survivors of Sexual Assault
36	Total Consultation Tables

Collaboration with systemic review in British Columbia: Our survivor and stakeholder surveys asked people living in BC if they would like to share their responses with the [Systemic Review of the Legal System’s Treatment of Sexual and Intimate Partner Violence](#) commissioned by the provincial government. We received consent from **123 survivors and 93 stakeholders**.

Written Submissions

Between 2024 to March 2025, we received **48 written submissions** from survivors, stakeholders, and organizations. These included personal experiences, policy briefs, and previously published reports relevant to our investigation.

Roundtables

We would like to thank the [Canadian Centre to End Human Trafficking](#) for their help with organizing and moderating the consultation tables on sex trafficking. We would also like to thank the [LUNA Child and Youth Advocacy Centre](#) for helping with the children and youth consultations.

We also thank the [Gatehouse](#) for their help organizing the consultation tables on restorative justice. A special thanks also goes to Sexual Violence Advisory Group Ontario Crowns Meaghan Cunningham and Teresa Donnelly for their expert legal lens.

Two focus groups were held in person at the [Barbra Schlifer Commemorative Clinic](#), who specialize in legal, counselling and interpretation assistance to women and gender diverse folk who may be marginalized, racialized and experienced violence. Thirteen lawyers and case managers participated in these focus groups. We also held a focus group with representatives from Athletes Empowered, Gymnasts for Change, and Stop Educator Child Exploitation: they provided key information on sexual abuse of children, including in sport.

Data collection and analysis

We designed a multi-method engagement strategy that prioritized accessibility, trauma-informed engagement, and intersectional representation. Our approach included survivor and stakeholder interviews, consultation tables, surveys, written submissions, legal, academic literature and media reviews.

Engagement was offered in both official languages, with accommodations for sign language and support persons. In-person interviews were primarily conducted in Ottawa, with some taken place in Québec, British Columbia, and Saskatchewan.

Qualitative Analysis

We used ATLAS.ti, qualitative data analysis software, to organize and code large volumes of textual data. This included notes from survivor and stakeholder interviews, consultation tables, written submissions, legal cases, academic reports, and media articles.

Quantitative Analysis

Survey data were analyzed using Stata, a statistical software program commonly used in social science research. We used descriptive statistics, such as frequencies, percentages, and means to summarize responses and highlight trends.

Group comparisons were conducted using cross-tabulations and appropriate statistical tests (e.g., chi-square tests, t-tests) to explore differences based on demographics, professional roles, and other relevant variables.

Legal and media review

Case law: We reviewed more than 750 legal cases, using CanLII, WestLaw, and LexusNexis. We focused on cases that intersected sexual violence with the *Criminal Code*, *Charter of Rights and Freedoms*,²³ or the *Canadian Victims Bill of Rights*. This included case law on testimonial aids,

records applications, victim impact statements; *Jordan* applications, *Charter* rights of victims of crime, and non-disclosure agreements, to name a few topics. We also reviewed facts from several recent appeals which have not yet been decided. We also received permission to observe several trials, including *R v. McLeod et al*, via Zoom.

Media analysis: We reviewed more than 300 media articles published between 2000-2025 related to key issues including non-disclosure agreements, *R v. Jordan* and 11(b) applications, military survivors of sexual violence, sexual violence in sport, and victim privacy. These were organized in ATLAS.ti and reviewed with support from the Victimology Research Centre at Algonquin College. Media analysis helped us identify relevant stakeholders, case studies, and findings from investigative journalists.

Accessibility and inclusion measures

From the outset, we prioritized accessibility and inclusion to ensure that survivors and stakeholders from diverse backgrounds could meaningfully participate in the investigation. Recognizing that access looks different for different people, we designed a flexible engagement strategy.

We offered multiple ways for survivors and stakeholders to share their experiences in both official languages and sign language, including:

- » Virtual, phone, and in-person interviews
- » Anonymous online surveys
- » Virtual consultation tables
- » Written submissions

We also made deliberate efforts to reach historically underrepresented populations, including:

- » Indigenous, Black and racialized survivors
- » People with disabilities

- » Deaf people
- » 2SLGBTQIA+ individuals
- » Survivors of human trafficking
- » Residents of remote and northern communities
- » Survivors in federal prisons
- » Refugees and migrants

Limitations and barriers

It was important to make participation accessible through various means, but there were limitations to our data collection.

- » **Geographic limitations:** Most consultations were held virtually with the exception of some interviews conducted in-person in Ontario, Québec, British Columbia and Saskatchewan. We were not able to travel to all regions for this investigation.
- » **Technological access:** Participation in our interviews, roundtables or surveys required phone or internet access, which may have excluded people in remote areas or those experiencing digital poverty.
- » **Language and Cultural Barriers:** Despite bilingual engagement, language barriers may have affected participation from Indigenous communities or newcomers whose first language is neither English nor French. Cultural differences and mistrust of institutions may also have influenced willingness to participate. We used Wordly to provide simultaneous French and English interpretation to roundtable participants.
- » **Youth representation:** A group who did not access these consultations were youth between 12 to 25 years old who are: unhoused, living in shelter, transient, in poverty, experiencing addictions, in group homes, or on reserve.

We had limited participation from Yukon (9), Northwest Territories (16), Nunavut (9), and PEI (16).

Advisory and consultative structures

About our Expert Advisory Circle members

Sunny Marriner – Chair

As the National Lead of the Improving Institutional Accountability Project (IIAP), Sunny Marriner spearheaded the introduction of independent advocate-led case reviews in uncharged sexual assault investigations across Canada and internationally. IIAP's independent police oversight model, Violence Against Women Advocate Case Review (VACR), is today used in over 30 Canadian communities over five provinces. Sunny's focus is advancing systemic change in responses to sexual violence across institutional and criminal justice frameworks by prioritizing systemic accountability, independent oversight, and improved data collection, while centering the role of feminist frontline, survivor-led advocacy movements as the key drivers of systemic change for women and girls in Canada.

Sunny's work is grounded in 27 years of advocacy and support to survivors of sexual violence as part of the Canadian independent feminist sexual assault centre movement. She regularly serves in provincial, national, and international capacities addressing police, legal, and state responses to sexual violence.

Corinne Ofstie

Corinne is the Co-Chief Executive Officer at Association of Alberta Sexual Assault Services (AASAS). She has expertise working as a cross-sector coordinator within community, system and government organizations in both the sexual and domestic violence services sectors. In her role with AASAS, Corinne works to achieve the goals and objectives of numerous special projects including the Workplace Sexual Harassment Awareness Campaign and Training project. Among her many achievements, Corinne co-chaired the provincial Collaborative Justice

Response to Sexual Violence Committee and was a member of the Gender Equality Network of Canada from 2017 to 2020. In 2018 Corinne was awarded Avenue Magazine's #Top40Under40. She is a member of the Rebuilding Lives Committee for the Canadian Women's Foundation and an Expert Advisory Panel member of Canadian Femicide Observatory for Justice and Accountability.

Deepa Mattoo

Deepa Mattoo is a dedicated lawyer and intersectional feminist recognized for her commitment to advancing equity, anti-oppression, and anti-racism. Her extensive career spans various legal and leadership roles. Since 2019, Deepa has served as the Executive Director of the Barbra Schlifer Commemorative Clinic, overseeing multiple departments and directing the Clinic's intervention and advocacy efforts. She has appeared before the SCC, parliamentary committees, and UN civil society meetings, advocating on a broad spectrum of social justice and human rights issues. In 2023, Deepa was appointed to the Domestic Violence Death Review Committee (DVDRC).

Janet Lee

Janet Lee (BA, BSW, RSW) is the Provincial Director of the Journey Project who is proud to lead a dedicated team of Legal Support Navigators in the quest to strengthen access to justice for survivors in Newfoundland and Labrador. Prior to joining Journey, Janet worked community organizing, residential care, and alternative education programs for over fifteen years, focusing her efforts on supporting survivors of gender-based violence in 2014 through her work at End Sexual Violence NL. Janet is passionate about aligning evidence-informed policy with survivor-centred service delivery to better serve the individuals and communities we work with and for.

Jessica Bonilla-Dampney

Jessica Bonilla-Dampney, a Latinx/Indigenous woman from El Salvador, has devoted her life to creating safer communities. As the Executive Director of the Sexual Assault Centre Hamilton & Area (SACHA), she has led numerous initiatives in Hamilton, all of which aim to build a city free of violence and oppression. With a comprehensive educational background from McMaster University as a graduate of the School of Social Work, Indigenous Studies and Health Studies programs, Jessica has forged these academic fields into public service and advocacy work in the not-for-profit sector. In addition to her role at SACHA, she holds key positions with the Ontario Coalition of Rape Crisis Centres (OCRCC), the Woman Abuse Working Group (WAWG), and the Hamilton Anti-Human Trafficking Coalition (HAHTC).

Joanna Birenbaum

Joanna Birenbaum is a litigator with expertise in gender equality and violence against women. Joanna has extensive experience in constitutional litigation, civil sexual assault claims, defending anti-SLAPP malicious prosecution and defamation claims targeting women who have reported violence, and representing women who have experienced harassment and discrimination in employment. Joanna prosecutes, including sexual abuse claims, for a regulated health college in Ontario and supports complainants before other professional discipline bodies. Joanna's advocacy in this area also includes human rights tribunal claims, university tribunal and Criminal Injuries Compensation Board hearings, and supporting complainants through the criminal justice process. She has been a McMurtry Fellow at Osgoode as well as adjunct faculty at Osgoode teaching Law, Gender, Equality and co-directing Osgoode's Feminist Legal Advocacy: Ending Violence Against Women clinical program. Joanna has lectured and published in the area of violence against women and women's equality rights.

Kimberly MacKenzie

Kimberly MacKenzie is the Territorial Nurse Practitioner, Mental Health and Substance Use, for the Northwest Territories. In this role, she works with service users who have complex mental health needs, and combines her frontline work with program and policy development. Kimberly has spent most of her career living and working in remote Northern communities, and she is an advocate for equitable access to healthcare across the Northwest Territories. Kimberly's formal education is in nursing, psychology, social work, and counselling and spirituality, and she draws from these perspectives, as well as her lived experience, to inform a holistic approach to recovery and healing.

Maggie Fredette

Committed for more than two decades to end violence against women, she works with passion and determination at the CALACS de l'Estrie (Centre d'aide et de lutte contre les agressions à caractère sexuel), where she worked for 11 years as a service provider, before assuming the position of Director 12 years ago. Her career has been marked by a deep commitment to defending women's rights and improving social and institutional practices in relation to sexual violence. Recognized for her expertise, she was a member of the Expert Committee formed by Minister Sonia LeBel, which aimed to rethink systemic approaches to sexual assault. She is also active in the VOIE committee, a group mandated to review police practices during denunciations to the Sûreté du Québec, thus ensuring a critical and committed look at the justice process. At the same time, she has been president of the board of directors of CIVAS Estrie (Centre d'intervention en violence et agression sexuelle) for more than 5 years, where she continues to put her leadership and experience at the service of the community.

Mandy Tait-Martens

Mandy Tait-Martens is a lifelong resident of Thunder Bay, Ontario. She served as the Executive Director of a street-based Mental Health and Addiction agency in Thunder Bay and surrounding districts for almost ten (10) years. Her career has centred around supporting individuals with complex care needs, concurrent disorders, victim supports, informal counselling and cultural intervention practices. Mandy applies her years of experience- working with street-based populations, program design, development, implementation, and her passion to drive change in communities to her current role as Acting Director of Community Services with Ontario Native Women's Association to create meaningful change to support healing and wellness.

Naomi Parker

Dr. Naomi Parker is the Director of Research for Luna Child and Youth Advocacy Centre (Calgary). She co-leads Kindex, the Research and Knowledge Centre of Canadian Child and Youth Advocacy Centres. Naomi is an Adjunct Assistant Professor with the Faculty of Social Work at the University of Calgary. Naomi boasts many years of experience working in the field of addiction and mental health, ranging from frontline practice to prevention, policy, and research. Naomi has extensive experience in leading community-academic partnerships and conducting policy-relevant research and evaluation.

Nneka MacGregor

Nneka MacGregor is the co-founder and Executive Director of the Women's Centre for Social Justice, also known as the WomenatthecentrE, our unique non-profit organization that was created for women survivors of gender-based violence, by women survivors. Nneka develops and delivers training to various agencies and organizations that promote better understanding of the issues, and

focuses on personal and political advocacy for women survivors, as well as on ways to engage men and boys in the initiatives to eradicate violence against women.

Pam Hrick

Pam Hrick is the former Executive Director & General Counsel of the Women's Legal Education and Action Fund (LEAF). Before joining LEAF, she practised law at Stockwoods LLP, maintaining a broad litigation practice, including advising survivors of sexual violence. Pam appeared as counsel or co-counsel at every level of court in Ontario, and at the Federal Court, the Federal Court of Appeal, and the SCC.

Pam has been contributing to the legal community and broader community for years, currently serving as a bencher of the Law Society of Ontario. She also served as Chair of the Board of Management of the 519, a City of Toronto Agency that advocates for 2SLGBTQ+ communities, and Chair of the Canadian Bar Association's Administrative Law Section.

Pam clerked for Justice Thomas A. Cromwell at the SCC and Justice David Stratas at the Federal Court of Appeal. Pam also served as the Legislative Advisor and Issues Manager to the Attorney General of Ontario. She received her B. Soc. Sci. from the University of Ottawa, her J.D. from Queen's University, and her LL.M. from New York University.

Rita Acosta

Rita Acosta is Director and Social Programs Officer at the "Mouvement contre le viol et l'inceste or MCVI" (Movement against rape and incest) in Montreal. She has a university education in social intervention (master's degree in social intervention), as well as a BA in Education. Together with her training in international politics, she has developed the analytical and demanding sense of social policy and advocacy. A committed

activist, Rita is dedicated to working for women's rights. Rita has been with MCVI for 25 years, bringing migrant women to the organization and representation tables. She works specifically on the issue of violence against women and, more particularly, immigrant and refugee women. For the past 10 years, the issue of trafficking migrant women for sexual exploitation has occupied a significant space in Rita's work at MCVI.

Robert S. Wright

Robert Seymour Wright is a queer, African Nova Scotian Social Worker and Sociologist whose 35-year career has spanned the fields of education, child welfare, forensic mental health, trauma, sexual violence, and cultural competence. He recently completed terms of service as the founding Executive Director of both the Peoples' Counselling Clinic and the African Nova Scotian Justice Institute and currently continues at the Peoples' Counselling Clinic as Director Emeritus, Consultant and Therapist. Robert's identity and work are grounded in his integrated and activist spirituality.

Tanya Couch

Tanya Couch is a Canadian Armed Forces officer and co-founder of Survivor Safety Matters, an advocacy group she launched with Alexa Barkley to protect the privacy and safety rights of sexual assault survivors. After navigating the criminal justice system herself, she launched House of

Commons Petition e-4749 and is working to amend Section 278.1 of the *Criminal Code*. Tanya also serves as the advisor representing women to the Cadets and Junior Canadian Rangers National Diversity and Inclusion Advisory Group, under the Professional Conduct and Culture Advisor. She brings lived experience and a survivor-centred perspective to systemic efforts for reform within both the military and civilian justice systems.

Valérie Auger-Voyer

Valérie Auger-Voyer has 15 years of work experience with non-profits committed to social justice. As the Advocacy Coordinator of the Ending Sexual Violence Association of Canada, Valérie works collaboratively with community-based organizations across the country to advocate for better services, policies and laws for survivors of sexual violence. Her national advocacy work is also informed by her years of experience as a frontline worker with women who experienced violence as well as her time on the Board of the Ottawa Coalition to End Violence Against Women. Valérie is also a Registered Psychotherapist (Qualifying) and holds a master's in counselling psychology as well as in sociology.

Federal Interdepartmental Consultative Committee

We convened a Federal Interdepartmental Consultative Committee to facilitate information-sharing and coordination across federal departments. This working-level group helped identify relevant federal initiatives and provided updates on efforts to prevent and address sexual violence.

Participating departments included:

- » Canadian Heritage (Sports Canada)
- » Department of National Defence (Sexual Misconduct Support and Resource Centre)
- » Immigration, Refugees and Citizenship Canada (IRCC)
- » Indigenous Services Canada (ISC)
- » Public Health Agency of Canada (PHAC)
- » Royal Canadian Mounted Police (RCMP)
- » Women and Gender Equality Canada, 2SLGBTQI+ Secretariat

We are also grateful to Dr. Denise Preston for her contributions to the military case transfers chapter in this report. Her expertise, deep knowledge and thoughtful analysis have significantly enriched our findings.

Dr. Denise Preston served as Executive Director of the Sexual Misconduct Response Centre at National Defence (2017-2022), where she advanced trauma-informed, restorative, and evidence-based approaches to support and policy development. She previously held senior roles at the Parole Board of Canada and the Correctional Service of Canada, with a 32-year public service career focused on justice, victim rights, and offender rehabilitation.

Dr. Preston holds a Ph.D. in clinical and forensic psychology from Queen's University and was a licensed psychologist from 1996 to 2022. Since retiring, she has continued to contribute her expertise as a Senior Advisor to the OFOVC and as a board member of a non-profit counselling agency.

Standing Advisory Circles

The OFOVC also drew on the expertise of its three ongoing advisory circles, which provided ongoing feedback and support throughout the investigation.

- » **Academic Advisory Circle**
- » **First Nations, Inuit and Métis Advisory Circle**
- » **Frontline Service Provider Advisory Circle**

Myths and Stereotypes

Since the 1990s, the SCC has addressed the improper use of rape myths and stereotypes in sexual assault trials, recognizing their harmful effects on survivors and judicial outcomes.

“A number of rape myths have in the past improperly formed the background for considering evidentiary issues in sexual assault trials. These include the false concepts that: women cannot be raped against their will; only ‘bad girls’ are raped; anyone not clearly of ‘good character’ is more likely to have consented.”²⁴

“The woman who comes to the attention of the authorities has her victimization measured against the current rape mythologies, i.e., who she should be in order to be recognized as having been, in the eyes of the law, raped; who her attacker must be in order to be recognized, in the eyes of the law, as a potential rapist; and how injured she must be in order to be believed. If her victimization does not fit the myths, it is unlikely that an arrest will be made or a conviction obtained. As prosecutors and police often suggest, in an attempt to excuse their application of stereotype, there is no point in directing cases toward the justice system if juries and judges will acquit on the basis of their stereotypical perceptions of the ‘supposed victim’ and her ‘supposed’ victimization.”²⁵

“In considering the lack of evidence of the complainant’s avoidance of the appellant, the trial judge committed the very error he had earlier in his reasons instructed himself against: he judged the complainant’s credibility based solely on the correspondence between her behaviour and the expected behaviour of the stereotypical victim of sexual assault. This constituted an error of law.”²⁶

These myths and stereotypes about child and adult complainants are particularly harmful because they wrongly comprise “common sense” and the “reasonable person” test that are the basis for many social comparisons or legal decisions. **Their pervasiveness and subtlety create the risk that survivors will be blamed, ignored, or unjustly discredited** in the minds of police, service providers, judges and jurors, policymakers, and decision-makers.²⁷

Facts about sexual assault

Most sexual assaults occur between people who are known to each other.²⁸ It is fundamentally a crime of power and control, and the presence of pre-existing relationships or familiarity, should not diminish its severity or influence the appropriate response. This fact is foundational to our investigation.

Women and girls remain the primary targets

and victims of sexual violence in Canada and globally.²⁹ Importantly, there is no single or ‘typical’ way that a survivor of sexual violence behaves during or after an assault.³⁰

Sex-based stereotypes and myths

In 1991, the SCC³¹ described the “twin myths” of sexual assault:

- » The belief that a woman who has engaged in consensual sexual activity in the past is more likely to have consented to the alleged assault.
- » The belief that a woman's sexual history is relevant to assessing her credibility.

The continued prevalence of the twin myths is indisputable. Survivors encounter them from friends, family, professional networks, law enforcement, Crown prosecutors, defence lawyers, and judges.

Survivors of sexual assault may commonly:³²

- » freeze
- » not say “no” clearly to unwanted sexual contact
- » show no physical injuries
- » exhibit no apparent emotional expression following a sexual assault
- » be unable to identify the perpetrator to police
- » provide seemingly inconsistent statements
- » deny or minimize the assault
- » blame themselves for the assault
- » maintain relationships with the perpetrator after the assault
- » struggle with decision-making
- » delay or avoid reporting
- » exhibit memory gaps or inconsistencies
- » recant the experience

Sex-based stereotypes are frequently used, overtly or unconsciously, in assessing the credibility of a survivor.³³ **“Some of the most common ways that victims react to sexual assault are precisely what people often have difficulty understanding.”**³⁴ Common and entirely natural survivor reactions, such as freezing, delayed reporting, memory inconsistencies, emotional numbness, or maintaining relationships with perpetrators, are misunderstood as credibility issues rather than typical and predictable responses to trauma.

These misconceptions are so frequent in legal proceedings that the National Judicial Institute explicitly instructs judges to inform juries in sexual assault trials that *“Silence does not constitute consent. Nor does submission or lack of resistance.”*³⁵

Discriminatory stereotypes have been used in so-called “rough sex” defences, subjecting survivors to humiliating cross-examination questions, such as whether they “enjoyed”

violent acts.³⁶ We heard that violent sexual acts are projected on screens in the courtroom and paused while the survivor is asked questions about whether she was enjoying herself.³⁷

Male survivors

Myths profoundly affect male survivors, significantly contributing to underreporting.³⁸ 68% of men who experienced childhood sexual abuse and 70% who experienced adult sexual abuse/assault did not report it.³⁹ The vast majority of men who sexually assault other men or boys are heterosexual.⁴⁰

Male survivors are affected by stereotypes about male strength, control and power, sexuality, and virility in their interactions with justice systems.

Programs and services for male survivors are much more limited – which creates a vicious circle with reduced reporting, funding, research, and understanding by service providers, decision-makers, and policymakers.

Sexual abuse and assault affects all of us.



VIDEO : Survivors of Sexual Trauma
Reveal an Important Truth [5:47] ⁴²

Content Warning:

Video includes descriptions of sexual assault.

*Boys are told, “man up,”
“don’t cry,” and “tough it out.”*

The Association of Alberta Sexual Assault Services identifies **common myths** about male survivors, including:

- » men can’t be sexually assaulted by women
- » sexual abuse is less harmful to boys than girls
- » male survivors don’t suffer as much as female survivors
- » only gay men are sexually assaulted
- » boys and men who have been sexually assaulted will sexually assault others
- » sexual arousal of a man indicates his consent⁴¹

Two-spirit lesbian, gay, bisexual, transgender, queer, intersex and others (2SLGBTQIA+) survivors

People who are sexual and gender minorities are disproportionately affected by sexual violence. Studies show that 2SLGBTQIA+ people **are three times more likely** than heterosexual people to be survivors of violent crime, including sexual violence.⁴³ A much smaller portion are crimes that happen within an intimate relationship.⁴⁴

Across all parts of daily life – in public, online, and at work – 2SLGBTQIA+ people are more likely to experience inappropriate sexual behaviours.⁴⁵ Despite this reality, myths and stereotypes continue to undermine public understanding of their experiences and access to support.

2SLGBTQIA+ people face both traditional rape myths like victim blaming and disbelief, alongside a second layer rooted in anti-2SLGBTQIA+ bias. Recent research highlights how these modern rape myths reflect persistent biases rooted in heteronormative assumptions, gender stereotypes, and widespread misconceptions about LGBTQ experiences of sexual violence.⁴⁶ These include false and harmful beliefs such as:

- » 2SLGBTQIA+ people deserve to be assaulted because their identities are deviant or immoral
- » Living openly as 2SLGBTQIA+ somehow invites or causes assault

- » Sexual violence is a “normal” or expected part of the gay lifestyle
- » Gay and bisexual men cannot be raped if they engage in anal sex willingly
- » Sexual assault between women is not real because it doesn’t involve male anatomy
- » Lesbian and bisexual women who are assaulted by men are being “turned straight,” not victimized

Survivors with disabilities

People with disabilities are diverse, encompassing both visible disabilities such as mobility impairments and invisible disabilities, including intellectual and cognitive conditions. Disability affects people across all demographics, but women with disabilities are particularly vulnerable to sexual violence. Research shows that women labelled with cognitive disabilities are four times more likely to be sexually assaulted than women without disabilities, and thirty times more likely than men without disabilities.⁴⁷

Despite this heightened risk, rape myths and stereotypes continue to shape how survivors of sexual violence with disabilities are perceived and treated. Harmful assumptions, such as the belief that people with disabilities are either asexual or sexually hyperactive, or that they are unreliable witnesses, can undermine their credibility and access to justice.

People with disabilities are disproportionately subjected to sexual violence.⁴⁸ For many disabled survivors, reporting violence poses additional risks – they may be dependent on others for personal care, housing, income, companionship, and access to community or services.

Why this matters

These pervasive myths and stereotypes significantly harm survivors by undermining their access to justice, safety, and healing. Myths and stereotypes can reinforce stigma, silence survivors, and perpetuate systemic inequalities, for example, by:

- » Discouraging survivors from reporting and limiting their access to counselling or testimonial aids
- » Denying validation and justice to 2SLGBTQIA+ survivors by failing to recognize their experiences of sexual violence as legitimate crimes
- » Compromising judicial decisions by influencing perceptions of what constitutes credible behaviour, affecting the disclosure of private records (including therapeutic records), permissible cross-examination questions, instructions to juries, etc.

Despite the Supreme Court’s clear and unequivocal direction that correct and reasonable decisions on sexual violence offences cannot be based on myths and stereotypes, we heard that myths and stereotypes remain pervasive in the criminal justice system. Annex B identifies specific myths and stereotypes that have been discredited by Canadian courts.

This image by [SACHA Sexual Assault Centre](#) in Hamilton addresses myths about sexual assault. Clothing, flirting, alcohol, going to a bar or walking home alone are not the cause of sexual violence.



Myths & Stereotypes about sexual assault

Myth #1: Real victims avoid the perpetrator(s) of the assault

Closing arguments: examples

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The Supreme Court of Canada has stated unambiguously that judging a complainant's credibility based on "the correspondence between her behaviour and the expected behaviour of the stereotypical victim of sexual assault" is an error of law.

(*R. v. ARD*, 2018 SCC 6 at para. 2)

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Endnotes

- 1 On more than one occasion during consultation tables, participating stakeholders referenced this quote to express concerns about how challenges persist despite years of changes to legislation.
- 2 The “brings the administration of justice in disrepute” is a phrase used in Canadian law. Its purpose is to protect the integrity and reputation of the justice system. In the Canadian *Charter of Rights and Freedoms*, it asks whether an action in the justice system (such as admitting or excluding evidence), would harm the justice system’s reputation in the eyes of an objective reasonable person. Government of Canada, Department of Justice (July 14, 2025). [*Charterpedia - Section 24\(2\) – Exclusion of evidence*](#).
- 3 *Canadian Victims Bill of Rights*, S.C. 2015, c. 13, s. 2.
- 4 *Canadian Victims Bill of Rights*, S.C. 2015, c. 13, ss. 18–19.
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- 7 McDonald, S., Tijerino, A., & Research and Statistics Division, Department of Justice Canada. (2013). [Male survivors of sexual abuse and assault: their experiences](#).
- 8 *Terms and Conditions of Employment of the Federal Ombudsman for Victims of Crime*, SOR/2007-54, retrieved on 2025-08-18
- 9 *P.C. 2007-0355*, March 15, 2007, para. 9(4).
- 10 SISSA Written submission #01
- 11 [A letter was sent to the Prime Minister, Minister of Justice, Minister of Public Safety, Minister of WAGE, and Minister of National Defence](#).
- 12 *R v. Jordan*, 2016 SCC 27 (CanLII), [2016] 1 SCR 631
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- 15 Bill S-12 codified the process for revoking or modifying a publication ban. Bill S-12, *An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act*, 1st Sess., 44th Parl., 2023 (Can.).
- 16 [Landmark lawsuit launched by survivors of violence calls for changes to justice system – Marshall Law](#). (2025, April 1).
- 17 *Canadian Victims Bill of Rights*, S.C. 2015, c. 13 (Can.).
- 18 Emphasis added.
- 19 Canadian Council of Parliamentary Ombudsman. (2022). *Fairness by Design: An administrative fairness assessment guide*.
- 20 Semi-structured interviews were based on Melissa DeJonckheere and Lisa M Vaughn’s (2019) semistructured interviewing practices for primary care research which focuses on flexible, exploratory, detailed experiences and communication strategies for interviews. DeJonckheere, M., & Vaughn, L. M. (2019). [Semistructured interviewing in primary care research: a balance of relationship and rigour](#). *Family Medicine and Community Health*, 7(2), e000057. <https://doi.org/10.1136/fmch-2018-000057>
- 21 The survivor survey was open from November 2024 to March 2025.
- 22 From October 2024 to January 2025
- 23 This includes sections 1, 2, 7, 8, 11, 15, 24 and 28.
- 24 *R v. Osolin*, 1993 CanLII 54 (SCC), at para 670. See also *Seaboyer*, [1991 CanLII 76 (SCC)]; *R v. Osolin*, 1993 CanLII 54 (SCC) at pp. 669-71; *R v. Ewanchuk*, 1999 CanLII 711 (SCC) at paras. 94-97.
- 25 *R v. Seaboyer*; *R v. Gayme*, [1991] 2 SCR 577.
- 26 *R v. A.R.J.D.*, 2018 SCC 6 (CanLII), at para 2; emphasis added
- 27 *R v. Find* (2001) 1 SCC 863 at paras 101-103. (McLachlin CJC)
- 28 [Sexual Assault & Harassment | Violence prevention | Canadian Women’s Foundation](#). (2022, November 22). Canadian Women’s Foundation.
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Reporting to Police and Investigations

ISSUE

Sexual violence remains one of the most underreported crimes in Canada. Despite decades of reform, only 6% of sexual assaults are reported to police.² For those who do report, investigative practices such as KGB statements are perceived as harmful and sexual assault evidence kits (SAEKs) are not always accessible or used appropriately.

IN NUMBERS

In our survey of 1,000 survivors of sexual violence:



51% reported to police, while **47%** did not



In a case law review from 2019 to 2024, **43 cases of sexual violence** involved the use of cautioned KGB statements³



SAEKs can be essential to investigations, yet **41% of hospitals lack kits or trained staff**⁴

“Believe us. It’s that simple. When we tell you something happened, don’t blame it on what we were doing or what we were wearing or if we ‘deserved it’ or not. Regardless of what we were doing or how we were dressed, we didn’t deserve what happened to us.”¹

SISSA Survivor Survey, Response #59

Of 433 survivors who did not report:



93% feared the police would not believe them, which stopped them from reporting



89% were influenced by seeing how other survivors had been treated

BOTTOM LINE

Survivors of sexual violence are responding to a system that fails to ensure safety, dignity, and accountability. The fear of being disbelieved, retraumatized, or harmed is based on lived experiences. Sexual violence investigations should focus on the suspect rather than the survivor.

KEY IDEAS

Survivors feared being **blamed, judged, or not believed**, a sentiment that was nearly universal

Safety concerns and economic barriers are deeply interconnected.

Survivors can't risk retaliation, or losing housing, income and above all, child custody

Survivors report to **protect others**, often at personal cost

Survivors are **experiencing more positive interactions with police**, yet **significant barriers remain in some investigative practices**

Sexual assault evidence kits (SAEKs) **are not available in many in rural and remote communities**

Trauma-informed protocols for sexual violence investigations are promising **but are not always followed**

RECOMMENDATIONS

1.1 Implement the Calls for Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls to improve policing and investigative practices:

- a. **Ensure equitable access** to trauma-informed practice and investigative tools such as sexual assault evidence kits in all communities, including rural, remote and northern regions, in line with Call for Justice 5.5.
- b. **Embed Indigenous-led oversight and accountability** in policing responses to sexual violence, ensuring culturally safe practices that respect Indigenous legal traditions and self-determination, in line with Calls for Justice 9.1 and 9.2.
- c. **Invest in Indigenous-led, community-based victim services** to support survivors through reporting and investigation processes, in line with Calls for Justice 5.6, 16.29, and 17.28.

1.2 Evaluate trauma-informed protocols for police investigations. External monitoring promotes accountability and accessibility for equity-seeking groups.

1.3 Provide ongoing training to criminal justice actors on the unique needs of survivors based on sex, gender, sexual orientation, race, culture, religion, age, ability, mental health, immigration status, income and access to housing, with attention to intersecting identities.

1.4 Stop using KGB cautions with survivors of sexual violence. These warnings treat survivors like suspects based on the myth that survivors of sexual violence are more likely to lie.

1.5 Address the invisibility of Black survivors in research on the criminal justice system. The federal government should invest in Black-led, community-based research on the experiences of Black women, girls, and gender-diverse people affected by gender-based violence, including sexual violence.

Our investigation

BACKGROUND

“When citizens fail to report crimes, it is fair to presume that in many cases they are making a judgment that reporting does not promote their own interests or even those of the larger community... this judgment should not be rejected summarily as irrational.”⁵

Sexual violence is one of the most underreported crimes in Canada. **Only 6% of sexual assaults** are reported to police.⁶ Despite decades of reforms, criminal justice responses to sexual violence continue to fail survivors. **Reporting sexual violence is often framed as an individual choice**, but survivors consistently indicate that

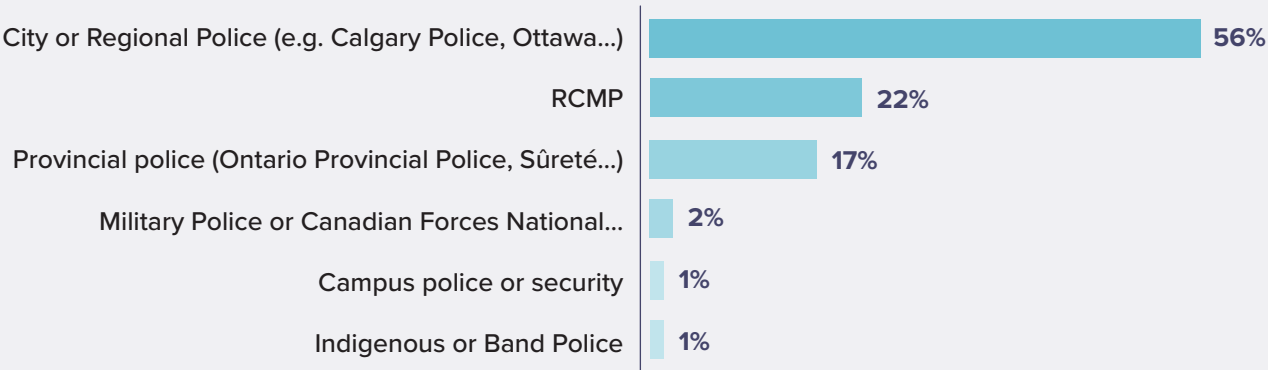
their silence is in response to systemic barriers, institutional failures, and inequality rather than personal unwillingness. Further complicating this picture, investigative tools like KGB statements and sexual assault evidence kits (SAEKs) can reinforce these barriers, intensifying survivors’ hesitation to engage with police. Public safety and confidence in the criminal justice system (CJS) remain at risk until the system confronts the structural conditions silencing survivors.

What we heard

“If I could go back in time, I wouldn’t report.”⁷

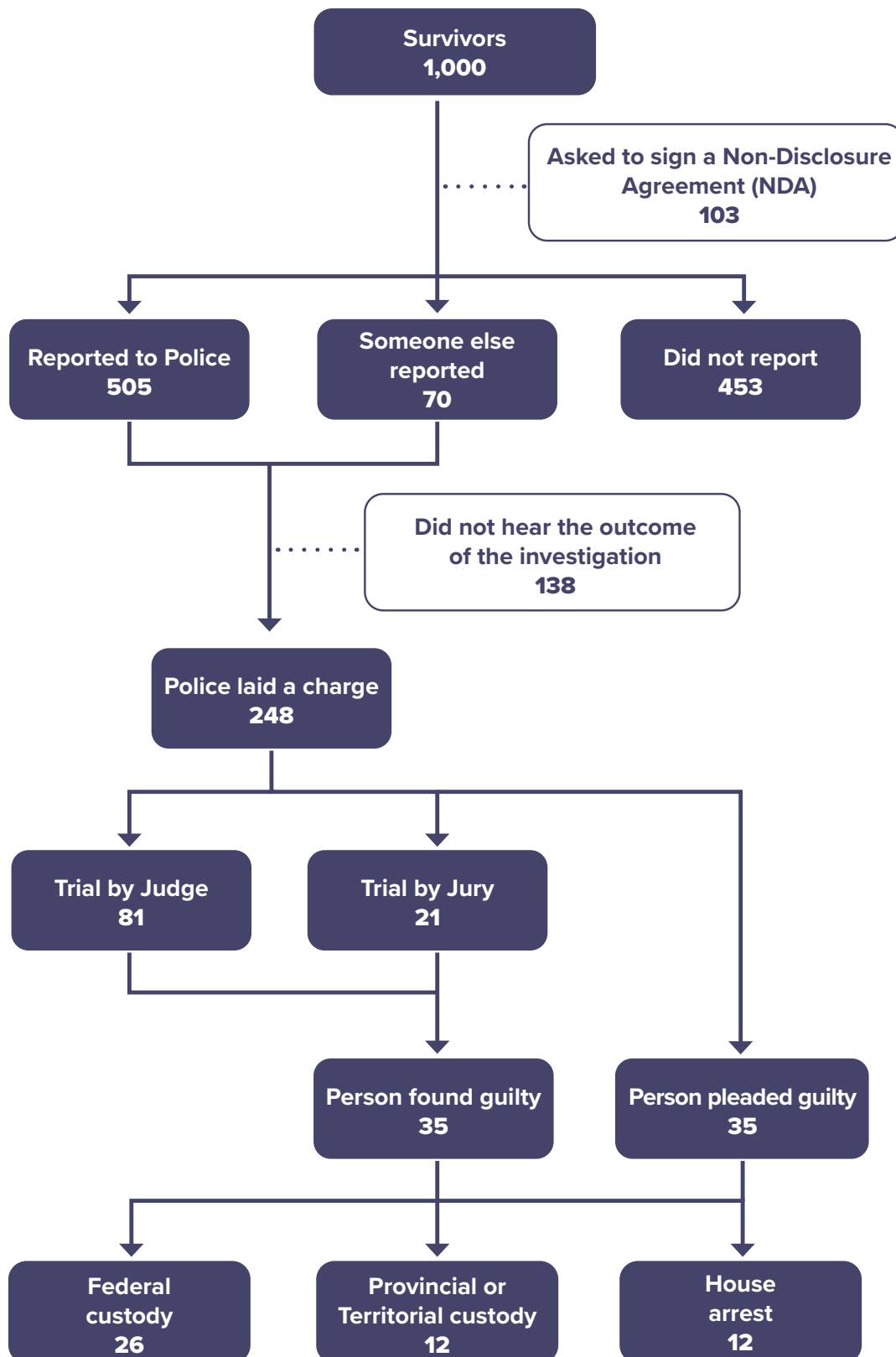
Roughly half (51%) of survivors in our survey had reported sexual violence to the police, from every province and territory in Canada.⁸

Type of police service that took the report (n = 503)



Survivors Survey Respondents' Path Through the CJS

Flowchart of outcome (n = 1,000)⁹



Barriers to reporting

Survivors who do not report sexual violence are often responding to systemic, practical, and identity-based barriers that make reporting unsafe, inaccessible, or unthinkable.

Survivors are silenced by myths and stereotypes

Myths and stereotypes about sexual violence reinforce biases in how we respond to sexual violence as a society. Survivors who disclose sexual violence are often disbelieved, shamed, or judged. When a survivor’s behaviour differs from expectations of how an “ideal victim” would behave, society can be quick to assign blame. Many of the assumptions of how a sexual assault survivor should behave are contrary to the common experiences of survivors.

For example, the assumption that a survivor would immediately distance themselves from the perpetrator is not grounded in evidence and lacks understanding of complex trauma reactions to violence, breach of trust, coercion, grooming, exploitation, or economic and social interdependence.

Structurally, the continued prevalence of myths and stereotypes offer survivors little confidence that they will be believed, silencing them and reproducing conditions that enable perpetrators of sexual violence to continue harming others.

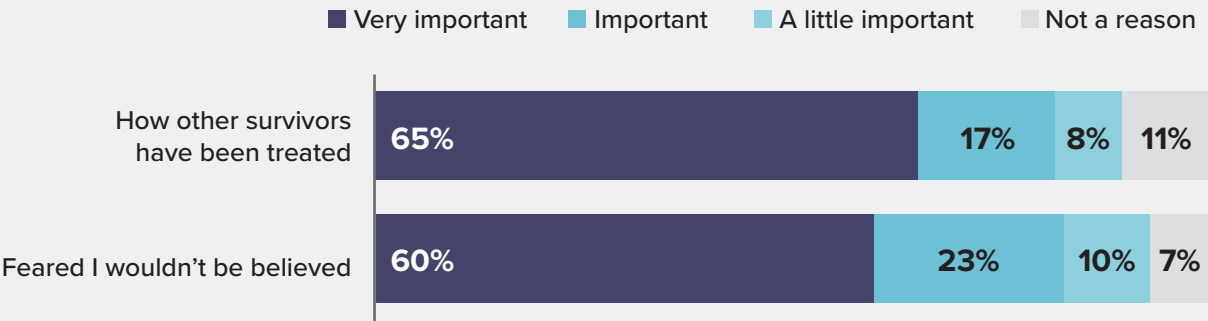
This context is foundational to understanding reasons why survivors do not report sexual violence.

Fears of being misbelieved

“I witnessed a friend go through the process and she wasn’t believed because she had been drinking and she knew the person. One of the people who did this was a friend who assaulted me while I was asleep and drunk.”¹⁰

In our survivor survey, 47% did not report to police. **More than 9 in 10 survivors said the expectation they would not be believed stopped them from reporting: 93%** did not expect the police would believe them, and **89%** were influenced by seeing how other survivors had been treated.

Importance of reasons for not reporting sexual violence to police (n = 433)



Several survivors emphasized how gender, race, Indigeneity, and other social markers made them even less likely to be taken seriously. *“The system is biased against those who have intersectional marginalized identities (race, ethnicity, Indigenous status, sexual identity) which causes individuals to refrain from reporting as to prevent further harm.”*¹¹

*“Police do not believe women... women are never believed over men, it’s just a very sad fact. Identifying as an Indigenous woman from a small town, police do not like us – always taking the side of white people no matter what.”*¹²

Internalized blame and shame

Internalized shame, often learned from social norms and past experiences of being dismissed, created a powerful disincentive to report, especially when survivors lived with or depended on the person who harmed them.

Survivors shared that they:

- » Feared being blamed for being intoxicated at the time of the assault¹³
- » Worried they would be “slut-shamed”¹⁴ after the incident or as a result of reporting it¹⁵
- » Did not want people in their social circle to know what happened
- » Feared other negative social repercussions¹⁶
- » Believed that **rape only “counted” if committed by a stranger**¹⁷
- » **61%** of survivors in our survey said reporting would shame or dishonour their family

*“Shame has to switch sides.”*¹⁸

Credibility and the “ideal victim”

Survivors described struggling with societal expectations around appropriate victim behaviour. Any deviation from this “expectation” often damaged their credibility:

*“The system is very broken. I had to spend time becoming the best victim of crime I could be. There was no good way to show up. If I show up distraught, I get patted on the head. You have to be emotional enough for them to feel sorry for you but not so emotional to make it too difficult for them. Have to be dedicated enough but not so dedicated that you are calling them too often. Paradox. As the victim I was under constant scrutiny.”*¹⁹

Social expectations around the “perfect victim”²⁰ continue to shape reporting behaviour and institutional responses. Survivors who do not fit these expectations, due to identity, behaviour, or trauma responses, are frequently reclassified as the “bad victim” who is unreliable, uncooperative, or not credible.²¹

- » **Trauma Responses.** Normal reactions to trauma create barriers to reporting. A survivor may not be considered an ideal victim or witness if they struggle to remember the events of the assault in chronological order or have difficulty explaining them in a coherent manner.²²
- » **Racialized survivors.** Gendered racial stereotypes frame some survivors, especially Black women and girls, as promiscuous, angry, or manipulative, undermining their credibility.

Black women’s sexual assault disclosure experiences are framed by their unique social space at the margins of society due to systemic race, gender, and class oppression.²³ Slatton and Richard argue that there are three areas of marginalization: the delegitimization of Black women as victims of rape, the social construction of Black women as inordinately strong, and the sanctioning of intra-racial sexual assault disclosure.

- » **Survivors with disabilities** may be more likely to be perceived as uncooperative, unreliable witnesses, or mentally unstable by police or justice actors, resulting in their complaints being dismissed.²⁴

Survivors are silenced by risks to safety, income, housing, and child custody

“It is a privilege to be able to go through the criminal justice system. You have to have supports in areas of basic needs, language, childcare, housing and work requirements; the onus needs to be on the government to provide these supports.”²⁵

For survivors who consider reporting, the practical costs and immediate threats to their safety often come at a cost they simply cannot afford. Survivors consistently emphasized that deciding to report involves evaluating concrete risks, from financial stability to physical safety.

“I had no money, no home to go to, no car, I couldn’t leave and had to subject myself to more of it because there wasn’t adequate resources to help a brand new single parent in this economy.”²⁶

Reporting is often framed as a choice, but for many, it is a **false choice** in the absence of basic supports. Survivors told us clearly: reporting is a privilege they simply cannot afford. Survivors identified multiple interconnected practical barriers:

- » **27%** identified potential **loss of income** from taking time off work as a factor
- » **15%** feared reporting would jeopardize **child custody**
- » While some programs have limited funds to alleviate barriers, we heard that it is **grossly unfair** to assume survivors can overcome

logistical barriers to reporting, such as taking time off work and paying for parking, transportation, and lunch.²⁷

In a submission by Ontario Native Women’s Association, they emphasized that the ability to lay a report, or to be able to testify against a perpetrator, can seem insurmountable when a victim’s basic safety and housing needs are not met.²⁸

Survivors in **rural, remote, and northern communities** described additional barriers:

- » **Long distances** to reach police stations, hospitals, or sexual assault centres²⁹
- » **Limited access** to specialized officers of trauma-informed services
- » **Greater risk** of encountering the perpetrator in court, in public, or in community settings

Survivors fear retaliation

For many survivors, reporting violence to police could directly endanger their personal safety or the safety of their loved ones. Fear of retaliation was particularly pronounced in the context of living with the perpetrator, intimate partner violence, or situations involving trafficking or organized crime.³⁰

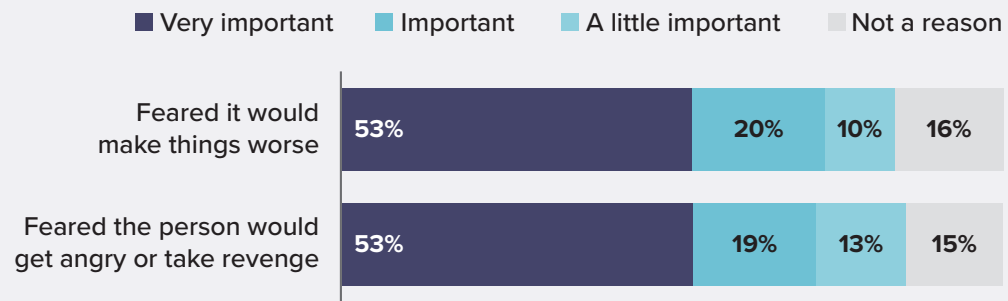
Safety, both personal and relational, was cited as a significant barrier:

- » **85%** of survivors feared revenge from perpetrators if they reported
- » **83%** of survivors feared reporting would make things worse

Some survivors reported being threatened with blackmail, such as threats to share intimate photos of the victim with friends and work,³¹ or received death threats.³² Others reported they **did not trust that the systems in place would adequately protect them.**

“Policing as an institution is not set up to support survivors of sexual violence. They do more harm than good.”³³

Importance of reasons for not reporting sexual violence to police (n = 433)

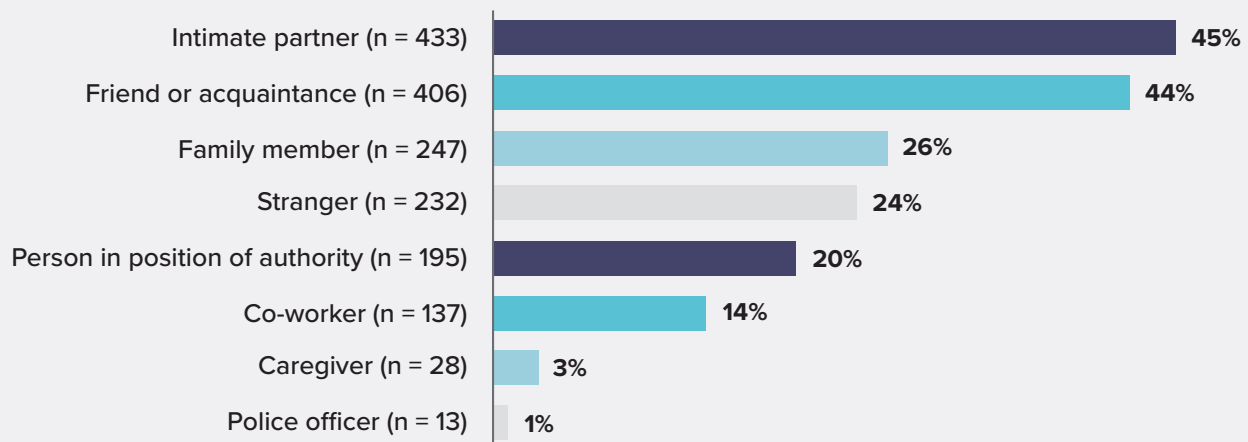


Sexual violence in intimate relationships is often dismissed or ignored

“I was terrified I would not see another day if I ever called the police. I lived with them and they made me completely dependent on them so it wasn’t easy to report & run, and if I reported, I would have to run fast and far.”³⁴

45% of survivors identified an intimate partner as the perpetrator. Survivors often live with, rely on, or co-parent with the person who harmed them. These situations can create a context of coercive control where reporting is not only unsafe, but it can also be life threatening.

Who are the perpetrators of sexual violence (n = 964)



Reporting requires a broad system of support: housing, relocation, child protection, and income. Survivors of sexual violence within relationships are often met with disbelief.

“I was sexually assaulted once by my husband. I didn’t even get close to reporting it to police. I reported physical assault and dangerous behaviour affecting a child and this was summarily dismissed. I had one male officer present to my home. He suggested that I just got in my husband’s way. When the system doesn’t even handle this fundamental situation well, sexual assaults will not be reported.”³⁵

These experiences reinforce many survivors’ and advocates’ beliefs that the justice system is **not equipped to recognize or respond to sexual violence in ongoing relationships**, particularly when the violence is psychological, coercive, or part of a broad pattern of abuse.

Survivors are silenced by perpetrators and limited access to resources

Some survivors do not initially recognize their experiences as sexual violence. Lack of language, knowledge, or social validation can delay disclosure.

Key reasons for delayed recognition:

- » **Grooming.** Stakeholders highlighted that “grooming” is commonly used by a perpetrator to prepare a victim for abuse and creates a solid barrier to disclosure. Survivors may be conditioned to believe the abuse is *normal*.³⁶

- » **Age and power imbalance.** Many survivors who were assaulted as children described not understanding what had happened until years later. At the time they lacked the cognitive tools or adult support to recognize or disclose the abuse.
- » **Coercion without physical force.** Survivors may dismiss the experience because it did not involve physical violence or “fight back” responses.
- » **Intimate or trusted relationships.** Abuse by a partner, coach, or authority figure is often misinterpreted as a “bad relationship” or “confusing experience.”³⁷
- » **Lack of language or education.** Survivors emphasized that the absence of accessible information about consent and sexual violence, particularly tailored to youth or marginalized communities, prevented them from recognizing the harm.³⁸

Why identity matters

We heard of many additional barriers to reporting among survivors in marginalized communities:³⁹

- » Not wanting to reinforce **racial stereotypes** that target members of their community.
- » **Living in poverty.** Some victims do not want to report abusers because they are the only source of income for the family. If they go to jail, then there could be financial insecurity for the survivor or the family.
- » **Experiences with the child welfare system.** Concerns that this system will become involved and they will lose custody of children.
- » Fear of being **reported or deported** (migrant workers, non-status, international students, and others).
- » **Language barriers can limit a survivor’s options** for places to turn and people to talk to about what happened.⁴⁰ For example, a survivor expressed that they did not report the sexual violence they experienced because services were not inclusive of their cultural identity and practices.⁴¹

Mistrust Rooted in Lived Experience

“Poor responses by police – [I was a] child witness to domestic violence in the 1980s and how my mother was treated (Indian under the Indian Act and non-Indigenous father who was the one everyone believed). I also heard how other survivors were treated, at hospital I felt racialized (questions asked at hospital such as were you drinking) – I felt blamed for what happened so going to the police felt pointless.”⁴²

Survivors and stakeholders cited a series of systemic failures that increased harm and discouraged reporting:

- » A lack of confidence that **child protection services** will protect children from sexual violence⁴³
- » **Criminal justice systems** prioritize the perpetrator and their rights, while survivors felt treated as objects or pieces of evidence⁴⁴
- » The trial process was viewed as lengthy and retraumatizing,⁴⁵ especially due to invasive cross-examinations (Chapter 4), repeated questioning, and prolonged delays (Chapter 3)⁴⁶
- » Survivors were aware of **high evidentiary burdens** to prove incidents of sexual violence,⁴⁷ **low conviction rates**, and **minimal consequences** for perpetrators, which made reporting feel useless⁴⁸
- » For **children and youth**, the court process often dragged on for years – at a young age this becomes part of their identity⁴⁹

- » Victims perceived that the system is designed to respond to one-time occurrences of sexual assault and ill-equipped to respond to **patterns of coercive or repeat assaults** within an intimate relationship⁵⁰
- » In cases involving perpetrators holding a **position of power** (e.g., police, military), survivors lacked confidence that the system would act impartially⁵¹
- » There was a **lack of trauma-informed responses** from medical staff, including barriers to accessing sexual assault evidence kits⁵²
- » **Post-secondary** institutions would deny the issue or not know how to respond⁵³

Racism, colonialism, and power dynamics make reporting even harder

“I do not trust police as individuals or a system. Policing by definition does not see me (a Black queer trans-human) as a person worth protecting.”⁵⁴

Consider these statistics:

- » Nearly 1 in 10 Indigenous people (8.4%, or 5.5% of First Nations people, 11.7% of Métis, and 11.5% of Inuit) reported being victims of at least one sexual assault, robbery or physical assault in the 12 months preceding the 2019 General Social Survey (GSS). This is double the proportion for non-Indigenous people (4.2%)⁵⁵
- » More than triple the proportion of sexual minority Canadians (7%) reported that they had been sexually assaulted than did heterosexual Canadians (2%)⁵⁶

For Indigenous survivors of sexual assault, barriers to justice “stem from the long history and legacy of colonialism and the ongoing impacts of settler-colonial violence enshrined in Canada’s Justice system.”⁵⁷ Formal legal processes may do more harm than good, often reinforcing racist and sexist stereotypes about how and why Indigenous peoples experience violence.⁵⁸

This distrust is not only historical but well documented:

- » The **Oppal Inquiry**⁵⁹ found that police repeatedly failed to respond to missing persons reports from Vancouver’s Downtown Eastside and failed to prevent serial violence against mostly Indigenous women
- » The **National Inquiry into MMIWG**,⁶⁰ although not specifically mandated to investigate policing, documented widespread accounts of police mistreatment, discrimination, and violence against Indigenous women and girls
- » Research by **Pauktuutit Inuit Women of Canada**⁶¹ found that Inuit women face racist and violent policing, slow responses to calls for help, and long-standing harms rooted in colonial police practices such as the displacement of Inuit communities and the mass killing of sled dogs

Our survey findings reinforce these lived realities across other marginalized groups:

- » **70% Black survivors (n = 10) and 61% of racialized newcomers (n = 18)** cited racism in the justice system as a factor in deciding not to report
- » **100% of 2SLGBTQIA+ survivors (n = 13) survivors who are also Indigenous** said fear of the court process was part of the reason they did not report

The distinct experiences of Black women, girls and gender-diverse people

“Black women deserve a specific mention. Our experiences are very different from other racialized groups... We are not protected—from the womb to the tomb.”⁶²

Black women, girls, and gender-diverse people are disproportionately impacted by sexual violence in Canada. Yet their experiences often

remain invisible in research, policy, and service delivery. Too frequently, their realities are folded into broader categories such as “racialized” or “people of colour,” obscuring the distinct and compounding harms they face.

From the outset, this investigation sought to engage survivors from historically underrepresented groups. We reached out to Black-led organizations, circulated our calls for survey and interview participation, and invited input across multiple engagement channels. However, participation from Black survivors remained limited. We understand this is not simply a matter of outreach—but one of trust, safety, and historical experience. We recognize that institutions connected to the criminal justice system may not be viewed as safe or welcoming spaces for many Black survivors.

Stakeholders and research emphasized that:

- » **Harmful stereotypes:** The enduring myth of the “strong Black woman,” combined with hyper-sexualization, undermines Black survivors’ credibility and discourages disclosure. Stereotypes such as the “angry Black woman trope” perpetuate the assumption that Black women are hostile, aggressive, overbearing and ill-tempered.⁶³
- » **Preliminary findings from the Truth and Transformation project of WomenatthecentrE** show that 314 (69%) English-speaking survivors responded that they had experienced anti-Blackness while accessing services in the GBV sector and 24 (92%) French-speaking survivors responded that they had experienced anti-Blackness. 215 (93.07%) of English-speaking advocates responded that they had experienced anti-Blackness in a workplace/organization and 9 (75%) French advocates responded that they had experienced anti-Blackness in a workplace/organization.⁶⁴
- » **Institutional betrayal:** Black communities have faced generations of surveillance, dismissal, and violence at the hands of state systems, including police, child welfare, and courts. These legacies foster justified mistrust.

- » **A cycle of neglect:** The absence of disaggregated data and targeted investment makes Black survivors structurally invisible, reinforcing underfunding, policy inaction, and lack of culturally appropriate supports.

We acknowledge the investment made in Canada's Black Justice Strategy, and its 10-year Implementation Plan. The Strategy commits to reducing the over-representation of Black people in the criminal justice system, including as victims of crime. This is an important step forward.

While the Strategy largely focuses on incarceration, policing, and diversion, less attention has been placed on the lived realities of Black survivors. The policy response must not overlook Black survivors, specifically of sexual violence, whose experiences have received less attention.

"There is no policy when there is no research—and no research when there is no investment." ⁶⁵



We would like to see that the implementation of Canada's Black Justice Strategy includes sustained, dedicated investments in Black-led, community-based research for Black women, girls, and gender-diverse people affected by sexual violence. These efforts must not only centre Black survivors but be shaped and led by them.

Barriers to reporting for Muslim women

Muslim women face intersectional barriers when engaging with the criminal justice system.

Maira Hassan's dissertation, which is the first study in Canada to examine how Muslim women are portrayed and treated in sexual assault cases, combines legal analysis and interviews with front-line support workers to document these systemic challenges. **Hassan found that** *"In addition to the already challenging circumstance of reporting to police, there can be mixed reactions from police when it comes to Muslim women survivors reporting their experiences of violence. Interview participants related the unpredictable reactions by the police, including overreactions at times and sometimes dismissal of complaints by Muslim women's experiences of violence. Where overreactions corresponded to seeing Muslim women experiencing violence as an opportunity to save 'the oppressed woman,' the dismissals related to 'othering' the violence as something expected as part of 'the Muslim culture.'"* ⁶⁶

Hassan highlights how **gendered racialization** and **Islamophobic stereotypes** continue to shape the reporting experience for Muslim women. At times, this leads to heightened surveillance and paternalistic attitudes. At others, it leads to minimization or dismissal of the harm they have experienced.

Reasons for Reporting

Survivors report to protect others

“I used to believe it would protect me and my children. Now I know the only protection offered is to the perpetrator, while I continued to receive threats, have my reputation destroyed, and have had to finance a move and identity change alone and have paid thousands of dollars in trying to recover not only from the sexual assaults, but the Justice system harm to me as well.”⁶⁷

For many survivors, reporting is driven by a **deep sense of responsibility to protect others**, especially children, women, and members of their own communities.

“The reason I did this was to protect other women and girls. To see them warned about him. But the reality is that his sentence will almost certainly be less time than the period between when he was charged and when he’s sentenced. The criminal justice system is so offender-centric that the safety of victims isn’t even considered.”⁶⁸

“When I was a little girl, many of us were sexually abused by those in high positions of trust and authority in my community. Today, this is still happening. It is why I decided to come forward.”⁶⁹

Survey findings echoed this motivation (n = 1,000):

51% (n = 505) of survivors reported to police. Survivors often considered **many different reasons** in the choice to report:

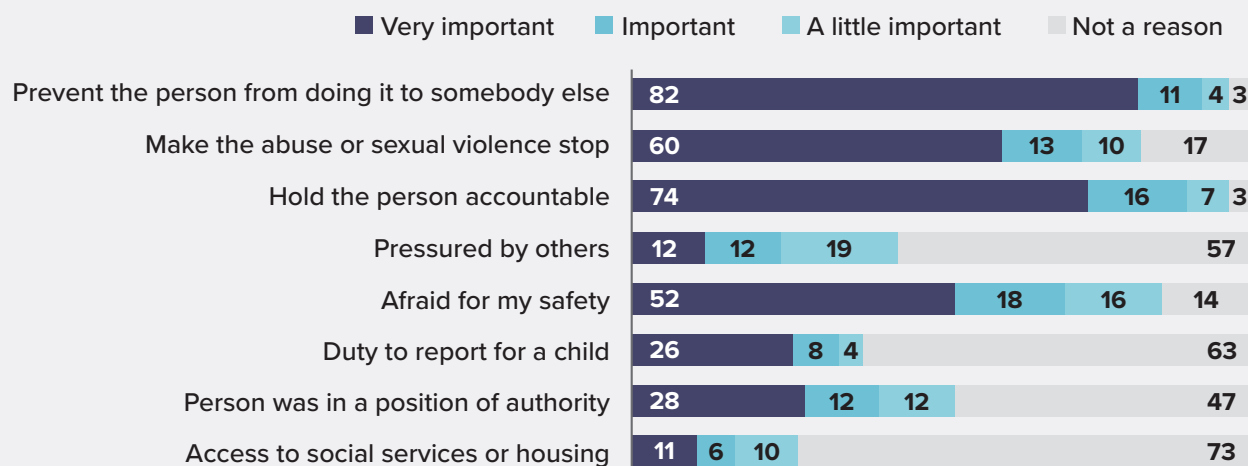
- » **97%** reported to prevent the person from doing it to someone else
- » **97%** sought accountability
- » **86%** feared their safety
- » **83%** wanted the abuse or sexual violence stop
- » **52%** cited the perpetrator’s position of authority
- » **43%** felt pressured by others
- » **38%** reported because of a legal duty to report for a child

We also asked survivors to share **how important different reasons were** in their decision to report sexual violence to the police:

- » **4 in 5** survivors said that preventing the person from doing it to someone else was a **very important reason** for them
- » **3 in 4** survivors said that holding the person accountable was a **very important reason** for them

“I reported because my abuser said things that made it clear he would do it to others and I didn’t want other women to suffer this. But I wouldn’t report again.”⁷⁰

Importance of the following reasons in decision to report to police, in percent (n = 505)



What happened when they reported?

Many survivors described how **reporting inflicted new harm**, even when they came forward to protect others. Despite being motivated by a desire to protect others, survivors found themselves **retraumatized, disbelieved, or excluded from the very process they initiated**.

“Involving the police was worse than being drugged and raped for 24 hours by a disgusting and pathetic predator. The dishonesty of the ‘brotherhood’ of a useless police force is sickening. The rape did some serious damage to my life. But reporting it, then chasing any chance of justice, has broken me.”⁷¹

“Reporting a few years after the assault felt useless because the RCMP officer asked, ‘What do you expect from this?’ He made it sound like it was not even possible to lay charges or interview the person who assaulted me.”⁷²

Survivors who reported often carried a double burden: the trauma of the violence itself and the

trauma of navigating a system not built to support them. This is particularly serious for racialized survivors, who faced both systemic bias and lack of support.

Survivors had mixed experiences with police

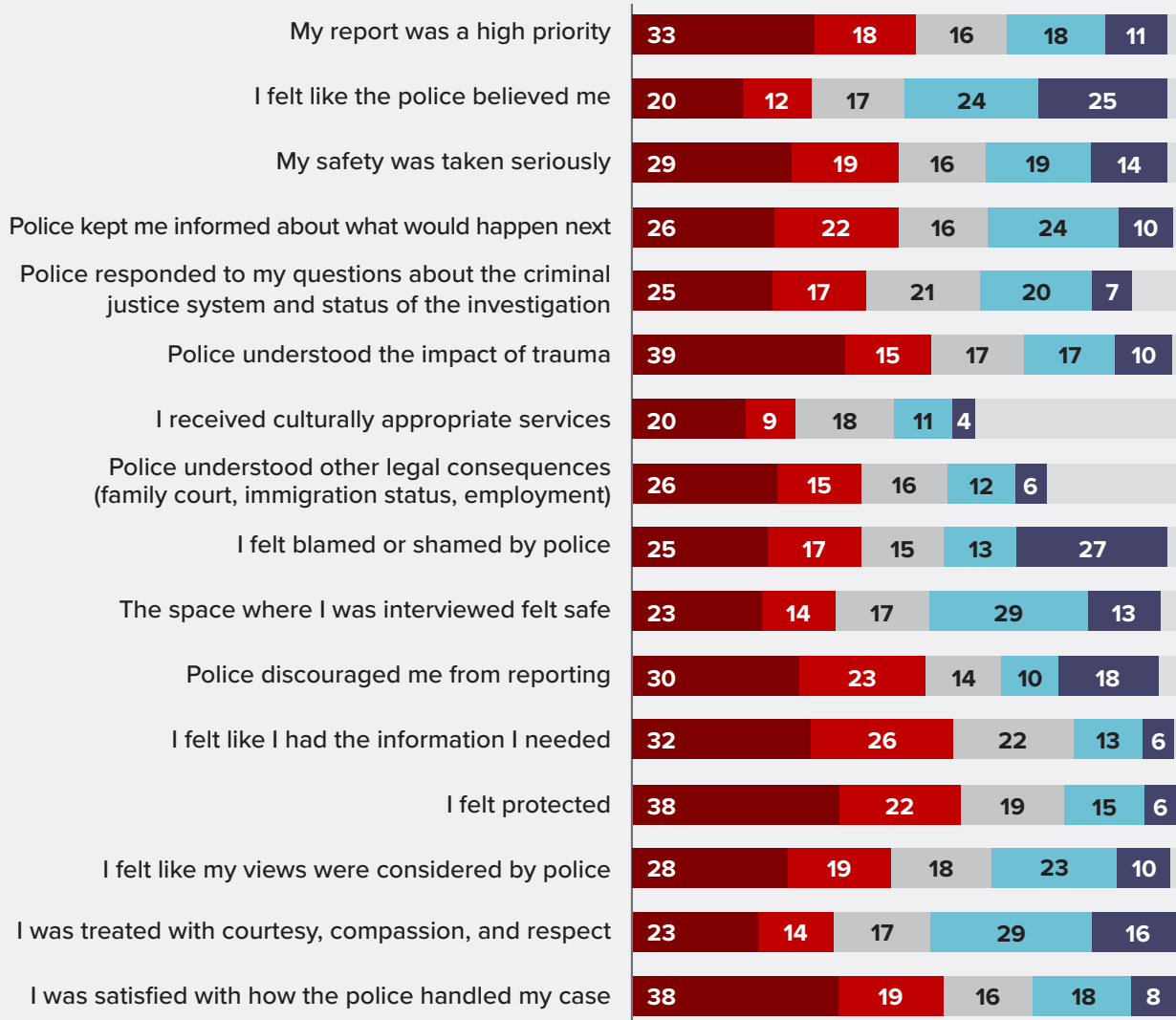
Among the 51% of survivors who reported to police, experiences were mixed. While some encountered understanding and respectful treatment, others described retraumatizing interactions.

Survivors had very mixed experiences with police:

- » 27% said police understood their trauma
- » 29% said their report was treated as a high priority
- » 33% said their views were considered
- » 42% said the place where they were interviewed felt safe
- » 45% said they were treated with courtesy, compassion and respect
- » 49% said they felt like the police believed them vs 32% who reported not being believed

Survivor experiences with police after reporting sexual violence, in percentage (n = 508)

■ Strongly disagree ■ Disagree ■ Neutral ■ Agree ■ Strongly agree ■ N/A

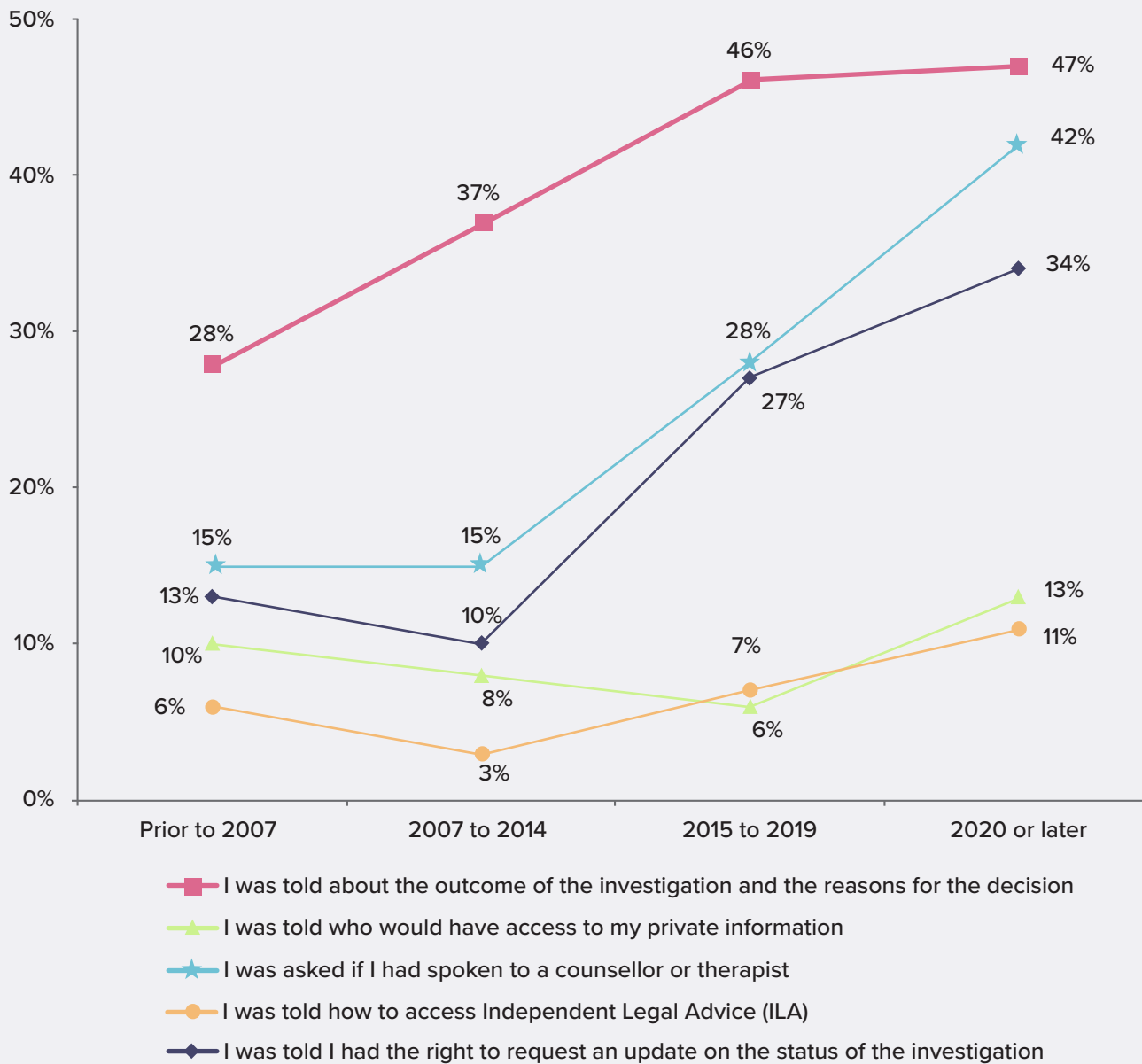


Police are providing survivors with more information on their cases

Survivors who reported sexual violence in recent years noted improvements in police communication and access to case-related information. Nearly half indicated they felt believed by police, marking a notable step forward. Additionally, our data show clear upward trends over the past two decades in police how police inform and engage survivors:

- » **Outcome information:** The percentage of survivors who were told about the outcome of their investigation increased from 28% prior to 2007 to 47% in 2020 or later.
- » **Right to request case updates:** Awareness of this right nearly tripled, from 13% prior to 2007 to 34% in recent years.

Survivors reported that police practices are improving, though overall performance remains low (n = 507)



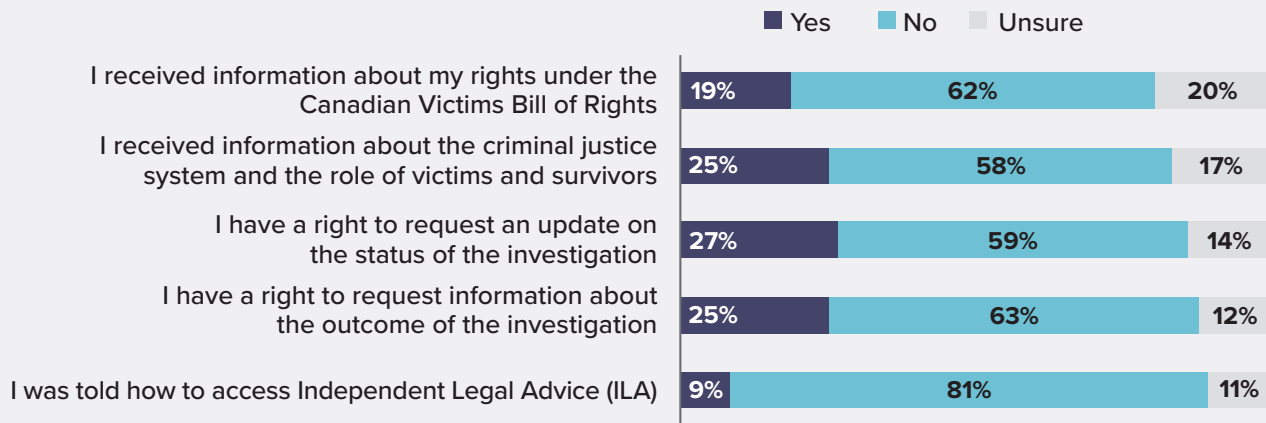
Persistent Gaps

Despite improvements in these areas, the overall performance indicators in other important areas remain low.

- » **1 in 4** survivors were told they had the right to know the outcome of the investigation

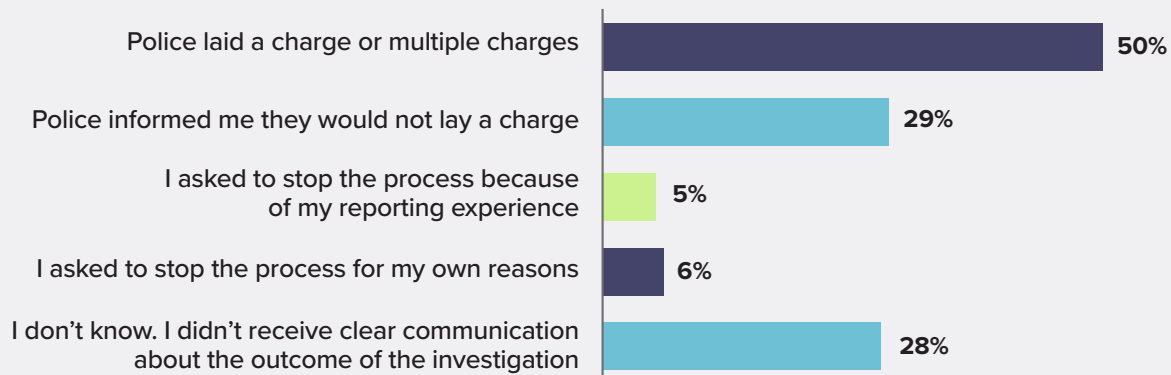
- » **27%** were told they could request an update
- » **19%** reported receiving information about their rights under the CVBR
- » Only **9%** were told how to access independent legal advice

Information provided to survivors who reported sexual violence to the police (n = 507)



When asked explicitly about their case outcomes, **28% of survivors said they received no clear communication** about what happened after they reported to police.

Outcomes of sexual violence reported to police (n = 498)



The attention turns toward survivors

Despite improvement in police communication, survivors continue to describe experiences that suggest a default attitude of suspicion. In our survivor survey:

- » **28%** said police discouraged them from reporting
- » **40%** of survivors said they felt blamed or shamed by police
- » **47%** said they did not feel their views were considered

KGB statements and the presumption of doubt

“Basically, it’s a three-minute soliloquy telling you what’s going to happen if you lie. These are not best practices in sexual violence – telling survivors before they even open their mouths what’s going to happen to them if they’re liars. So many places around the country have struggled to figure out how to get rid of these warnings.”⁷³

Imagine coming forward after experiencing a violent crime, only to be cautioned in a way that leaves you, the survivor, feeling that: **any minor mistake or forgotten detail could lead to your own imprisonment.** This is how KGB statements are often perceived by survivors; not because police say this outright, but because that is how the warning is perceived by survivors. While rare in other violent offences, it is disproportionately applied in sexual assault cases.

What is a KGB statement?

KGB statements⁷⁴ are cautioned, sworn, video-recorded statements taken by police, a tool originally developed to preserve reliable evidence from witnesses who may be reluctant to testify or whose testimony may later change. They were primarily intended for use in cases involving co-accused individuals or witnesses in high-risk contexts, such as organized crime, where there is a concern about witness intimidation, recantation, or refusal to testify.⁷⁵

- » KGB statements include multiple warnings about criminal prosecution for lying, including references to prison terms longer than the maximum length for most sexual offences⁷⁶
- » The use of KGB statements varies significantly across Canada⁷⁷

Research, stakeholder interviews, and submissions raised concerns about the use of KGB statements in sexual assault investigations:

- » Survivors feel like they are not believed and may fear criminal charges⁷⁸
- » Warnings reduce the amount of information survivors provide to police,⁷⁹ suggesting they may have an adverse impact on the truth-seeking purpose of the interview
- » Neurobiological responses to trauma can affect memory and recall, resulting in inconsistent statements over time⁸⁰
- » The warnings may cause survivors to withdraw from the system, fuelling attrition⁸¹
- » In cases of GBV, the use of a KGB statement paired with the threat of criminal prosecution for non-compliance can coerce survivors into participation in the court process, even if it is contrary to their best interests⁸²

A stakeholder echoed these concerns:

“You can see the person’s whole demeanour change, regardless of how delicately, empathetically, or how trauma-informed the officer tries to talk about these statements. As soon as you start getting into sentencing, you can just see that they are immediately recognizing that they’re not believed, that this isn’t for them. It’s heartbreaking to watch that and to have to keep seeing that.”⁸³

KGB Statements are being reconsidered

We asked the Royal Canadian Mounted Police (RCMP) for their perspective on the use of KGB warnings given to survivors. They told us:

*“Sworn statements would very likely have a detrimental effect on the quality of evidence obtained during the interview and on the well-being of sexual assault victims. It can be misinterpreted as disbelief of the victim and is not consistent with using a trauma-informed approach to investigations. **Individual investigators should make a decision about whether it is in the best interests of justice to utilize the KGB procedure when interviewing a victim, bearing in mind the advantages and disadvantages of doing so, as well as the potential detrimental effect on the victim.** It is important to remember that a sexual offence victim will rarely be asked to testify without their ongoing agreement to be involved.”*⁸⁴

While RCMP policy indicates KGB statements should be used sparingly, there is no formal tracking or oversight of this practice, nor a standard script or form. *“They are created Divisionally in conjunction with Provincial Crown Counsels. This allows for regional differences such as requirements for the Commissioner of Oaths.”*⁸⁵

There is growing consensus that KGB statements should not be used in sexual assault cases:

- » The **Uniform Law Conference of Canada (ULCC)** recognized the damage that recanting witnesses can do to a trial and to the administration of justice, and that prosecution for recanting KGB witnesses is exceptionally rare.⁸⁶
- » Some **prosecution services** acknowledge that it is not in the “public interest” to prosecute cases against survivors of intimate partner violence who report violence and later recant.⁸⁷

- » We heard **how rare it was** for a sexual assault complainant to recant and have a KGB statement introduced at trial in the previous 25 years.⁸⁸
- » **Sexual Violence New Brunswick** shared a report funded by Women and Gender Equality Canada (WAGE), calling for an end to the use of KGB statements with survivors of sexual violence.⁸⁹

Are KGB statements necessary?

There may be **limited circumstances** – such as a sex-trafficking case or where a survivor may not later be available to testify – where a KGB statement may help to safeguard the interests of survivors. Other evidence suggests that **warning survivors may not be necessary**.

*“Other provinces have found ways to have those conversations without slapping that warning in front of someone and saying, ‘If you’re lying, all these terrible things are going to happen to you.’”*⁹⁰

Given the discriminatory and harmful impact of warnings when survivors report sexual violence to police, the potential benefit must be weighed against the harm.

Alternatives to KGB statements:

- » **It may be sufficient to record a sworn statement, without administering a KGB caution.**⁹¹ We note that multiple cautions of jail time are not provided to witnesses in court.⁹²
- » **Limit the scope of cautions.** If a caution is deemed necessary, it should be brief, neutral, and trauma-informed. There is no need to repeatedly threaten lengthy jail time.

Sexual assault evidence kits are not always available

Another investigative tool that survivors raised with us was sexual assault evidence kits (SAEKs). Though designed to preserve forensic evidence that may support a prosecution, the SAEK process can add trauma, delays, and unnecessary burden.

SAEKs are typically framed as essential investigative tools. However, their evidentiary value may be limited in sexual assault cases:

- » While SAEKs can help with investigations where the perpetrator is unknown or where there are serious injuries, **87% of accused persons in sexual assault cases were known to the victim.**⁹³ These cases often involve no visible injury and no dispute that sexual activity occurred, the issue is one of consent, **making the evidentiary value of SAEKs limited.**

The RCMP offered their perspective:

“Even in cases where the accused is known to the survivor and there is no dispute that sexual activity occurred, sexual assault evidence kits (SAEKs) can still provide valuable confirmatory evidence. DNA evidence can:

- » corroborate the survivor’s account of when and how the contact occurred.
- » strengthen the case by removing the possibility of a denial defence, where the accused claims no sexual contact took place.
- » support timelines and context, especially when combined with other forms of evidence (e.g., text messages, witness statements).

*While SAEKs may not always be necessary, their potential to reinforce credibility and reduce ambiguity in legal proceedings should not be underestimated. The key is ensuring survivors are fully informed about their options and that the use of SAEKs is guided by trauma-informed, survivor-centred practices.”*⁹⁴

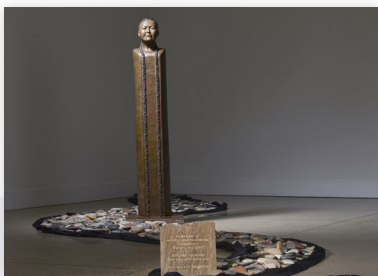
Accessibility

In many parts of Canada, SAEKs are unavailable or difficult to access:

- » **41%** of hospitals and health centres in Canada lack either kits or staff who are trained to administer them.⁹⁵
- » In rural and remote northern communities, access to SAEKs is limited. Stakeholders told us that the lack of local services means survivors are transported for hours by taxi or flown out of their community to undergo the examination.⁹⁶
- » Survivors described being examined by doctors with little or no training in sexual assault response, including fly-in physicians reading SAEK instructions for the first time.⁹⁷

“[I had to] drive over 2 hours to [the city] to get a rape kit done because it wasn’t available in my town.”⁹⁸

Waiting rooms in small communities may also raise serious privacy concerns. This disproportionately affects survivors in close-knit northern, Indigenous and rural communities where anonymity is difficult. Patients are often asked intrusive questions about why they are seeking care.



Call for Justice 5.5 of the **National Inquiry into Missing and Murdered Indigenous Women and Girls** specifically urges all governments to build capacity in investigative tools for sexual violence—including **access to sexual assault kits and trauma-informed questioning techniques**.⁹⁹ This call emphasizes the need to ensure that all Indigenous communities, particularly in remote and northern regions have timely and equitable access to these resources.

Pressure to Undergo SAEKs

Many survivors reported that police and even some health professionals pressured them to undergo a sexual assault exam in order to report the assault. Others were told, incorrectly, that without a rape kit, their case would be dismissed.

*“Police do not believe women, and I have been told (by police officers) that if I did not have a rape kit done immediately after then the case would be thrown out as I could not prove the incident. Women are never believed over men, it’s just a very sad fact. It also does not help that I am Indigenous, and police especially in my small town do not like us. Always taking the side of white people no matter what.”*¹⁰⁰

These experiences reflect the persistence of rape myths and misinformation. These myths reinforce harmful stereotypes, for example, that sexual violence always results in injury, that complainants are more likely to lie about an assault, and that sexual violence is committed by strangers unknown to the victim.

» **They also perpetuate the false idea that forensic evidence is required to validate sexual assault, which contributes to the overuse and misuse of SAEKs.** Jane Doe’s interviews with women about sexual assault evidence kits revealed that they were “unnecessary, invasive, and terrorizing”¹⁰¹

The RCMP shared their views on the harmful aspects of SAEK:

*“Sexual assault evidence kits (SAEKs) are not inherently harmful tools. When used appropriately and with trauma-informed care, SAEKs are designed to preserve critical forensic evidence that can support a survivor’s case, should they choose to pursue legal action. When administered with informed consent, sensitivity, and respect for the survivor’s autonomy, SAEKs can be empowering and play a vital role in justice processes. Many survivors choose to undergo the evidence collection process because they want the option to report or seek justice in the future.”*¹⁰²

Harm and revictimization during the examination

Some sexual assault survivors have described these forensic exams as a “second rape.”

*“The whole process of getting a rape kit is also fully retraumatizing.”*¹⁰³

"I was also told by my nurse that if I did not think I wanted to report, the kit would be a really uncomfortable experience for my male doctor to have to do. Instead, they gave me Valium to help me 'forget,' in the doctor's words." ¹⁰⁴

Even so, some survivors report being pressured to involve police if they want to have an exam done.

"I was required to report to police to be able to have a rape kit done at the hospital. That was hard as I didn't know anything about reporting or the criminal system or laying charges. I just wanted what happened to me to be acknowledged/recorded and to check my health. I did decide to proceed with reporting after they told me the police wouldn't lay charges if I wasn't ok with it. I had to give my report right then, alone in a

private hospital room with two male cops. That was hard, I didn't feel safe. I had just been [sexually assaulted] the night before and the man who did it wouldn't let me leave until I talked him into letting me go. I wish a female nurse or someone else from the medical team stayed with me in the hospital room when the cops came. I was not aware or thinking that I could ask for this at the time. Later the police did the investigation, but I had to ask them if they tested my blood samples. They did not until I asked, and it turned out that I was severely drugged... I don't think they were listening when I told my story, that I thought I was drugged. Maybe I didn't say it directly enough." ¹⁰⁵ The linking of reporting and forensic medical examination deters survivors who are not yet ready to engage with the justice system but still want medical care or to preserve evidence. **We need to better protect survivors' privacy interests over their own bodies.**

The **Toronto Police Guide for Sexual Assault Survivors** is available in 12 languages and includes information on sexual assault evidence kits. <https://yourchoice.to/evidence-kit.php>



Privacy and SAEK

A sexual assault examination kit (SAEK) records, on a specific forensic form, an examination done by a qualified medical practitioner. The complainant must consent to that form being released to the police, even if an investigation is underway. An Ontario case found that the SAEK was not a private record and that the nurse conducting the exam was part of the investigation of the sexual assault.¹ This meant that **the complainant had no privacy interest in the SAEK**.

- » This is in stark contrast to how any other medical record would be viewed. Medical records, by any definition, are records to which a person has a reasonable expectation of privacy.
- » This decision puts more emphasis on where the information is written (a forensic form) compared to what the information is (facts about the complainant's physical and mental integrity from a medical exam).

¹ *R v. T.C.* 2021 ONCJ 299 (CanLII).

Delays and processing failures

Delays in SAEK testing stall investigations and, in some cases, jeopardize prosecutions. Survivors reported cases where kits were only partially processed, often without a clear explanation.

*“To my knowledge the rape kit never made it to any database. I think it may have been destroyed. I have no idea, and I cannot find answers when I call them.”*¹⁰⁶

*“There needs to be a better process for dealing with rape kits—I know it’s a cost and the government tries to save money, but not processing entire rape kits as soon as they’re collected is terrible. Such a low percentage of women go through with reporting and getting the kit done. Out of respect for those of us who do, there should be an investment in making sure that the evidence is duly processed in a timely manner. We were told that DNA testing could take up to 6 months!!”*¹⁰⁷

In some cases, partial processing may be appropriate, for example, when only certain samples are relevant to the live issues in a case, such as suspected drug-facilitated sexual assault or questions about intoxication. However, when survivors are not informed of what was tested or why, a lack of transparency can cause distrust.

One survivor shared that the accused delayed entering a plea for months because DNA results had not been received. The survivor had to personally follow up to confirm that her blood samples had even been tested, only to learn they had not been processed until she insisted.¹⁰⁸

- » A 2017 evaluation found that the RCMP's forensic labs met their 40-day DNA processing target in only 44% of routine sexual assault cases.¹⁰⁹

Such delays may also jeopardize prosecutions.

- » Under the Supreme Court of Canada's decision in *R v. Jordan*, unreasonable delays can result in charges being stayed. SAEK processing delays, particularly when uncommunicated, worsen this risk while undermining trust in the criminal justice system.

Sexual Assault Nurse Examiners can reduce re-traumatization

“My choice ended at the hospital emergency room. I was not ready to make a decision about reporting but wanted to get a sexual assault kit done so that I had the option available. They were completely uneducated in handling my care. I was informed that I could only get the kit done if I was reporting.”¹¹⁰

Many survivors described uncomfortable or even traumatic experiences during SAEK exams, particularly when conducted by untrained or reluctant medical professionals. In contrast, **Sexual Assault Nurse Examiners (SANEs)** were highlighted as a promising model for **delivering compassionate, expert care**.

- » SANEs are trained to conduct forensic exams, document injuries, collect evidence properly, and testify in court. **They are more likely to provide trauma-informed care, take survivors seriously, and ensure survivors understand their options.**

“Some places have specially trained nurse teams that are called out to conduct rape kits are willing to testify, and act as a guide through the health system. That would have helped a lot.”¹¹¹

However, stakeholders noted that most hospitals do not have specialized nurses trained on administering SAEKs.¹¹² In regions **without** SANEs, survivors described being examined by providers who were unprepared, uncomfortable, or dismissive:

“The doctor at the university did not want to take the pictures (of my injuries) or be involved. I learned later it was because they did not want to waste time testifying.”¹¹³

We also heard of remote fly-in physicians administering SAEKs without adequate knowledge, sometimes consulting instructions during the exam. These situations can create confusion, fear, and additional trauma for survivors. In some cases, local nurses could have provided better care but were prevented from doing so by institutional policy.¹¹⁴

Case Study: Racialized Harm and Survivor Advocacy¹

In 2013, at age 17, Joëlle Kabisoso was sexually assaulted by five white boys. The assault was recorded and publicly mocked online, including a tweet “*four little monkeys sitting on a bed, 2 got raped and one just bled,*” which underscores the intersection of hate and sexual violence.

Despite the overt racism and brutality, Joëlle recalls that the detective assigned to her case dismissed the harm, telling her: “*Maybe next time you shouldn’t drink so much.*” Rather than support, Joëlle encountered institutional suspicion and indifference- an experience echoed in our survivor survey, where one survivor wrote: “*Les femmes noires agressées ne sont aucunement prises au sérieux.*” “*Assaulted black women are not taken seriously at all.*” [Translation]

From this trauma, Joëlle emerged as a leading voice for change. In 2018, she founded **Sisters in Sync**, a space for other Black girls and women to share their experiences of sexual violence.

- » Today, Sisters in Sync continues to build healing-centred, survivor-led spaces for Black women and youth in Hamilton, Ontario. Joëlle’s work exemplifies how survivors transform systemic betrayal into community leadership and policy change.

¹ Stakeholder Interview #104; Survivor Survey, Response #691.



Moving toward a trauma-informed approach

We heard about several promising reforms grounded in mitigating trauma:

- » The **Canadian Framework for Trauma Informed Response in Policing** (2024)¹¹⁵ was developed as a collaborative effort between police services across Ontario and Québec and the RCMP. The framework **integrates principles of procedural justice** and guides police services to **embed trauma-informed policies**, standards, and practices and includes considerations specifically to sexual assault, domestic violence, and child abuse.
- » **British Columbia's 2024 provincial standards for victim interviews** in sexual assault investigations require that interviews must

avoid re-traumatization, support victim dignity, minimize repetition, provide accommodations, and give survivors control over where, when, and how they participate.¹¹⁶

- » **Innovative tools offer survivors more control.** The **paceKit initiative**¹¹⁷ allows for self-collection of DNA evidence with support from a trained frontline worker. Survivors use the kit to swab for DNA, submit clothing, and document the incident on their own terms.

It provides accessibility for people who live in rural and remote communities. Currently piloted in BC, the program is focused on improving access for Indigenous communities and plans to expand.¹¹⁸

TAKEAWAY

Survivors deserve safety at every step, from the first disclosure to the last piece of evidence.

Reporting sexual violence should not open the door to suspicion, delay, or further harm.

Endnotes

- 1 SISSA Survivor Survey, Response # 59
- 2 Statistics Canada conducts the General Social Survey on Canadians' Safety every 5 years. It is a large victimization survey that collects self-reported data on criminal victimization from all provinces and territories. It includes questions on whether people reported a crime to police.
- 3 Craig, E. (2025 Forthcoming). *The Discriminatory Use of the 'KGB Procedure' by Police Against Women in Canada*. *McGill Law Review*.
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- 5 Finkelhor, D. (2008). *Childhood Victimization: Violence, Crime, and Abuse in the Lives of Young People*. New York: Oxford University Press.
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- 7 SISSA Survivor Interview #31
- 8 51% (n = 505) is a significant over-representation of survivors who reported to police. Since the reporting rate in Canada is roughly 6% according to the 2019 GSS, a sample of 505 survivors who reported to police would typically require a victimization survey with a sample size of approximately 8500 people.
- 9 *There is overlap in cases reported to police directly by survivors and those reported by someone else for a total of 548 cases reported to police.
- 10 SISSA Survivor Survey, Response #30
- 11 SISSA Consultation Table #09: 2SLGTBQ+ English
- 12 SISSA Survivor Survey, Response #118
- 13 SISSA Survivor Survey Responses #148 & #30
- 14 SISSA Survivor Survey, Response #142
- 15 SISSA Survivor Survey, Response #348
- 16 SISSA Survivor Survey, Response #348
- 17 Survivor Survey, Response #101
- 18 Survivor Survey, Response #167
- 19 SISSA Survivor Interview #093
- 20 SISSA Survivor Interview #024
- 21 SISSA Written Submission #33
- 22 SISSA Written Submission #37
- 23 Slatton, B.C., & Richard, A.L. (2020) *Black Women's experiences of sexual assault and disclosure: Insights from the margins*. *Sociology Compass*, March 2020, 14(6). DOI:10.1111/soc4.12792
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- 25 SISSA Consultation Table #28: Women's NGO/Advocacy Orgs EN
- 26 SISSA Survivor Survey, Response #106
- 27 SISSA Survivor Interview #159
- 28 SISSA Written Submission #31
- 29 SISSA Consultation Table #13: Legal & ILA
- 30 SISSA Survivor Survey, Response #656; SISSA Survivor Survey, Response #88; SISSA Survivor Survey, Response #106
- 31 SISSA Survivor Survey, Response #64
- 32 SISSA Survivor Survey, Response #49; SISSA Survivor Survey, Response #172; SISSA Survivor Survey, Response #656
- 33 SISSA Survivor Survey, Response #42
- 34 SISSA Survivor Survey, Response #106

- 35 SISSA Survivor Survey, Response #692
- 36 SISSA Written Submission #69
- 37 SISSA Survivor Survey, Response #229
- 38 SISSA Survivor Survey, Response #259
- 39 SISSA Consultation Table #08: Black and Racialized BIL; SISSA Consultation Table #28: Women's NGO/Advocacy Orgs EN; SISSA Survivor Interview #178; SISSA Survivor Interview #021; SISSA Consultation Table #23: Academics EN; SISSA Consultation Table #06: Newcomers BIL
- 40 SISSA Written Submission #38
- 41 SISSA Survivor Survey, Response #426
- 42 SISSA Survivor Survey, Response #915
- 43 SISSA Stakeholder Survey, Response #249
- 44 SISSA Stakeholder Interview #024
- 45 SISSA Survivor Survey, Response #90
- 46 SISSA Written Submission #37
- 47 SISSA Survivor Interview #086
- 48 SISSA Stakeholder Survey, Response #263
- 49 SISSA Consultation Table #03: Children and Youth EN; SISSA Survivor Survey, Response #364
- 50 SISSA Survivor Survey, Response #656
- 51 SISSA Survivor Survey, Response #253
- 52 SISSA Survivor Survey, Response #202
- 53 SISSA Survivor Survey, Response #569
- 54 SISSA Survivor Survey, Response #326
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- 69 SISSA Survivor Survey, Response #439
- 70 SISSA Survivor Survey, Response #454
- 71 SISSA Survivor Survey, Response #70
- 72 SISSA Survivor Survey, Response #260
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R v. Jordan

ISSUE

The *R v. Jordan*² decision by Supreme Court of Canada in 2016 has affected decision-making throughout the criminal justice system (CJS). Strict timelines imposed by the Court are creating systemic problems for survivors and the number of sexual violence cases permanently stayed or withdrawn continues to rise.

“I don’t think there is anything worse for a victim than to have a trial stayed.”¹

SISSA Survivor Interview #39

IN NUMBERS



268+ sexual assault cases across Canada have been stayed because of unreasonable delay since the *R v. Jordan* decision in 2016.³



Consequence: 1 in 7 cases of sexual assault were stayed or withdrawn in 2022/2023 after exceeding the *Jordan* timelines⁴



Sexual assault cases that exceeded the *Jordan* timelines rose from 15.1% (2016–17) to 30.4% (2022–23)⁵

In our survey of 450 stakeholders:



54% of Crown attorneys believed that the number of **stays in sexual assault cases has increased** over the past five years. Only 4% believed the number had decreased.



1 in 3 stakeholders had observed cases where charges were delayed to avoid starting the “Jordan clock.”⁶

BOTTOM LINE

Maintaining the current approach to *R v. Jordan* is unsustainable. It is compromising access to justice, violating victim rights to protection and participation and undermining public confidence in the judicial system in Canada.

KEY IDEAS

More sexual offences are being **stayed or withdrawn**

R v. Jordan is **reshaping decision-making** across the CJS

Stays are **wasting scarce resources** from governments, community groups, and survivors

Survivors also have **Charter rights**

Stays of sexual assault charges **delegitimize** the CJS

Stays are **compounding survivor trauma** and leave some survivors at **further risk of violence**

RECOMMENDATIONS

The federal government should amend the *Criminal Code* to:

2.1 Guide judicial discretion in delay motions. Set out the following criteria to be considered by the Court in a *Jordan* motion (a motion to stay the charges for a lack of timely prosecution):

- a. Nature and gravity of the alleged charges
- b. Length of the delay
- c. Complexity of the case
- d. Vulnerability of the victims
- e. Actions of defence
- f. Actions of prosecution
- g. Society's interest in encouraging the reporting of offences and the participation of victims and witnesses
- h. Prejudice to the victims' *Charter* rights
- i. Exceptional circumstances
- j. Other factors including local conditions

2.2 Consequences for defence delay: Provide that Crown can show that multiple contested procedural applications will count as defence delay if the applications have been found to be brought without adequate notice, frivolous, without basis, involve unnecessary argumentation, or show a failure to prepare.

2.3 Remedy for excessive prosecution delay: Where the Court finds there has been excessive delay in the prosecution of a case, upon conviction, these charges could receive a sentencing credit for days past the *Jordan* timelines, preserving judicial discretion to grant stays of charges for egregious or exceptional cases.

2.4 Ensure victims are informed of delay applications: When a *Jordan* application is filed under s. 11(b) of the *Charter*, the victim must be notified.

2.5 Protect victim safety in remedy decisions: Where a Court finds that there has been excessive delay and orders a stay, and where the charge relates to a violent offence, the Court must consider the victim's safety concerns when releasing the accused.

Our investigation

Background

In *R v. Jordan*,⁷ the Supreme Court of Canada (SCC) created a framework to assess delays in prosecutions of a criminal charge. This is important because excessive delay is a violation of an accused's 11(b) *Charter* right to be tried within a reasonable time. Later decisions applied the *Jordan* framework to other parts of the justice system, such as the youth criminal justice system.

Jordan established the current framework for assessing whether a delay is unreasonable by setting numerical ceilings beyond which delay is **presumptively** unreasonable:

- » 18 months for cases going to trial in provincial court.
- » 30 months for cases going to trial in superior court with or without a preliminary inquiry.⁸

These *Jordan* mandated timelines apply to all offences regardless of the seriousness of the charge.⁹ Delays that are caused by the defence or are accepted by the defence do not count toward the numerical limit. Delays caused by the Crown or the Court count toward the numerical limit. The defence can ask the Court to stay the charges if the limit is reached or if there is no reasonable prospect that the prosecution can be completed.¹⁰ The Crown can defeat this motion by showing that there were exceptional circumstances leading to the delay.¹¹

The *Jordan* decision was a landmark moment for the Canadian justice system because the *Jordan* framework created clear numerical values that everyone in the CJS, regardless of jurisdiction, would have to follow. It gave certainty to prosecutors, defence, court personnel, the victim, witnesses, the public and accused about the probable length of a prosecution. The decision also gave victims and witnesses some certainty about a range of time during which they would be interacting with the CJS.

What's a stay?

"Charges are "stayed" when a judge or a Crown decides that it would be bad for the justice system for the case to continue. This means the issue of guilt or innocence is never determined.

Stays can be granted when the state has acted unfairly, including a failure to bring the case to trial in a timely manner. A judicial stay brings the case to an end.

A different type of "stay" is done by the Crown. A Crown stay puts the case on hold. The Crown can bring the charges back before the court within 1 year of the date the charges were stayed. After a year has passed, the Crown cannot bring the stayed charges back before the court."

Definition of "stay", [Steps to Justice](#), Community Legal Education Ontario. Accessed August 1, 2025.

Most sexual assault prosecutions are conducted by provincial prosecutors, in provincial courtrooms supported by provincial employees. However, the federal government is responsible for developing the criminal law. There is a clear role for the federal government to solve the '*Jordan* problem'.

What we heard

There is widespread concern in Canada about the increasing number of cases involving intimate partner violence and sexual violence that are being stayed due to the *Jordan* framework and the **disproportionate impact this has for women's safety**. This was a significant theme in our interviews, consultation tables, surveys, written submissions, caselaw review, and media analysis.

Stays related to *Jordan* are not evenly distributed across Canada and some regions of the country rarely see stays. The *Jordan* framework has been positive for some jurisdictions where most criminal prosecutions are not delayed beyond the *Jordan* timelines. Other jurisdictions continue to see significant numbers of stays. Alberta is the only jurisdiction that proactively discloses the number of stays due to *Jordan* applications.¹²

In 2017, only one year after *R v. Jordan*, the Standing Senate Committee on Legal and Constitutional Affairs Committee (LCJC) wrote:

“Recent court decisions that have entered stays of proceedings in cases involving murder charges (see *R v. Picard*, 2016 ONSC 7061 and *R c. Thanabalasingham*, 2017 QCCS 1271) and child sexual assault charges (see *R v. Williamson*, 2016 SCC 28) shock the conscience of the community and bring the administration of justice into disrepute in Canada.”¹³

More sexual offences are being stayed

Things have gotten worse since the LCJC Senate Committee released their report. More cases of sexual violence and other cases of violent crime are being stayed, and media stories on court stays in egregious violent cases are becoming more frequent.

In a 2024 opinion piece in the *Globe and Mail*, Robyn Urback comments on two cases of long-term sexual violence against children that were stayed and echoes the sentiment of the Senate Committee. She says that in each case, “A rather arbitrary number meant that justice for the victim was forfeited for the rights of the accused...”

Canadians cannot, and will not, maintain faith in a justice system that so patently denies justice to victims of crime.”¹⁴

Many tests in the *Criminal Code* and criminal cases include this phrase “is this action or decision in the proper administration of justice.”¹

The CVBR indicates that **consideration of the rights of victims of crime is in the interest of the proper administration of justice.**²

¹ *Criminal Code*, section 276(2)(d), 278.92(2)(b); *Criminal Code*, section 486(1), 486.1(1), 486.5(1); *Criminal Code*, section 537(1)(h); *Criminal Code*, section 715.1 and 715.2

² *Canadian Victims Bill of Rights*, preamble.

The numbers of stays are increasing

An investigative report by CBC in 2025 found **more than 268 criminal cases involving sexual violence across Canada were stayed** since 2016 because of *R v. Jordan*.¹⁵ Journalists Ireton and Oulette submitted access to information requests to all 13 provinces and territories and discovered a patchwork of reporting frameworks with no cohesive federal data on *Jordan* applications in court. Advocates working with survivors of sexual violence suspect issues with tracking hide the magnitude of the issue.

» Angela Marie MacDougall, Executive Director of Vancouver’s Battered Women’s Support Services (BWSS), said the number seemed low.¹⁶ Her organization has been tracking media reports and researching the impact of the *Jordan* framework on survivors of gender-based violence (GBV) since 2018.¹⁷ On January 18, 2022, the BWSS wrote an open letter to former federal Justice Minister David Lametti about the harmful impacts of the *Jordan* framework following a review of **140 cases** of *Jordan* applications in cases of GBV from 2016 to 2020.¹⁸

A 2024 CBC article reported that most criminal cases in Ontario (56% in 2022–23) now end with charges being withdrawn, stayed, dismissed, or discharged before proceeding to trial.¹⁹

They found that **580 criminal cases in Ontario were stayed** for unreasonable delay under the *Jordan* framework from 2016 to the end of 2023, including **145 cases of sexual assault**, with **59 sexual assault cases** stayed because of delay in 2023 alone.

Our analysis of publicly available data from the ***Integrated Criminal Court Survey*** (ICCS) suggests that **these numbers** underestimate the magnitude of the problem because:

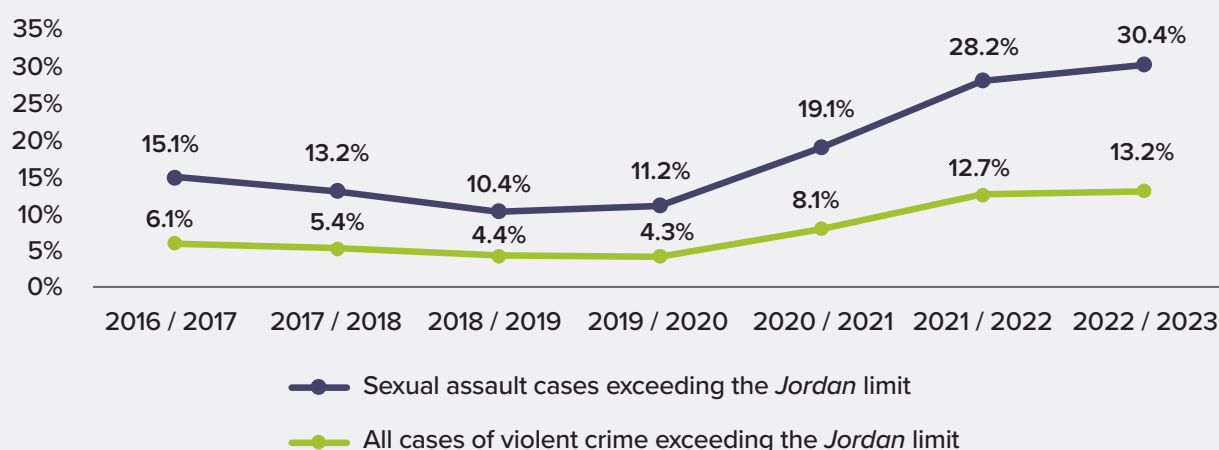
- » many cases that are stayed or withdrawn close to or after exceeding the *Jordan* limit never proceed to a *Jordan* application hearing and would not appear in provincial or territorial databases that track *Jordan*-related stays.
- » the **ICCS** compiles administrative court data from all provinces and territories in Canada, **except** for Superior Court data from Ontario, Manitoba, and Saskatchewan.²⁰

Other media reporting in Ontario has highlighted significant increases in the use of stays, suggesting that data in the ICCS **may underestimate the impact** on sexual assault cases.

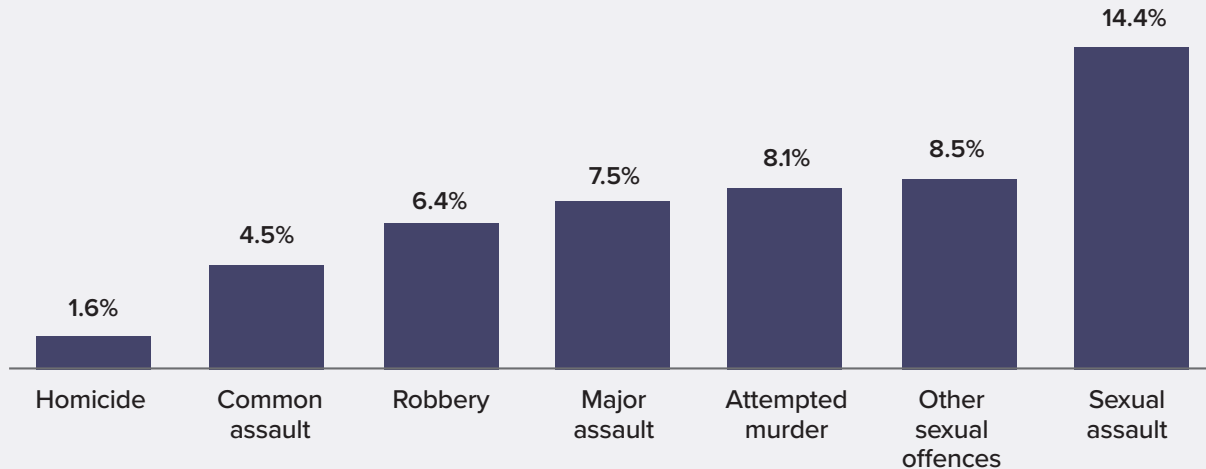
From 2016–17 to 2022–23, the percentage of sexual assault cases that exceeded the *Jordan* limit across Canada **rose from 15.1% to 30.4%**.²¹ This was significantly higher than the average for cases of violent crime.²²

In 2022–23, nearly 1 in 3 sexual assault cases in adult courts (30.4%) exceeded the *Jordan* limit. Among these cases, 47.3% were stayed or withdrawn due to the limit.²³ Given that sexual assault cases in adult court were already the most likely to be past the *Jordan* limit, this means that 14.4% of all sexual assault cases in adult courts were stayed or withdrawn, representing 1 in 7 cases of sexual assault in adult courts in Canada, or roughly 500 cases.²⁴ In 2022–23, **sexual assault offences in adult courts were the most likely to be stayed or withdrawn** after exceeding the *Jordan* limit.

In 2022/2023, sexual assault cases were 2.3 times more likely to exceed the *Jordan* limit than other violent crime



**Integrated Criminal Court Survey – In 2022/2023,
1 in 7 of all sexual assault cases (14.4%) passed the *Jordan* limit
and were stayed or withdrawn**



Why are stays increasing?

Through our consultations, we heard about multiple sources of delay:

- » Delayed analysis of SAEK²⁵
- » Increased numbers of elections for jury trials in some regions²⁶
- » Limited judges available and the ongoing need for judicial appointments²⁷
- » Lack of courthouse space and staff²⁸
- » Inefficient administration in scheduling hearings²⁹
- » Accused changing lawyers³⁰
- » Changes to judges or Crowns³¹
- » The use of pre-trial motions as a tactic to cause delay³²
- » Contested motions on formerly uncontested issues, such as testimonial aids³³
- » Pre-trial and mid-trial applications under ss. 276, 278.92 and 278.1 of the *Criminal Code*³⁴
- » Human trafficking being excluded from s. 276, requiring additional arguments and Court time during motions³⁵
- » Larger volume of electronic records, text messages, and video footage³⁶
- » Limited resources available for Crowns to argue section 11(b) motions³⁷
- » Strategic use of mid-trial motions for private records³⁸
- » Lengthy cross-examinations³⁹
- » Survivors requiring medical attention for their injuries⁴⁰

Stakeholders also acknowledged the role the COVID-19 pandemic played in creating delays and increasing the risk of serious cases not being heard or resulting in a stay after consideration of evidence.⁴¹ On the other hand, one stakeholder said that continued emphasis on COVID-19 is misplaced and that Crown's offices have already resolved cases that were part of the backlog.⁴²

Other countries are also struggling with the need for timely prosecutions.

A 2025 report from the Victims' Commissioner for England and Wales warns that Crown-court delay is **"actively harming victims,"** with almost **48%** of listed trials adjourned at least once and some postponed five times or more.⁴³



UK comparative insight

In 2022, England and Wales amended their criminal law to allow pre-recorded testimony in all adult rape and serious sexual assault cases to ease survivor participation.⁴⁴

A 2024 study reported that pre-recorded testimony cases resulted in lower conviction rates, a lower likelihood of guilty pleas, and longer delays for trials.⁴⁵ Conviction rates dropped to 41% for cases with pre-recorded evidence vs 69% for cases with live evidence.

Commentators attributed the change to courts prioritizing trials with live witnesses waiting to be cross-examined. The lack of courtrooms and prosecutors were also reasons for increased delays.

Promising Practice: New Zealand's Timely Access Protocol

In June 2024, the Chief District Court Judge of New Zealand issued a **Timely Access to Justice Protocol**. This Protocol sets a public standard that **90% of criminal cases must be resolved inside category-based time limits**, with performance reported quarterly.⁴⁶

The **Protocol** has three categories of cases based on the complexity and seriousness of the case, with corresponding time limits. The time limits range from 6 months for the least complex to 15 months for the most complex. The Protocol recognizes that, even within these timeframes, some cases will take longer. The Protocol also gives the system until 2027 to reach this target.

Timely Access to Justice Protocol released

Published 17 June 2024
By Te Whare



"The standard is aspirational and an important next step in our efforts to enhance timely justice."

Chief District Court Judge of New Zealand

R v. Jordan is reshaping decision-making across the criminal justice system

It became clear in our investigation that *R v. Jordan* affects decisions across the CJS and that stays are only one component. Efforts to avoid judicial stays have sparked innovation and investment in strategies to improve efficiency but have also led to unintended consequences that cause further delays or increase risks to public safety.

Pre-charge delay. Laying or approving charges is occasionally delayed to avoid starting the “Jordan clock.” We heard that, in some instances, there is enough evidence to make an arrest, but police or

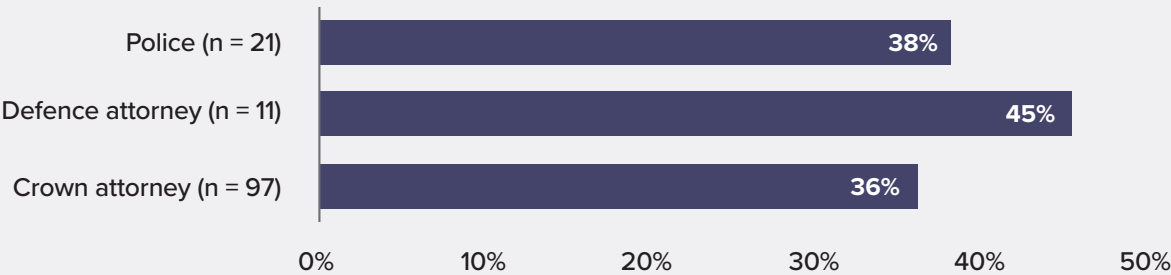
Crown want to have the whole case lined up to streamline prosecution and avoid delays.

Safety concerns. A senior prosecutor and a senior police leader mentioned that this fails to protect survivors, leaving them in situations that can compromise their safety and increase the risk of further violence or femicide.⁴⁷

Nearly 2 out of 5 stakeholders in legal professions had observed pre-charge delay, including

- » 38% of police,
- » 45% of defence attorneys, and
- » 36% of Crown attorneys.

Police, Defence, and Crown observed instances where charges were delayed to avoid starting the R v. Jordan “clock” (n = 129)



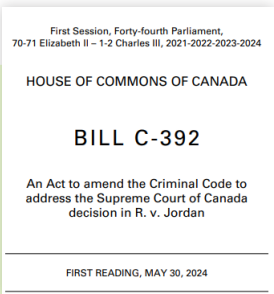
Entering a plea. Stakeholders informed us that *R v. Jordan* has caused more accused to delay submitting a plea or accepting a plea deal while they wait on the “Jordan clock.” They said that there has been an increase in the number of cases in which court preparations with a victim are completed and the hearing is cancelled at the last minute.⁴⁸

- » **Impact on services.** They indicated this is a significant expense for victim services and places additional stress on victims.⁴⁹

Pre-trial motions. We heard that *R v. Jordan* has incentivized the use of allowable motions by defence, particularly in cases of sexual violence.

One proposal to moderate the Jordan framework

In 2024, Bill C-392 proposed codifying the *Jordan* framework and using the notwithstanding clause of the *Canadian Charter of Rights and Freedoms* to exempt primary designated offences (such as sexual assault) from the *Jordan* framework. This Private Member’s Bill was not debated in the House of Commons.



- » **Strategic delays.** Stakeholders described how multiple pre-trial motions are used to prolong proceedings and wear down complainants.⁵⁰
- » **Misuse of *Jordan*.** A Crown said that defence counsel use *Jordan* as a “sword” rather than the “shield” it was intended to be to protect the *Charter* rights of the accused.⁵¹
- » **Manipulation of protections available to survivors.** Defence counsel are incentivized to apply for third-party records, bring applications to adduce sexual history evidence of the complainant, raise objections to the use of testimonial aids, bring applications to adduce records relating to the complainant, and conduct lengthy cross-examinations. There can be legitimate reasons for defence to take those actions, so it becomes difficult to discern when the practices may be exploitive.

Victim participation. We heard concerns that efforts to rapidly clear post-COVID case backlogs have negatively impacted victim participation and rights.

- » **Limited input.** Plea resolutions frequently occur around the time of bail hearings, providing minimal or no opportunity for victims to submit a victim impact statement.
- » **Resource strain.** Rural victim services are particularly strained, lacking sufficient resources to adequately support survivors when cases are rushed.
- » **Survivors with complex needs may be rushed to testify unprepared.** A court support worker shared a case where a survivor, who had suffered a traumatic brain injury, was rushed into Court proceedings with no prior contact from the Crown.

Plea deals. We heard that there is no incentive for the accused to accept a plea deal early in the process because of the possibility of charges being stayed under *Jordan*.

- » **Trade-offs.** Crown attorneys may accept less favourable plea deals to avoid stays.⁵²

- » **Resource pressures.** We heard that stays in the Yukon were rare until funding reduced the available number of prosecutors, leading to rapid plea bargaining to avoid stays.⁵³

Discontinuations. When time is running out and a hearing is adjourned, the Crown may decide that the reasonable prospect of conviction has evaporated and may stay or withdraw the charges.

- » **Strategic withdrawals.** Two stakeholders believed that the Crown was strategically withdrawing charges out of fear of potentially breaching *Jordan* timelines.⁵⁴ A former Crown noted for us that these withdrawals – perhaps due to lack of court resources – are their responsibility as Crowns.

Jury Trials. We heard that accused persons increasingly elect jury trials,⁵⁵ especially in those sexual assault cases which are also eligible for preliminary inquiries. Defence counsel recognize the complexity that jury trials create for meeting the *Jordan* timelines. They also recognize that judges have training on sexual assault.

- » **Strategic election.** Defence counsel prefer jury trials because they take longer to administer and jurors are more vulnerable to myths and stereotypes about sexual assault.⁵⁶
- » **Trial outcomes.** Some counsel believe that convictions are harder to obtain in jury trials, and jury trials are more likely than judge-alone trials to result in mistrials.⁵⁷
- » **Reform suggestion.** The *Charter* grants the right to select a jury trial for offences with a maximum punishment of 5 years in prison or longer, but most sentences for sexual offences do not exceed 5 years. For example, the maximum sentences for sexual offences range from 10 years to life imprisonment; however, the median time in custody for sexual assault (level 1, 2, and 3) from 2015-2019 was less than 2 years.

Sexual offence	Maximum Sentence	Median custody sentence (2015-2019) ⁵⁸
(Level 1) Sexual assault	10 years (if victim is 16 or older) 14 years (if victim is under 16)	Adult victim (18+): 180 days Youth victim (12 to 17): 270 days Child victim (0-11): 365 days
(Level 2) Sexual assault with a weapon or causing bodily harm	14 years	407 days (less than 1.5 yrs)
(Level 3) Aggravated sexual assault	Life imprisonment	678 days (less than 2 years)

- » Some Crown counsel suggested lowering maximum sentences to remove the right to a jury trial and improve efficiency, or to develop a *Charter* compliant process to proceed with judge-alone trials where Crown and defence formally agree not to seek a sentence of 5 years or longer.⁵⁹

Rushing highly consequential decisions.

Stakeholders expressed concerns that serious sexual assault cases are increasingly rushed through the judicial process, impacting case quality and outcomes.⁶⁰

- » **Resource strain.** Judges lack sufficient time to consider pre-trial applications when they are scheduled to be heard immediately prior to trial
- » **Courtroom availability.** Limited availability of courtrooms affects the speed at which cases can be heard and decided. This is particularly acute for courtrooms with CCTV or other witness accommodations
- » **Complex cases.** Cases are becoming longer and more complex, with little time to prepare with survivors, yet resources for experienced counsel and proper mentorship are diminishing

We heard from a Crown:

“[Sexual assault] proceedings are the most drawn out of prosecutions. Application dates add significant time to estimates and those dates need to be spread out to give a judge meaningful time to consider the applications. Because the charges are serious, the accused is given significant time to retain counsel, and that delay is not deducted from the 18-month ceiling. The trials are getting longer and the cross-examinations are rarely curtailed. Trials are being stacked and Crowns with little experience are being given these cases with little mentorship or time to understand this area of law, meet with the survivor, and really prepare the case. **The cases are complex and resources continue to dwindle.”**⁶¹

Stays are resulting in inefficient use of resources from governments, community groups and survivors

When cases are stayed after significant investments of time, money, and emotional energy, the result is a complete loss of value for many people. Survivors are left without resolution. There has been no adjudication of the allegations. Community supports are wasted or undercut. Public systems absorb costs without achieving any outcomes. ***R v. Jordan* has made this waste more frequent, visible, and costly.**

Public and community resources lost

A single case that is stayed under the *Jordan* framework negatively affects government and community investments, including the costs of:

- » Police investigations and forensic analysis of a sexual assault evidence kit
- » Legal aid for the accused
- » Independent legal advice sought by the complainant
- » Legal representation for the complainant for sexual history and private records applications
- » Crown prosecutors and staff time on case review and preparation
- » Judges, court staff, and administrative time
- » Physical courtroom infrastructure
- » Victim Witness Assistance services
- » Testimonial aids (e.g., therapy dog handlers)
- » Services from Child and Youth Advocacy Centres and sexual assault centres

These resources are funded by government budgets, grants, and donations to community organizations. When cases are stayed due to delays, it is a significant waste of resources that could be better invested to improve access to justice. **The growing number of stays under *R v. Jordan* is wasted dollars** – from public and private sources.⁶²

Survivors' personal costs

Survivors are financially affected by the justice process. These are not planned or voluntary

expenses, **no one budgets to be a victim of crime.** Survivors absorb the costs of participation, often in moments of crisis. When charges are stayed, this spending is wasted.

Time and emotional labour:

- » Time off work, using paid vacation days or unpaid leave.
- » Countless hours researching the legal system without access to legal services.
- » Cancelled plans and other personal disruptions.
- » Therapy or counselling costs for the trauma and stress of being in a courtroom
- » Childcare or pet care expenses.
- » Courtroom attendance costs, such as parking, lunches, transit.

Out-of-pocket expenses:

- » Transportation and accommodations (particularly in rural or remote communities).
- » Medical costs that aren't covered, including dentistry, chiropractic care, psychotherapy, and physiotherapy.

Over the past year, many survivors have emphasized the significant toll this has taken on them and their children.⁶³

National economic impact

In 2014, the Department of Justice estimated that crime in Canada cost survivors **\$13.99 billion** in direct, tangible losses, including the kinds of expenses described above.⁶⁴ Adjusted for inflation in 2024, this could be as high as **\$20.85 billion**,⁶⁵ without accounting for increases in crime rates, population increases, and the crime severity index from 2014 to 2024.⁶⁶

The Supreme Court of Canada's guidance on criminal trial delays

Jordan built on several seminal SCC cases on delay: *R v. Morin* (1992), *R v. Askov* (1990) and others. These cases lamented the problem of delays in the CJS and created various **qualitative tests** for determining unreasonable delay.

- » In *Jordan*, the SCC concluded that the *Morin* framework was unduly complex and led to micro-counting and endless post-event rationalizations. The *Jordan* framework, in turn, has been criticized as “failing everyone.”⁶⁷
- » Across *Jordan*, *Morin* and *Askov*, the SCC consistently highlighted the **societal interest in reducing delays** in the CJS.

*“Victims, too, have a special interest in having criminal trials take place within a reasonable time, and all members of the community are entitled to see that the justice system works fairly, efficiently and with reasonable dispatch. The failure of the justice system to do so inevitably leads to community frustration with the judicial system and eventually to a feeling of contempt for court procedures.”*⁶⁸

Later Supreme Court decisions applying the *Jordan* framework in cases of violent crime and young offenders have drawn on similar logic.

In *R v. J.F.*, the Court echoed that timely trials

- » “encourage better participation by victims and witness.”
- » “minimize worry and frustration.”
- » “allow them to move on with their lives more quickly.”
- » “help to maintain public confidence in the administration of justice”⁶⁹

The SCC observed that “Prolonged delay also causes prejudice to victims, witnesses and the justice system as a whole.” In *R v. Thanabalasingham*, a case involving femicide of an intimate partner, the Court upheld a stay of proceedings following a lengthy delay and identified that the s.11(b) *Charter* right **benefits accused persons, victims, and society alike**.⁷⁰

Victims of crime have *Charter* rights

Victim concerns in criminal justice proceedings are sometimes dismissed because accused persons have specific rights under the *Canadian Charter of Rights and Freedoms*. This perspective diminishes Parliament’s direction to recognize that victims of crime also have *Charter* rights. Consider these examples:

Bill C-46 An Act to Amend the *Criminal Code* (production of records in sexual offence proceedings)

WHEREAS the Parliament of Canada recognizes that violence has a particularly disadvantageous impact on the equal participation of women and children in society and on the rights of women and children to **security of the person, privacy and equal benefit of the law** as guaranteed by **sections 7, 8, 15 and 28** of the *Canadian Charter of Rights and Freedoms*

WHEREAS the **Parliament of Canada intends to promote and help to ensure the full protection** of the rights guaranteed by the *Canadian Charter of Rights and Freedoms* for all, including those who are **accused of, and** those who are or may be **victims** of, sexual violence or abuse

WHEREAS the rights guaranteed by the *Canadian Charter of Rights and Freedoms* are **guaranteed equally to all** and, in the event of a conflict, those rights are to be accommodated and **reconciled to the greatest extent possible**

Canadian Victims Bill of Rights (CVBR)

WHEREAS **victims of crime have rights** that are guaranteed by the *Canadian Charter of Rights and Freedoms*

WHEREAS **consideration of the rights of victims of crime is in the interest of the proper administration of justice**

The Supreme Court has repeatedly recognized the *Charter* rights of victims of crime:

- » *R v. Seaboyer* [1991] 2 SCR 577
- » *R v. O'Connor*, 1995 CanLII 51 (SCC)
- » *R v. J.Z.S.*, 2008 BCCA 401, appeal dismissed 2010 SCC 1
- » *R v. Levogiannis*, 1993 CanLII 47 (SCC)
- » *R v. Osolin*, [1993] 4 SCR 595
- » *R v. Wyatt* 1997 CanLII 12488 (BCCA)
- » *R v. L. (D.O.)*, 1993 CanLII 46 (SCC)
- » *R v. N.S.*, 2012 SCC 72 (CanLII)
- » *(L.L.) v. B. (A.)*, 1995 CanLII 52 (SCC)
- » *R v. Mills* 1999 CanLII 637 (SCC)
- » *R v. Brown*, 2022 SCC 18

An accused person's right to make full answer and defence in our system, while broad, is not absolute. "Section 7 of the *Charter* entitles an accused to a fair hearing but not always to the most favourable procedures that could possibly be imagined."⁷¹

Given that sexual assault is a violation of a victim's human rights, their rights should not be given less consideration than the accused's 11(b) fair trial rights. In our view, the victim's *Charter* rights can be engaged:

- » when the procedures around reporting of sexual assault question victims about their sexual history (equality rights)
- » when requests for private records affect women (who are more often victims of sexual assault) more than men (equality rights)
- » when requests for private records have a disproportionate impact on 2SLGBTQIA+ people
- » when requests for private records have a disproportionate impact on vulnerable people and Indigenous people who are more likely to have institutional records

- » when the accused uses the criminal law to access therapeutic records of a survivor (unreasonable search and seizure)⁷²
- » when the effects of the private records regime increase risks to a survivor's health (life and security of person rights)
- » when the defence seeks to adduce evidence about the complainant's sexual history or to adduce private records relating to the complainant

Where an individual's security or equality interests are at risk, they have a right to meaningful participation.⁷³

In *R v. Jordan*, the SCC made only **11 references** to complainants or victims of crime in a decision of 87 pages. The analysis focuses on how timely trials can minimize disruption and suffering that prevent victims from moving forward with their lives. However, *R v. Jordan* does not include an analysis of the relevant *Charter* rights of victims of crime or provide any balancing of the accused's right to a fair trial with the rights of victims.

"Be honest with victims about the state of the criminal justice system. How many cases get stayed due to delays? And how often are charges dropped by the Crown? And how many cases actually result in conviction? If the criminal justice system does not get a lot more funding so that cases aren't routinely thrown out, you shouldn't put survivors through the trauma of reporting."¹

¹ Survivor Survey; Response #275.

Survivors of sexual assault have had their bodily integrity violated in the assault. Yet their voice is often silenced and their body turned into an object of evidence.

- » From a victim's perspective, it is a stunning realization that the violation of a survivor's physical autonomy (human right to security of the person) is a fact to be proven, discussed and labelled, while the accused's rights (right to a fair trial among others) are repeatedly affirmed by numerous criminal justice professionals and procedures.
- » Survivors often describe the criminal justice process as "dehumanizing them into exhibits of evidence, analysing their culpability for the violence done onto them".⁷⁴

The *Jordan* framework, combined with complex evidentiary motions, systematically forces survivors to choose between access to their rights to life and security of the person versus the case being dropped.

*"These (sexual assault) trials are often much more complicated than the average trial, which means they can take longer to get through the system and are therefore more at risk of being stayed. Where a complainant has to choose between exercising their statutory right to retain counsel and challenge the admissibility of records pursuant to the regime set out in the Code and risk the charges being stayed based on the concomitant delay, or surrendering those privacy rights to ensure the case gets to a verdict, justice is impaired."*⁷⁵

Many survivors are angry that **reporting exposes them to the harms of the CJS without warning them about the possibility of a serious case being dismissed** after they are interviewed, have their records subpoenaed, testified in a public forum, and been cross-examined about intimate parts of their life.

- » One survivor was specifically advised by a Crown that a stay would never happen in the prosecution of their assault because of the violent aggravated nature of the offence and the strength of the evidence, but the matter was stayed the following year after a section 11(b) motion.⁷⁶

*"I was told it's best to move on with your life. This is not ok."*⁷⁷

We urge the federal government, in responding to the *Jordan* decision, to ensure that victims' *Charter* rights are considered. This includes in any analysis done under section 1.

- » The evidence provided to us indicates that there is **no proportionality** between the objectives of the *Jordan* framework and its effect on survivors of crime.
- » We also believe that a stay that results from the *Jordan* framework is **not a minimal impairment** of the survivors' *Charter* rights. Survivors are not currently considered in the *Jordan* framework, at all.
- » The SCC has noted that "a stay has been recognized as the most extreme remedy available for a *Charter* breach, and one that is to be reserved for exceptional cases."⁷⁸ **The routine ordering of stays for the most serious sexual violence offences is neither proportional nor minimal.**

Case Study: Mother Jailed, Charges Against Abuser Stayed⁷⁹

The survivor and her sister were sexually abused by her stepfather for many years as children. Once the police were involved, the stepfather was charged with sexual interference, and her mother was charged with sexual interference by complicity since she knew about the abuse.⁸⁰

Her mother pled guilty to the charges and served 3.5 years in prison. Her stepfather pled not guilty, and **despite admitting to sexual assault in Court, his charges were stayed** because of delays that extended the case for nearly seven years.

The trial judge, in granting the stay, noted that the stepfather had been the cause of some of the delays as he was “talkative to a degree never seen by the Court” and made little effort to have the case completed.

The survivor sued the Attorney General and Director of Criminal and Penal Prosecutions (DPCP) in Quebec for \$450,000 for the psychological harms to her in the stay of the prosecution.⁸¹ Justice Prémont ruled that the prosecutors had made errors but still benefited from immunity. She reminded the victim that prosecutors represent society, and not the victim, and that a victim’s role is limited to being a witness in a criminal trial. The Judge estimated that if the prosecutors did not have immunity, the DPCP would have to pay \$25,000 in damages.

Costs were ordered against the survivor.⁸²

Litigating the right to life, liberty, and security of the person

EXAMPLE 1: **Fourteen survivors of sexual violence and intimate partner violence have filed a lawsuit against the Government of Canada** claiming that *R v. Jordan* violates their s. 7 *Charter* rights to life, liberty, and security of the person and that the *Canadian Victims Bill of Rights* fails to provide effective remedies.⁸³ At the time of this report, this case has not been adjudicated.

Each survivor’s case includes evidence that threats to their lives, the lives of their children, or other safety concerns were **exacerbated** when the criminal charges were stayed under 11(b):

- » The survivors state that the impunity of a stay **emboldened their abusers** and the justice system’s failure to provide protection continues to place them at risk.
- » The lawsuit provides specific examples of **stalking, violence, and child abduction after charges were stayed**.
- » Some of the plaintiffs are still in danger, and one mother’s child is still missing.

EXAMPLE 2: The OFOVC has received several **formal complaints from survivors** whose cases have been stayed. We have also noted ongoing safety threats from serious violent crime where the perpetrator would generally be incarcerated. In one instance, we were required to report a child in need of protection.

EXAMPLE 3: In **two Québec cases**,⁸⁴ the victim's lawyers have argued that the *Charter* interests of survivors of crime were violated in the Crown's decision to stay charges or lack of diligent case management. Both cases have failed.

Stays of sexual assault charges delegitimize the criminal justice system

We heard repeatedly that stays granted under *R v. Jordan* undermine public confidence in the justice system. The Standing Senate Committee on LCJC said the stay in *R v. Thanabalasingham* – and similar decisions involving homicides and sexual assault against children – “**shock the conscience of the community and bring the administration of justice into disrepute in Canada.**”⁸⁵

- » Stakeholders emphasized to us that terminating sexual assault prosecutions for reasons unrelated to the assault, especially after a survivor has testified, undermines the legitimacy of the legal process and **signals that procedural timelines are prioritized over substantive justice.**⁸⁶
- » Survivors who endure months or years of delays, undergo cross-examination, and navigate retraumatizing proceedings are often devastated to learn that charges have been stayed due to delay. A victim service worker described a sexual assault case where a young survivor who had already testified was informed of a stay weeks before a new trial date. The worker told us that the “sobs and anger were intense” when the decision about the stay was shared.⁸⁷

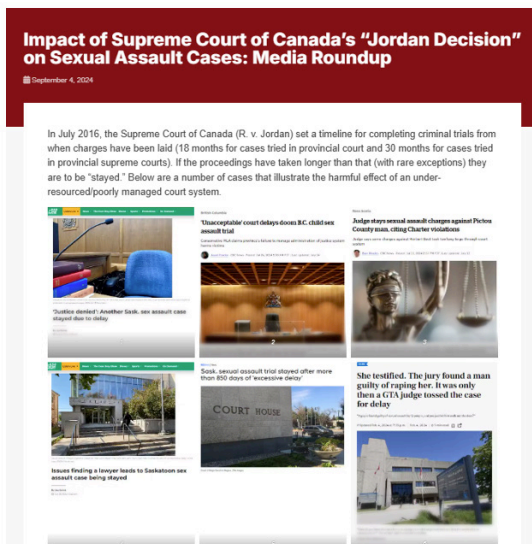
We heard that the *Jordan* framework is viewed as arbitrary and draconian, particularly in sexual assault and homicide cases.⁸⁸ One stakeholder noted:

*“These survivors are retraumatized during the trial and then ultimately feel like it was for no reason because a judgment on the matter can’t even be made. It’s abhorrent that cases can be ‘thrown out’ due to time delay that simply cannot be resolved because of the sheer volume of files and difficulty coordinating schedules and available court time.”*⁸⁹

The message to survivors is clear: procedural delays can override their access to justice, no matter the harm they have endured or the strength of the evidence. For many, it confirms the broader perception that **sexual assault is being decriminalized in Canada**, not by statute, but by attrition and delay.

Growing liability and public confidence

The number of victims whose experiences of violent crime have been dismissed by the courts is rising. This increases the **longer-term possibility of a class action lawsuit**, particularly where survivors have participated in the justice process and incurred costs, been hospitalized for mental health, or lost their employment, housing, savings, or education.⁹⁰



There is growing organization at the community and international level to challenge *R v. Jordan*.

It is inevitable that the growing disrepute will extend internationally, undermining Canada's commitments to gender equality and the rule of law. The Supreme Court observed in *R v. Jordan*:

*“Extended delays undermine public confidence in the system. And public confidence is essential to the survival of the system itself, as ‘a fair and balanced criminal justice system simply cannot exist without the support of the community’.”*⁹¹

At the community level, Vancouver Rape Relief's 2024 CEDAW submission calls *Jordan*-related stays **“a violation of Canada's duty to ensure access to justice for women”** and asks the UN committee to press Canada to prioritize sexual assault trials.⁹²

Public confidence is eroding quickly as cases are profiled repeatedly in the media and shared by advocates.⁹³

R v. Jordan violates the good faith and confidence survivors place in the criminal justice system to protect them and others. It exposes survivors to significant risks to their mental health, resources, and relationships through participation in the criminal justice system, then undercuts the process once survivors have already paid the costs of participation.

TAKEAWAY

Survivors deserve timely justice too.

Justice delayed is often justice denied.

Endnotes

- 1 SISSA Survivor Interview #39
- 2 *R v. Jordan* (2016) SCC 27 (CanLII).
- 3 Ireton, J., & Ouellette, V. (February 3, 2025). Hundreds of stayed sexual assault cases send chilling message to victims, advocates warn. CBC News.
- 4 Statistics Canada. (2024). *Table 35-10-0173-01 Key indicator results and absolute change for annual data, adult criminal court and youth court*. For specific filters on sexual assault, see Sexual Assault Specific Filters. The statistics cover criminal proceedings against the accused that were stopped by the court after exceeding *Jordan* limits including stays under a *Jordan* application or without an application, charges being withdrawn, dismissed, or discharged at preliminary inquiry, or referred to alternative and extrajudicial measures including restorative justice.
- 5 Statistics Canada. (2024). *Table 35-10-0173-01 Key indicator results and absolute change for annual data, adult criminal court and youth court*. For specific filters on sexual assault, see Sexual Assault Specific Filters
- 6 SISSA Stakeholder Survey results, question 16: 36.16% of stakeholders believe that the number of stays in sexual assault cases has increased over the past 5 years.
- 7 *2016 SCC 27* (CanLII)
- 8 *R v. Jordan*, 2016 SCC 27 (CanLII), [2016] 1 SCR 631, at para 49.
- 9 Complexity of a case can be used to show that exceptional circumstances lead to a delay. Complexity refers to complex legal issues, extensive police investigation, complex preparations, multiple co-accused, etc. The Crown has the burden to show that it took reasonable steps to avoid and address problems relative to complexity.
- 10 This is not an exhaustive list of the reasons that a defence can seek a stay under 11(b).
- 11 This is not an exhaustive list of the reasons that a Crown can defeat a 11b motion.
- 12 Everson, K. (2024, June 1). Long delays and collapsed cases are eroding faith in the justice system, lawyers warn. CBC.
- 13 Runicman, B., The Honourable & Baker, G., The Honourable. (2017) *Delaying Justice is Denying Justice: An Urgent Need to Address Lengthy Court Delays in Canada (Final Report)*. Standing Senate Committee on Legal and Constitutional Affairs. [Emphasis added]
- 14 Urback, R. (2024, November 14). *Opinion: What kind of functional country lets alleged criminals, by the hundreds, walk free? Canada, apparently*. The Globe and Mail.
- 15 Irreton, J., & Ouellet, V. (2025, February 3). Hundreds of stayed sexual assault cases send chilling message to victims, advocates warn. CBC news.
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- 24 The statistics cover criminal proceedings against the accused that were stopped by the court after exceeding *Jordan* limits including stays under a *Jordan* application or without an application, charges being withdrawn, dismissed, or discharged at preliminary inquiry, or referred to alternative and extrajudicial measures including restorative justice.
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- 26 SISSA Stakeholder Survey, Response #306

27 SISSA Consultation Table #30: Legal and Independent Legal Advice; SISSA Stakeholder Survey, Response #346

28 SISSA Consultation Table #30: Legal and Independent Legal Advice; SISSA Stakeholder Survey, Response #346

29 SISSA Stakeholder Survey, Response #61

30 SISSA Survivor Interview #38; SISSA Consultation Table #7: Human Trafficking Crown

31 SISSA Consultation Table #7: Human Trafficking Crown

32 SISSA Stakeholder Survey, Response #62

33 SISSA Consultation Table #16: Crown Consult; SISSA Survivor Survey, Response #293

34 SISSA Survivor Survey, Response #611; SISSA Stakeholder Survey, Response #23, #50, #61, #131

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36 SISSA Stakeholder Interview #17

37 SISSA Consultation Table #16: Crown Consult

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Access to Therapeutic Records

ISSUE

Survivors are having to choose between essential mental health care and engaging with the criminal justice system.

IN NUMBERS

In our survey of 1,000 survivors of sexual violence, we found that (n = 973):



13% chose not to report to the police because they wanted counselling



12% of survivors were advised not to speak with a therapist because their private records could be subpoenaed



20% wanted to speak with a counsellor but felt like they couldn't because their private records could be subpoenaed



29% of survivors whose cases proceeded to court in 2020 or later **said the defence wanted access to their counselling records** or other private records (n = 64)

In a case law review of 294 sentencing decisions in 2024:



13% of sentencing decisions for sexual offences in 2024 included judicial mention of the **survivor having thoughts of suicide or making attempts to die by suicide**²

*"It was the worst part about the entire awful thing... I disclosed other sexual abuse including incest that I never wanted anyone to know about. I was suicidal and severely depressed and desperately wished I had either never done counselling or never reported. In the future I will advise other sexual assault victims to pick one or the other, never both."*¹

SISSA Survivor Interview #461

BOTTOM LINE

Allowing defence access to survivors' therapeutic records deters survivors from life-saving care, while adding delay and costs to the justice system and increases the risk of charges being stayed.

KEY IDEAS

Therapeutic records are **different from other records**

The threat of disclosure of a survivor's therapeutic records³ is a **risk to the health and safety of survivors**

Records **applications have a chilling effect** on access to therapy

Records applications have a **chilling effect on reporting to police**

Some parts of the **records regimes worsen Jordan-related delays**

Allowing defence access to therapeutic records can **violate survivors' Charter rights**

RECOMMENDATIONS

3.1 Invest in independent legal advice (ILA) and independent legal representation (ILR) The federal government should immediately invest in independent legal advice (ILA) and independent legal representation (ILR) programs for any proceeding where a survivor's CVBR or *Charter* rights are engaged. This includes for sexual history, record production and record admissibility applications.

The federal government should immediately amend the *Criminal Code* to:

3.2 Protect therapeutic records: Recognize that psychiatric, therapeutic and counselling records as enumerated in s. 278.1 are distinct from other private records and should be the subject of a higher threshold to be accessed by the defence. Apply the "innocence at stake" threshold or "class protection" to Stage One of both private records regimes, given the highly prejudicial impact on the health, equality and safety of survivors during a time of predictable distress.

3.3 Add context disclaimers: Provide that, when used as evidence, any disclosure of a therapeutic record shall include a disclaimer that the contents are based on the therapist's impressions, have not met the privacy requirements of allowing the complainant to review and correct inaccuracies, and may contain factual errors.

3.4 Expand the definition of 'record': Amend the definition of a record in s. 278.1 of the *Criminal Code* to:

(a) Include electronic data found on a phone device or internet-based account for the purposes of the private records regimes

(b) Include the contents and results of a sexual assault examination kit (SAEK).

(c) Provide participation rights and standing for complainants where a motion for direction on the definition of a record engages the privacy interests of complainants.

3.5 Clarify the express waiver provision: Amend the express waiver provision for third party records (s. 278.2) to create an exception, where the Crown intends to adduce private records and cannot obtain the complainant's express waiver, records can be disclosed to the defence without an express waiver.

3.6 Simplify applications of sexual non-activity: Create a simplified statutory regime for the complainant's evidence of sexual non-activity and sexual activity when presented by the Crown.

3.7 Expand regime coverage: Include sex trafficking and voyeurism in all the records regimes.

Our investigation

Background

The *Criminal Code* contains several important provisions outlining how and if the sexual history evidence of a complainant or evidence in the possession of the accused or a third party can be used in sexual offence prosecutions. These are valuable protections for complainants about evidence for which they have a reasonable expectation of privacy.

Three regimes set out in the *Criminal Code* work together: sexual history evidence (s 276), private records in possession of a third party (s. 278.2), and private records in the possession of the accused (s. 278.92).

Sexual History Evidence

Section 276 of the *Criminal Code* governs the admissibility of evidence about a complainant's sexual history and the uses of that evidence. The s. 276 regime aims to protect the integrity of the trial by excluding irrelevant and misleading evidence, protecting the accused's right to a fair trial, and encouraging the reporting of sexual offences by protecting the security and privacy of complainants. Section 276 applies to any communication made for a sexual purpose or whose content is of a sexual nature and to any proceeding in which a listed offence is implicated.⁴

A defence application under section 276 will outline the details of what they want to introduce as evidence and its relevance. The judge will determine if the evidence is admissible using the test in s. 276(2) and the factors in s. 276(3).

Twin myths and stereotypes cannot be used.

The twin myths are that the past sexual behaviour of survivors make them (1) less worthy of belief about a sexual assault or (2) more likely to consent to the sexual activity in question. Section 276 of the *Criminal Code* is deliberate in stating that evidence of a complainant's other sexual history can't be used to infer that, by reason of that activity, the victim is more likely to have consented or less worthy of belief.

» *“Sexual history evidence is also presumptively inadmissible to support other inferences unless the evidence is of specific instances of sexual activity, is relevant to an issue at trial, and has significant probative value that is not outweighed by the danger of prejudice to the proper administration of justice. The sexual history evidence regime is intended to keep myths and stereotypes about victims of sexual offending out of the courtroom to support its truth-seeking function.”*⁵

» The SCC upheld these provisions in *R v. Darrach*.⁶

The procedure to be followed for sexual history applications is the same as the procedure for private records in the possession of the accused.

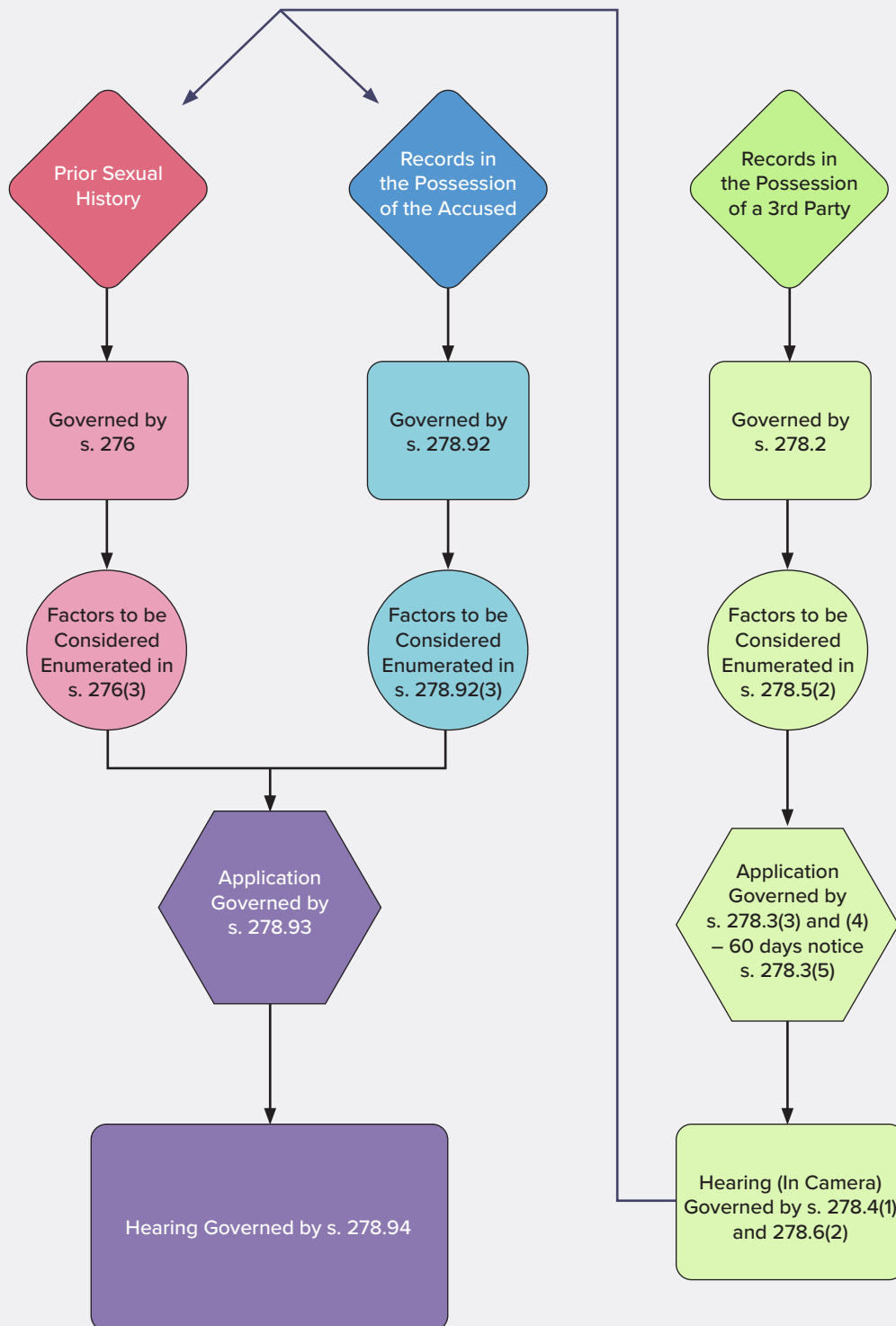
The factors used by the judge in a sexual history application include: “the potential prejudice to the personal dignity and right to privacy of any person to whom the record relates” and “the right of the complainant and every other person to personal security and to full protection and benefit of the law.”⁷

Private Records in possession of a Third Party⁸ (Production and Admissibility)

The third-party records regime was enacted to **require courts to conduct a balancing exercise** before producing private records in cases of sexual assault.⁹

» “Parliament enacted this regime with a view to (1) protecting the dignity, equality, and privacy interests of complainants; (2) recognizing the prevalence of sexual violence in order to promote society's interest in encouraging victims of sexual offences to come forward and seek treatment; and (3) promoting the truth-seeking function of trials, including by screening out prejudicial myths and stereotypes.”¹⁰

Process Map for Sexual History & Private Records Applications



Stage One determines if the records should be produced to a judge.

- » A defence application for records in the possession of a third party must be made in writing, identify the record the accused seeks to have produced and the name of the person who has possession or control of the record, and must set the grounds upon which the accused relies to establish that the record is likely relevant to a triable issue or the competence of a witness to testify.
- » This application must be provided to the Crown, the record-holder and the complainant 60 days prior to a hearing being scheduled. At the same time, the defence must serve a subpoena for the records on the record-holder.
- » Stage One usually involves an oral hearing and submissions from the defence, the Crown's response, and, if they make submissions, the complainant's and the record-holder's submissions and determines if the record is likely relevant to a triable issue or the competence of a witness to testify. If the judge agrees that they meet these criteria, the records are produced to the judge for review and the application goes to Stage Two. If the judge disagrees, the application ends.
- » These applications can't be published or shared with others, and the Stage One hearing takes place *in camera*.

Stage Two determines if the records should be produced to the accused

- » Based on evidence presented at Stage One by the defence, Crown, and if they decide to give evidence, from the record-holder and complainant, the trial judge must determine whether the records sought by the defence meet the statutory criteria to be produced to the accused.
 - a. To make this decision, the judge shall consider, "the effects of the decision to release or withhold the record on the right to privacy, personal security and equality of the complainant."

What kind of records are sought in these applications?

- » Psychiatric, therapeutic or counselling records
- » Police records
- » Child protection records
- » Social services records
- » Education or employment records
- » Medical records unrelated to the assault
- » Personal journal or diary
- » Photos or videos
- » Private electronic communications

This is not an exhaustive list*. The Court will consider whether the documents at issue are similar to these kinds of documents.

* See section 278.1. of the *Criminal Code*

- b. The judge shall consider these factors: "the potential prejudice to the personal dignity and right to privacy of any person to whom the record relates" and "society's interest in encouraging the obtaining of treatment by complainants of sexual offences."¹¹
- » The trial judge must provide written reasons for the decision.¹² The application, the evidence and the reasons for a determination cannot be published or shared with others, although the judge can decide to allow the publication of their reasons.
- » The judge can decide to redact, release in part, impose restrictions on the viewing or use of the records, or any other condition necessary to protect the privacy of the complainant.¹³
- » If the judge decides that the records should not be produced, the application ends but can be included in an appeal.
- » The Supreme Court upheld these provisions in *R v. Mills*.¹⁴

The complainant has a right to participate and be represented by counsel at both stages of an application to access their private records.

“The more important issue is that complainants have lawyers to advocate strongly for them and outline these arguments clearly to the Judiciary.”¹⁵

Private Records in Possession of Accused (Admissibility)

If the accused wishes to adduce into evidence records about the complainant which are in the possession of the accused, the accused must comply with a two-stage procedure set out in the *Criminal Code*.

Stage One determines if the conditions for an admissibility hearing are met.

- » A defence application to adduce records about the complainant in the possession of an accused must be made in writing, set out

What kind of records are sought in these applications?

- » Text messages between the accused and the survivor
- » Text messages between the survivor and friends or family
- » Diaries or journals of the survivor
- » Correspondence from mutual friends, employers, professional colleagues or therapists
- » Recordings of the complainant

This is not an exhaustive list*. The Court will consider whether the documents at issue are similar to these kinds of documents.

* See s. 278.1. of the *Criminal Code*

in detail the evidence the accused seeks to adduce and the relevance of that evidence to an issue at trial.

- » This application must be provided to the Crown 7 days prior to a Stage Two hearing, although the trial judge has some discretion on the notice period.¹⁶
- » A judge reviews the defence application, the Crown’s response and determines if the record is capable of being admissible under the statutory criteria of 276(2) or 278.92(2).
- » If the judge agrees that the written application meets these criteria, the application goes to Stage Two. If the judge disagrees, the application ends.
- » These applications can’t be published or shared with others. If oral submissions are made at Stage One, they are held *in camera*.
- » The complainant does not have standing at this screening stage.

Stage Two is an *in camera* evidentiary hearing.

- » Based on evidence presented at the hearing by the defence, Crown, and if they decide to give evidence, from the complainant,¹⁷ the trial judge must determine whether the records sought by the defence meet the statutory criteria.
 - » The *Criminal Code* specifies these factors must be considered: “the potential prejudice to the complainant’s personal dignity and right of privacy” and “the right of the complainant and of every individual to the equal protection and equal benefit of the law without discrimination” and “society’s interest in encouraging the obtaining of treatment by complainants of sexual offences.”¹⁸
- » The trial judge must provide written reasons for the decision.¹⁹ The reasons for an unsuccessful application cannot be published or shared with others, unless the judge allows it. The reasons for a successful application can be published.

- » If the judge decides that the records cannot be used as evidence, the application ends but can be included in an appeal.
- » The complainant has a right to participate and to be represented by counsel at Stage Two. Independent legal advice and representation for complainants in these applications is key.²⁰
- » The SCC upheld these provisions in *R v. J.J.*²¹

Proper administration of justice

Many tests in the *Criminal Code* require a consideration of whether this action or decision is “in the interests of the proper administration of justice.” See, for example,

- » the criteria for admitting prior sexual history or the private records regime,¹
- » the standard for testimonial aids such as a support person, the exclusion of the public, publication bans,²
- » the test for the publication of evidence at a preliminary inquiry,³ or
- » the test for the use of video-recorded evidence.⁴

The CVBR indicates that **consideration of the rights of victims of crime is in the interest of the proper administration of justice.**⁵

¹ *Criminal Code*, sections 276(2)(d), 278.92(2)(b)

² *Criminal Code*, sections 486(1), 486.1(1), 486.5(1).

³ *Criminal Code*, section 537(1)(h)

⁴ *Criminal Code*, sections 715.1 and 715.2

⁵ *Canadian Victims Bill of Rights*, preamble.

Survivor therapeutic records contain **personal information that many people would not want shared with anyone**, particularly with the person who harmed them.

- » They may mention prior sexual abuse by a different person or information about a miscarriage or an abortion
- » These records may reveal the deeply personal, physical, emotional, or mental state of a survivor following an assault.
- » These records may reflect a survivor’s attempts to rebuild their health after an assault.
- » They may contain information about economic or employment consequences after an assault.
- » They may contain information about other people’s reactions to the assault, such as family, spouses, or children.
- » They may reveal locations of safe houses or other places of safety for survivors.

Why therapeutic record subpoenas are problematic

1. Therapeutic records are not verbatim reports of what the therapist said or what the survivor said.
2. Therapeutic records are created for a different purpose; they were not created to be evidence for court.
3. Therapeutic notes are not verified by survivors for accuracy.
4. Therapy invites reflection and new ways of thinking about trauma.
5. Counselling is subjective in nature.
6. Allowing therapeutic records to be used as evidence denies survivors a safe place to heal.

Applying the *Canadian Victims Bill of Rights* (CVBR)

One Court has specifically considered how the CVBR applies to the records regime. In *R v. Mund*, the Court found:

“In the hopes of redressing past injustices, the rights to privacy and psychological security of victims of crime have been explicitly protected in their own instrument, the Canadian Victims Bill of Rights (herein after the CVBR).

Bestowed with quasi-constitutional status, the CVBR imposes that federal legislation, like the Criminal Code and the CEA, be applied in compliance with the statute and its enumerated rights.

The preamble of the CVBR affirms the importance of recognizing courtesy, compassion, and respect for the dignity of the victims as priorities throughout the criminal justice system. These values must guide litigants and deciders when navigating evidentiary provisions such as s. 278.1-278.9 of the Criminal Code. Just like these provisions

have been enacted to protect the privacy and dignity of complainants and witnesses in sexual assaults procedures, the CVBR serves as a beacon of the society’s concern for the fair treatment of vulnerable persons who have been historically wronged by a merciless and overly legalistic justice system.”²²

What we heard

Therapeutic records are distinct from other records

Survivors shared very personal reactions with our Office about how they felt when they found out the defence was asking for their counselling or therapy records. In fact, we encountered **a clear disconnect between survivor experiences and stakeholder impressions**. Some stakeholders believed that the private records regime in the *Criminal Code* strikes a balance between the privacy rights of complainants and the rights of the accused to a fair trial, and that the process – if applied properly – largely protects complainants. That was not what survivors experienced.



Survivors spoke clearly – counselling records are intimate and personal

*“Even though I’ve heard people say counselling records could be ordered to be produced, I didn’t think it would happen because I didn’t think the records would be important for the trial. **I haven’t read my counselling records**, but my counselling sessions are mostly sobbing, talking about how I’m sleeping in my closet, hiding in my closet during the day, that I’m scared of everyone, that I’m phoning suicide crisis lines. I didn’t see how notes about that would ever be helpful to the person who raped me to defend themselves in court.”*

*“**I cannot overstate how hopeless I feel ever since the application was made.** I never in a million years would have gone to counselling if I’d know this would happen. The ironic thing is that it was going to counselling that gave me the courage to report. So, I guess it’s probably more likely that **if I had known, I would never in a million years have reported the rape.**”*

*“**I think it’s gross that the so-called justice system does this to victims of sexual crimes.** Given the serious harm it does victims – which anyone who has any empathy would agree with – and given the minuscule chance counselling records would ever have something that’s helpful and necessary for the accused to defend themselves, it honestly feels to me like it’s just **a state-sanctioned way to bully and intimidate and shame victims**, the vast majority of whom are female, into regretting reporting and **scaring them into begging the Crown to drop the charges.** That’s what I am doing.”*

*“The decision about producing my records hasn’t been made yet. But if it orders them released, I will beg the Crown to drop the charges and say I won’t cooperate. I’m a dual citizen with [another country], and **I will leave Canada permanently before I stay to have my so deeply, horribly personal counselling records handed over for a judge, Crown, defence counsel to read.** It’s the record of the most awful, violent, scary, traumatic, life-altering thing that’s ever happened to me, and they might just get passed around.”*

*“I’ve never in my life done this before, but **when I heard he was applying for my records I wanted to die.** [Description of self-injury removed]. I spoke with two suicide crisis lines.”*

*“**I did not feel like the process protected my dignity.** Maybe my assumption is wrong, but I doubt victims of regular assaults or other non-sexual violent crimes often have defence counsel applying to get their counselling records.”²³*

Small changes to the definition of a record can protect complainants

A particular problem noted for us by several Crowns related to the definition of record – one Crown called this a “disturbing trend where judges find privacy interest is diminished when a complainant reports... that she was sexually assaulted.”

EXAMPLE A: A sexual assault examination kit (SAEK) records, on a specific forensic form, information gathered during an examination done by a qualified medical practitioner. The complainant must consent to that form being released to the police, even if a police investigation has already commenced. An Ontario case found that the SAEK was not a private record and that the nurse conducting the exam was part of the

investigation of the sexual assault.²⁴ This meant that the **complainant had no privacy interest in the SAEK**. It would be automatically disclosed without consideration of the statutory factors.

- » This is in stark contrast to how any other medical record would be viewed. Medical records, by any definition, are records to which a person has a reasonable expectation of privacy. Medical records are specifically included in the definition of a record for the private records regime.
- » This decision puts more emphasis on where the information is written (a forensic form) compared to what the information is (facts about the complainant's physical and mental integrity gathered during a medical examination).

EXAMPLE B: The proliferation of electronic records on personal devices is creating a mountain of records in sexual assault prosecutions. Because electronic communications and data are specifically noted in the definition of a record, Crown prosecutors must parse the contents of a phone to determine if each photo, message or data point contains personal information **AND** engages privacy interests of a complainant.²⁵

- » Personal information in the context of the records regime has been interpreted to mean, "intimate and personal details about oneself that go to one's biographical core."²⁶ The need for the record to go to a complainant's biographical core is leading to **many records being unprotected** – such as a text between a parent and child or an email to a counsellor for which a reasonable expectation of privacy should be clear.

- » This is **in contrast to how data from an electronic device of the accused is treated**. In *R v. Marakah*,²⁷ (a firearms prosecution), the Supreme Court of Canada found that individuals have a reasonable expectation of privacy in text messages they send and receive. The assessment is made on the totality of the circumstances – not made on each specific record.

EXAMPLE C: A related issue is the **use of a motion for direction** by defence counsel **as a way to avoid the private records regime** including the procedural protections for complainants and the balancing factors set out in the regime. Counsel will sometimes argue, in a motion for direction or at Stage One of an application, that a particular document does not meet the definition of record in s.278.1 and therefore is admissible without further screening. This determination turns on whether the information in question is "personal information" relating to the complainant, and whether the complainant has a reasonable expectation of privacy in that information or record.

- » The *Criminal Code* could provide that, where a motion for direction or a Stage One hearing engages the privacy interests of complainants, complainants are entitled to participate and be represented.
- » Counsel pointed us to obvious examples where a reasonable person would expect privacy protections, such as a text from a child to a parent or an email to a counsellor seeking urgent treatment.

The possibility of access to therapeutic records causes foreseeable harm to survivors

PTSD can occur in the aftermath of a sexual assault and can be severe.²⁸ Knowing the perpetrator, prior experiences of physical or sexual dating violence, stalking, or witnessing violence between parents can increase the likelihood of PTSD symptoms from sexual assault.²⁹ PTSD increases the risk of suicide, particularly for women.³⁰

Survivors may experience higher rates of suicidal ideation and suicide attempts.³¹

Experiencing sexual violence from an intimate partner, childhood sexual abuse, and sexual assault increase the chances of suicidal ideation and suicide attempts.³²

- » The risk is higher for people who identify as 2SLGBTQ+ or who have been exposed to suicide mortality.³³
- » Sexual violence against children increases the likelihood of psychiatric disorders, substance use, sexually transmitted infections, unwanted pregnancies, and suicide.³⁴

Social isolation can further heighten the risk of suicidal ideation.³⁵ Young adults who are racialized and gender minorities are at an increased risk both of experiencing sexual violence and of suicidal thoughts and behaviours.³⁶ One study demonstrated that **suicidal ideation was almost 3 times higher** for female post-secondary survivors of sexual assault.

Suicide attempts have social and economic costs.

Justice Canada estimates that in 2009, Canada spent **\$5,447,740** on medical responses to suicide attempts by non-spousal, adult survivors of sexual assault and other sexual offences.³⁷ Adjusting for population and inflation, in 2024, this could be as high as **\$9.1 million**³⁸ without accounting for a slight decrease in police-reported rates of sexual assault and slight increase in the crime severity index since 2009.³⁹ Since we know that sexual violence also occurs between intimate partners

and within spousal relationships, this figure is likely much higher. Even so, the most significant cost is to survivors and those who care about them.

Sexual violence increases the risk of post-traumatic stress disorder (PTSD) and suicide. Therapeutic interventions can help.

Therapeutic interventions can help. Therapeutic interventions with survivors of sexual violence can significantly reduce PTSD symptoms, depression, and the risk of suicide.⁴⁰ Multiple psychotherapy treatments can reduce PTSD and mitigate short- and long-term negative impacts to mental health.⁴¹

- » Access to evidence-informed mental health care can help people receive treatment and support before they become suicidal.⁴²
- » Access to mental health care can prevent suicide and **save lives**.⁴³

Therapeutic interventions are in the public interest. Former Chief Justice McLachlin noted:

“Victims of sexual abuse often suffer serious trauma, which, left untreated, may mar their entire lives. It is widely accepted that it is in the interests of the victim and society that such help be obtained. The mental health of the citizenry, no less than its physical health, is a public good of great importance. Just as it is in the interest of the sexual abuse victim to be restored to full and healthy functioning, so it is in the interest of the public that she take her place as a healthy and productive member of society.”⁴⁴

Sexual assault increases the risk of suicide for survivors.⁴⁵

Invasive investigations and aggressive cross-examinations make some survivors want to die.⁴⁶

Most sexual assaults are perpetrated by a person known to the survivor.⁴⁷ Survivors told us that the **accused's access to their therapy records was another form of manipulation and control.** These records, and the application to obtain them, require victims to have their personal life opened to strangers (the judge, court staff, Crown, defence) and provide intimate knowledge to the accused. If the application is successful, the information may become public knowledge.

While some survivors were angry at the accused for requesting their records, most of the anger we heard over these applications was not directed towards the accused, **but to the criminal justice system itself** for allowing survivors to be further exploited. Many survivors felt like they had to choose between justice or their own mental health.

"I wished I hadn't gone to counselling. When I told the Crown, they dismissed my concerns and said counselling is important. Sure, but not having my former partner get to know about my most private thoughts is more important to me. When I [told my counsellor] I didn't feel comfortable talking about the assaults anymore because of the records being disclosed, they suggested I tell the Crown I would no longer cooperate and try to convince them to drop the charges. It's extremely important to me that the person who assaulted me faces consequences. I don't want charges dropped. This convinced me the system really is unjust and the rights of the perpetrators are treated as far more important than the rights of their victims."⁴⁸

Just the possibility of therapeutic records being disclosed was sufficient to cut survivors off from access to life-affirming care.

In *R v. J.J.*, the Supreme Court acknowledged that, historically, complainants could "expect to have the minutiae of their lives and character unjustifiably scrutinized in an attempt to intimidate and embarrass them, and call their credibility into question."⁴⁹ This is still the case.

- » We heard that the complexity of the records regime itself is used to intimidate complainants into dropping charges.
- » Threatening to access counselling records and initiating a hearing before a judge has a profound destabilizing impact on survivors.
- » Multiple survivors told us, before a stage one hearing, they wanted to die, did not feel like it was safe to access mental health care, and asked the Crown to stay the charges.

"I feel like I'm the one suffering all the consequences... I have never been so depressed and wanting to die as when I found out they were applying for my records. I have given serious thought to either killing myself or disappearing. And never felt so keenly how unjust the legal system is that this is acceptable to do to victims, when what value do the counselling records actually provide? I will never report another crime. If other victims ask me, I will tell them they shouldn't either."⁵⁰

Judges are familiar with the suicide risk to survivors. We reviewed available sentencing decisions for sexual offences in 2024 (n = 294) using the Westlaw Canada database to identify judicial mention of suicide risks to survivors.⁵¹

- » **13% of sentencing decisions** for sexual offences in 2024 included judicial mention of the **survivor having thoughts of suicide or making attempts to die by suicide** (39 of 294 available sentencing decisions). In most cases, the judge noted the suicide risk based on content provided in victim impact statements.
- » This is likely an **underestimate of the suicide risk** to survivors since 31% of sentencing decisions in 2024 did not include victim impact statements, not all survivors who experienced suicide risk would have mentioned it in their statements, and judges may not always mention the risk when it is included in the victim impact statement.
- » In addition to the 39 cases identified, judges often cited *R v. Friesen*⁵² in sentencing decisions for sexual offences against children to acknowledge the wider harms of childhood sexual abuse, including an increased risk of suicide.

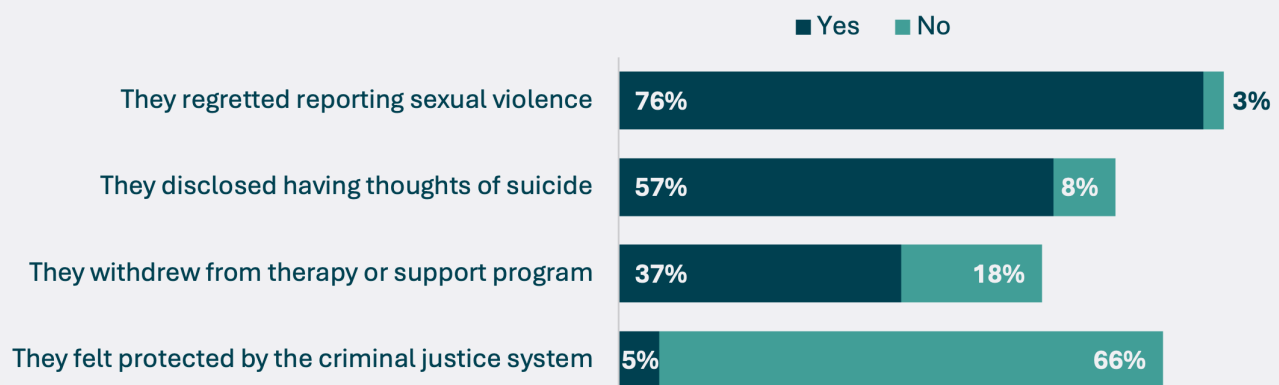
Stakeholder survey

Based on early interviews with survivors, we added some targeted questions to our stakeholder survey for counsellors or therapeutic support programs about what they observed when survivors' therapeutic records were subpoenaed.

A total of **38 therapists or service providers** shared what they had observed in the past 5 years:

- » **3 in 4 survivors** regretted reporting sexual violence (76%)
- » **1 in 2 survivors** disclosed having thoughts of suicide (57%)
- » **1 in 3 survivors** withdrew from therapy or the support program (37%)
- » **1 in 20 survivors** felt protected by the criminal justice system (5%)

Therapists observed serious negative impacts when survivors' therapy records were subpoenaed (n = 38)⁵³



Therapists told us that **when the criminal justice system allows disclosure of therapeutic records, it is harmful to the mental health of survivors.** Therapists reported that survivors withdrew from therapy, disclosed thoughts of suicide, and regretted reporting sexual violence. This places survivors at risk and compromises society's trust in the criminal justice system.

Therapists reported that **the threat of disclosure of their records made treatment less effective.** It compromises the quality of notetaking to support sessions, violates the therapeutic relationship, takes time away from providing services to other survivors, and co-opts the therapy process to extend the impact of abusers. The continued risk **also compromises quality of care to survivors who choose not to report.**

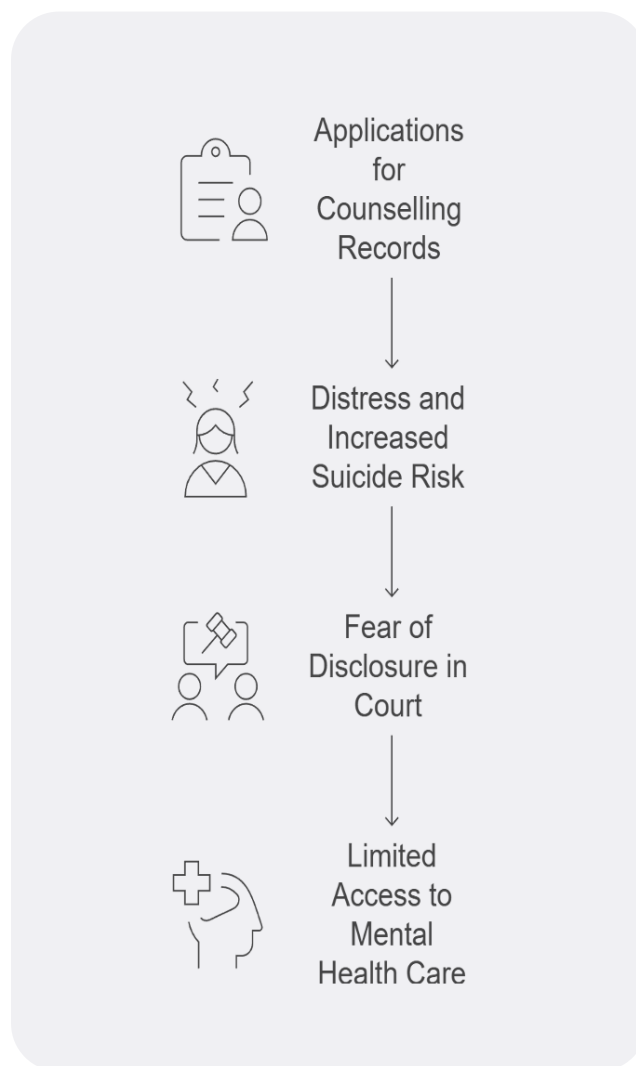
Therapists and service providers said:

*"Knowing that our records could be subpoenaed requires that we write our records extremely vaguely to ensure that there is nothing an ex-partner's lawyer could use against the client. It's frustrating because we must be vague almost to the point of the notes being difficult to follow, with a lot of relevant information omitted to protect the client."*⁵⁴

*"These requests take time and resources away from providing services for victims."*⁵⁵

*"The threat of subpoenas prevents good work from happening in terms of treatment and processing. Both the client and the therapist are reluctant to engage meaningfully."*⁵⁶

*"Requests are often made maliciously in an attempt by the abuser to further their power and control which makes the justice system another tool in their toolkit of abuse and violence."*⁵⁷



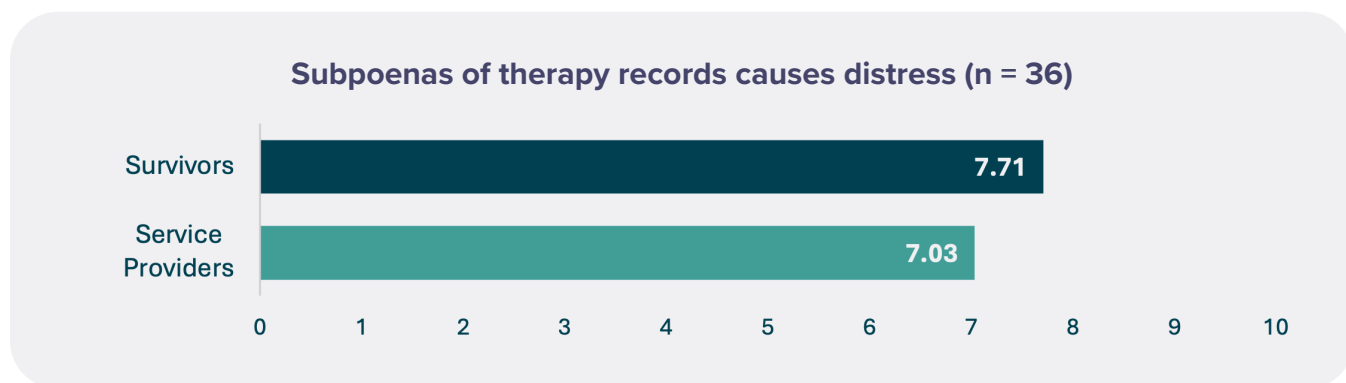
*"Survivors feel exposed and feel as though their suffering is now on display for the world to see. They also feel like it is a continuation of abuse from the abuser due to an infringement into their very personal life. Feel reduced safety. Breakdown in trust. If their counselling records are not safe and are ways that accused persons may use to humiliate or control the survivor."*⁵⁸

Service providers whose records were subpoenaed also experienced distress. We asked therapists and service providers who had client records subpoenaed in the past 5 years to provide a subjective rating from 0 to 10 to describe the mental impact on clients and on themselves as helpers. A score of 0 represented no negative impact on mental health, and a score

of 10 represented a very significant negative impact on mental health.

- » Therapists and service providers indicated that subpoenas for therapy records have a **significant negative mental health impact** on survivors and on themselves.

- » On a scale of 0 to 10 measuring subjective levels of distress, there was less than one point of difference in the score they attributed to survivors (7.71) and to themselves (7.03).⁵⁹



In qualitative responses, we heard that many therapists felt like it **damaged the therapeutic alliance**, and they worried about the possible negative impact on survivors going through the criminal justice system.

*“I had my records subpoenaed and it was incredibly stressful. I felt so much worry about what I wrote and how that could be construed and thinking how that could impact the client. It also felt incredibly invasive, I felt like I would be under a microscope.”*⁶⁰

*“I didn’t know if I might be penalized by the court for not bringing the records, if the court would compel me to produce them, or if my organization would back me with any potential consequences. I did not want to unintentionally do or say anything to cause harm to my client or the court case.”*⁶¹

*“Gives rise to concern that a mistake may have been made, or you may have disclosed “too much” about a client’s emotions/feelings in service notes. This creates fear that your documentation is going to have a detrimental impact on the client when they are crossed examined.”*⁶²

Many therapists or service providers contest records applications

*“Protecting survivor records is a priority for our agency. Fighting these subpoenas has come at a great financial cost to our organization, which ultimately impacts our direct services. Further, it causes significant stress for our management team.”*⁶³

Therapists and other service providers felt like providing their records to the court was an ethical violation. Providers that worked within larger government-run agencies would disclose information as requested, but many more independent or community-based care providers fought against disclosure in court.

- » In our study, **31 providers estimated they had received a total of more than 116 record applications in the past 5 years.**

Costs associated with fighting record applications.

Stakeholders whose records had been subpoenaed in the past 5 years reported legal costs that ranged from \$0 where pro bono services were offered, up to \$20,000 for one agency.

- » For private therapists, **responding to records applications is uncompensated time that directly affects their ability to provide for their family financially.** The time involved getting legal advice, preparing documents, complying with court orders and attending court makes a therapist unavailable for counselling sessions, eliminating income and indirectly extending harm to others seeking urgent support for their mental health.⁶⁴

Expenses for service providers:

- » Sexual assault centres and therapists pay legal fees to contest third party applications for counselling records in court. We heard that some centres pay \$2000-\$5000 in legal fees annually. Money for legal fees takes away from core services for survivors.⁶⁵
- » In some of these cases, sexual assault centres are **not keeping records** because of the risk of subpoenas **but will still pay legal fees** to contest a records application because they believe survivors deserve safe spaces to heal that are not exploited by their abuser.⁶⁶
- » One private therapist had records for multiple clients subpoenaed in the same case, and they were also subpoenaed to testify. Preparing documents, getting legal advice, preparing for trial and attending court **cost them a month's worth of time** with no billable hours, destabilizing family income and ability to provide for their family.⁶⁷

Therapists believed their records should be better protected. They believed, when therapeutic records are disclosed, what survivors share in therapy is twisted and used against the survivor.

*"I believe strongly that the therapy records of clients must remain confidential. If there is anything that arises that indicates someone is at risk for harm, therapists are ethically required to report to the most appropriate authorities. Confidential therapy records should not be used in a court of law to discredit or downplay a violent attack or IPV. No one deserves to be abused."*⁶⁸

Abusive use of counselling records in cross-examination

One Crown prosecutor shared that a complainant was cross-examined about a **dream** she had shared with her therapist about the sexual assault. In the dream she was experiencing self-blame and had shared these feelings in a therapeutic setting. She was cross-examined about the dream and its differences with her testimony.

A survivor told us that she had shared with her therapist a **dream** about the sexual assault. The survivor had smiled in her dream. When her records were subpoenaed, she was cross-examined for 3 hours about this dream based on notes from her therapist.

We believe that the private document regimes do not go far enough to protect therapeutic records, which are distinct from other records because of the specific link with survivors’ access to life-saving mental health services. Our evidence shows a chilling effect on survivors reporting sexual offences to police and seeking treatment.

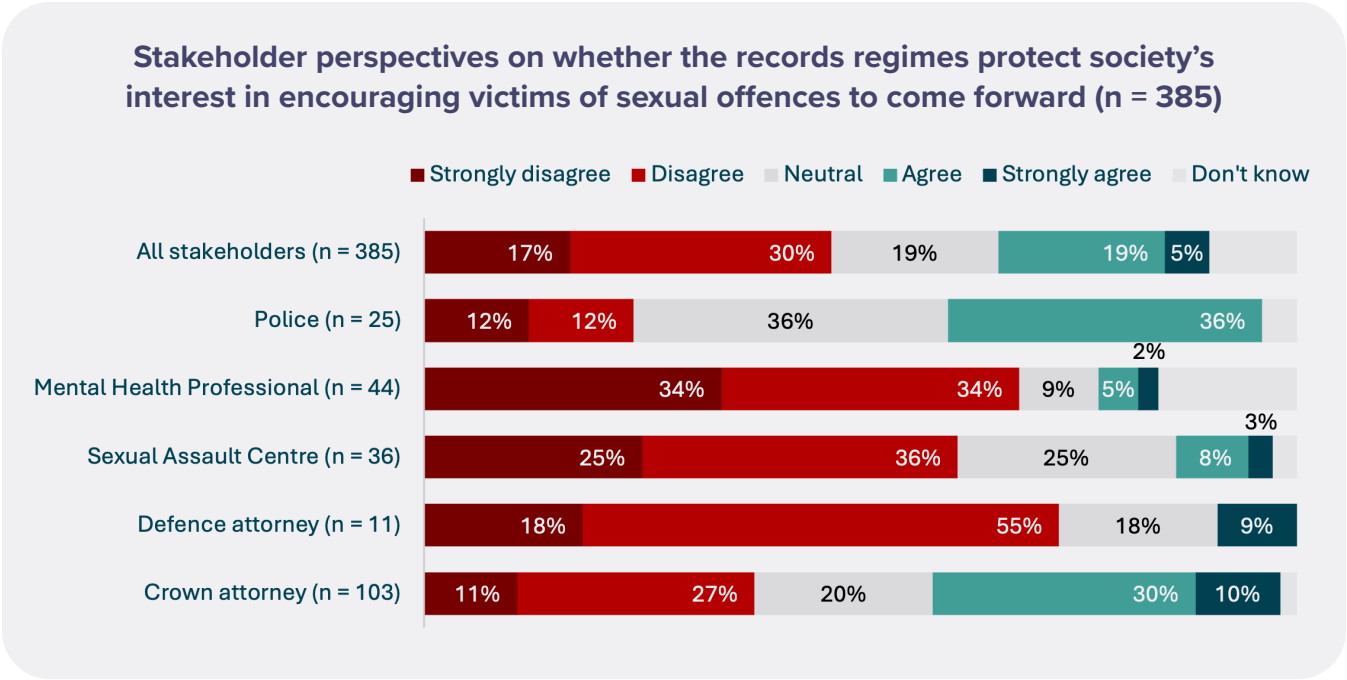
There is clear evidence of a chilling effect

In our investigation, many stakeholders did not believe the private records production and admissibility regimes fully achieve their purposes.

Stakeholder survey

We heard that **47% of stakeholders disagreed** that the records regimes effectively promote society’s interest in encouraging victims of sexual offences to come forward and report to police.

- » **68% of mental health professionals** (n = 44) and **61% of sexual assault centres** (n = 36) **disagreed** that the records regimes encourage victims to come forward and report. These perspectives are important because many survivors talk to sexual assault centres and therapists about sexual offences – and do not report those offences to police or anyone else!
- » **40% of Crown attorneys agreed** (n = 103) that the records regimes help survivors to come forward.⁶⁹



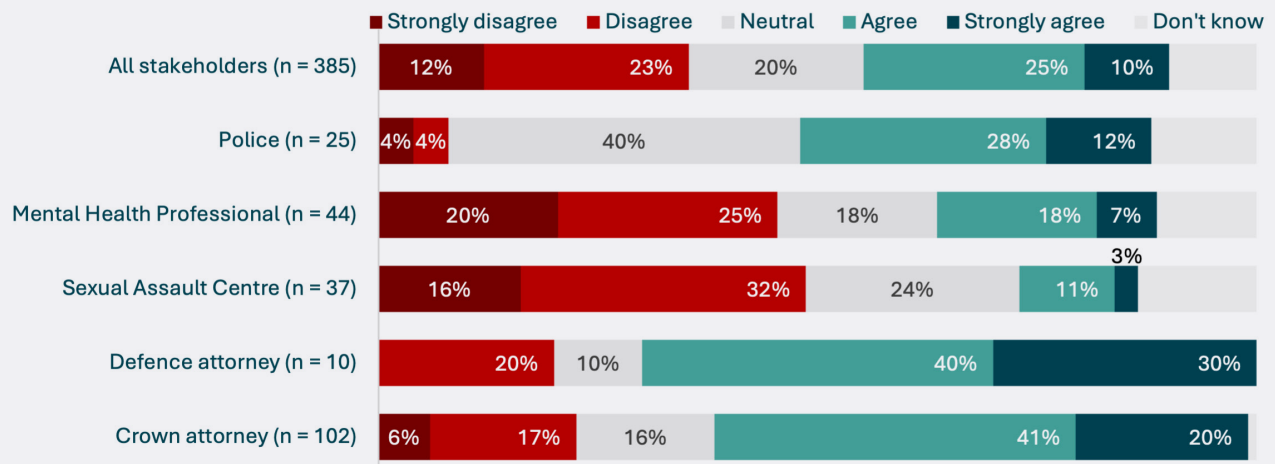
Protection of records. Stakeholders had divergent views on whether counselling or therapy records are adequately protected under the current law.

- » An equal percentage agreed and disagreed (35%)
- » People working within the system were more

likely to believe the law protected records, such as defence attorneys (70%), Crown (61%), and police (40%).

- » Stakeholders working directly with survivors were more likely to disagree that the law protected records, such as sexual assault centres (48%) and mental health professionals (45%).

Stakeholder perspectives on whether counselling or therapy records are adequately protected under the current law (n = 385)



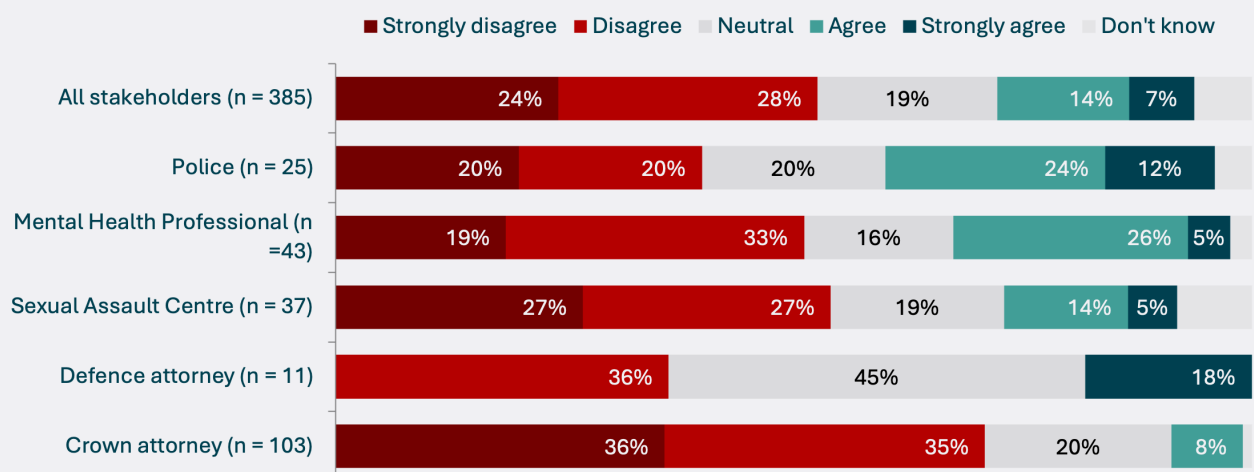
Relevance of records. Overall, stakeholders were more likely to disagree that counselling or therapy records provide valuable evidence in sexual violence trials – **52% of stakeholders disagreed** vs. **21% who agreed** (n = 385).

- » Since the use of records in a trial is directly related to the work of defence and Crown

attorneys, it is valuable to note that **only 18% of defence counsel (n = 11)** and **8% of Crown attorneys (n = 103)** agreed that counselling or therapy records provide valuable evidence.

- » This result raises the question of the **balancing of the clear harms to survivors compared to the benefits to accused persons.**

Stakeholder perspectives on whether counselling or therapy records provide valuable evidence in sexual violence trials (n = 385)



Seeking treatment. In our investigation, **42% of stakeholders disagreed** that the records production and admissibility regimes effectively promote society's interest in encouraging victims of sexual offences to seek treatment vs. 23% who agreed.

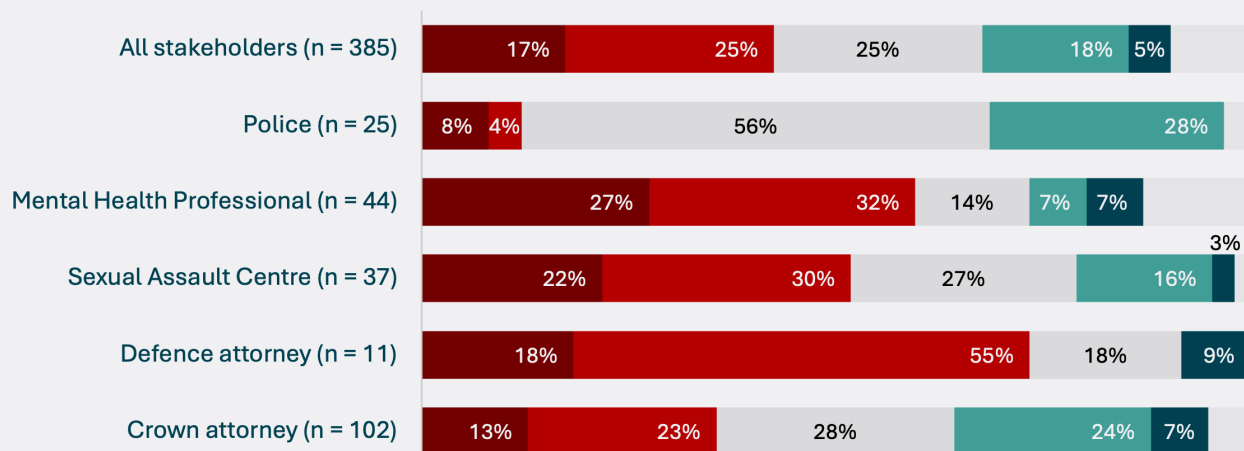
- » **59% of mental health professionals** (n = 44) and **52% of sexual assault centres** (n = 37) **disagreed** that the records production and admissibility regimes

encourage victims to come forward and report. These perspectives are important because sexual assault centres and therapists regularly witness how survivors are harmed when they are told their therapy records may be subpoenaed.

- » **Slightly more Crown attorneys (n = 102) disagreed (36%)** than agreed (31%) that the records regime encourages survivors to access treatment, while **73% of defence counsel disagreed (n = 11).**

Stakeholder perspectives on whether the records regimes protect society's interest in encouraging victims of sexual offences to seek treatment (n = 385)

■ Strongly disagree ■ Disagree ■ Neutral ■ Agree ■ Strongly agree ■ Don't know



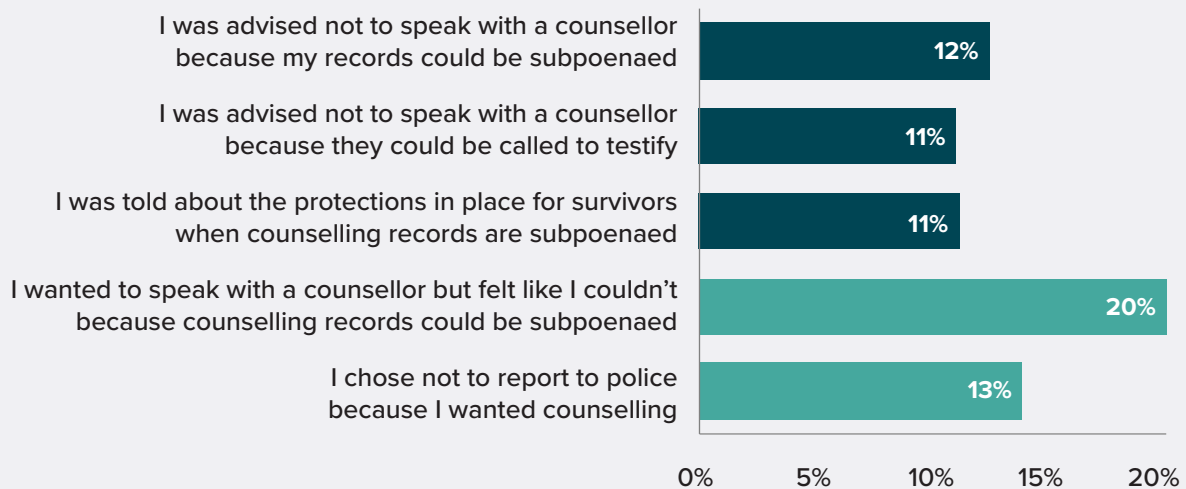
Chilling effect on survivors. Even with the records production and admissibility records regime, survivors reported having to choose between access to mental health services and access to justice.

- » Some survivors receive advice from service providers, other survivors, police, Crown attorneys, or independent legal advice (ILA) not to speak with a counsellor because their records could be subpoenaed (12%) or their

therapist could be called to testify in court (11%). An equivalent proportion of survivors (11%) said that the existing protections in law were explained to them (n = 973).

- » **187 survivors (20%) wanted to speak with a counsellor but felt like they couldn't** because their counselling record could be subpoenaed.
- » **129 survivors (13%) chose not to report a sexual offence to the police** because they wanted access to counselling.

The s. 278.1 regime has not mitigated a direct chilling effect on survivors reporting to police and seeking treatment (n = 973)



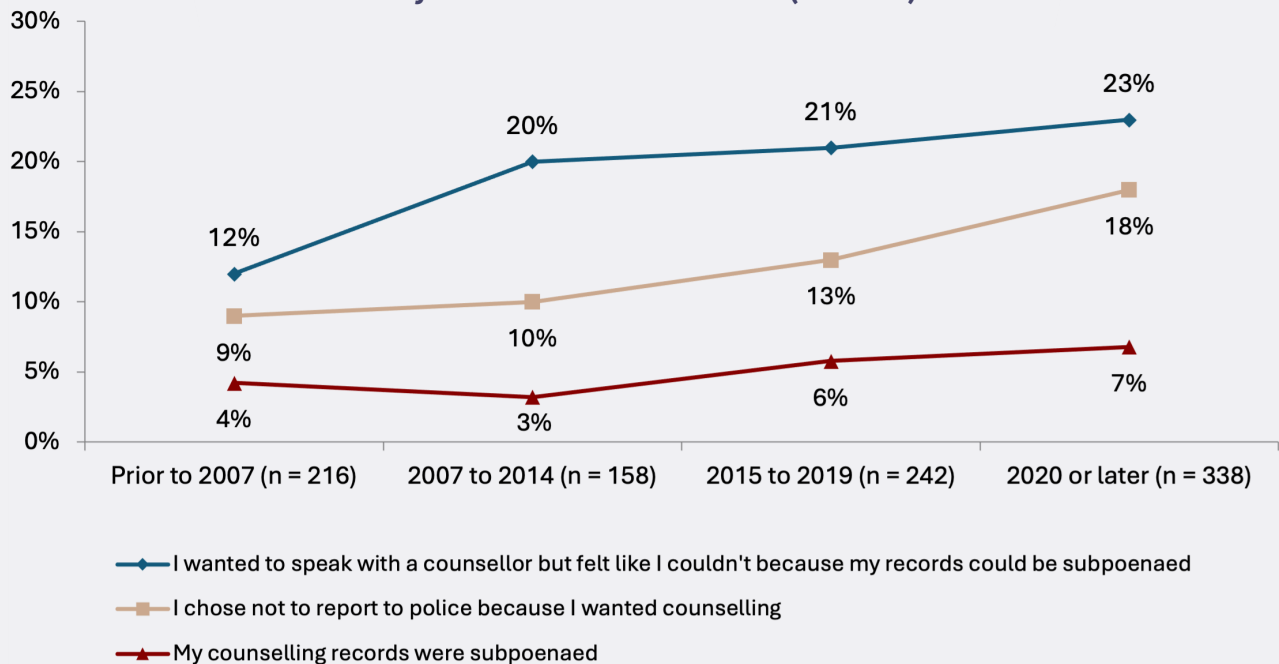
Tracking the chilling effect over time. There is limited data available on applications for survivor counselling records. Previous reviews of case law have concluded that it is difficult to determine whether these applications are standard practice for defence and how frequently records are produced to the judge or disclosed to defence.⁷⁰ However:

- » An older review of cases from December 1999 to June 2003 found that the majority of records applications included a request for counselling records (23%), women were more likely to have counselling records subpoenaed, and of the cases deemed relevant, records were produced to the judge in 63% of cases, with full or partial disclosure to defence in 35% of cases.⁷¹
- » A study of the records regime done in 2008⁷² found that certain categories of vulnerable complainants, especially women

and children, may be most at risk of having their records accessed in trials. This includes children under the care of child welfare authorities, women with mental health histories or disabilities, Indigenous women, and immigrant and racialized women. The study also found that most Canadian sexual assault centres have adopted minimal record-keeping practices in response to disclosure applications.

In our survivor survey, we observed an increase over time in the percentage of survivors who felt like they could not access counselling or did not report to police because their records could be subpoenaed and an increase in the percentage of survivors whose records were eventually subpoenaed. The following table provides survivor responses based on a year of the last incident of sexual violence.

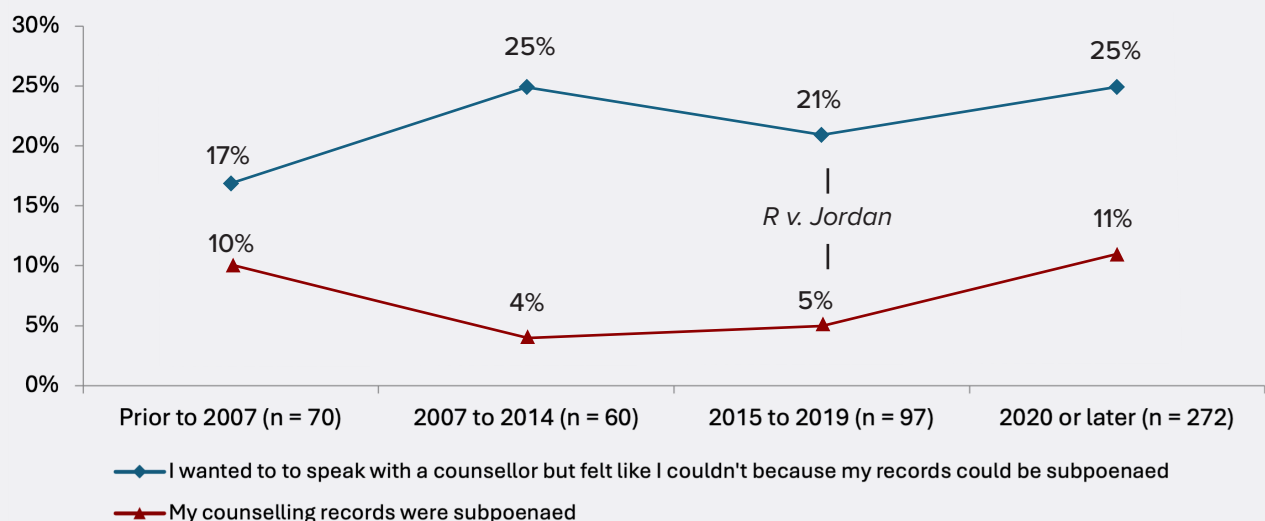
Chilling effect on reporting and access to treatment by last incident of violence (n = 969)



If we narrow our data to include only survivors who reported sexual violence to police, and filter by year of last contact with the criminal

justice system, **1 in 4 survivors** in contact with the criminal justice system in 2020 or later **felt like they could not speak with a counsellor** and 1 in 10 had their counselling records subpoenaed.

Chilling effect on access to treatment by last contact with the criminal justice system (n = 506)



Because of the private records regime, we know that **there are more attempts to access survivor therapy records than what the courts permit**.

Requests must satisfy a two-stage test before they can be produced to the defence and satisfy a second two-stage process before the records can be used by the defence as evidence – but they are subpoenaed from a record-holder in order to conduct this two-stage test. We also heard testimony from survivors that private record applications can be used to **intimidate and embarrass** complainants: this is exactly the SCC observation in *R v. J.J.*⁷³

For survivors whose cases proceeded to court (n = 116):

- » **1 in 3 survivors** said defence wanted to raise prior sexual history (32%).

- » **1 in 4 survivors** said defence wanted to access private records (24%).

- » **1 in 5 survivors** said defence wanted to access their counselling records (22%).

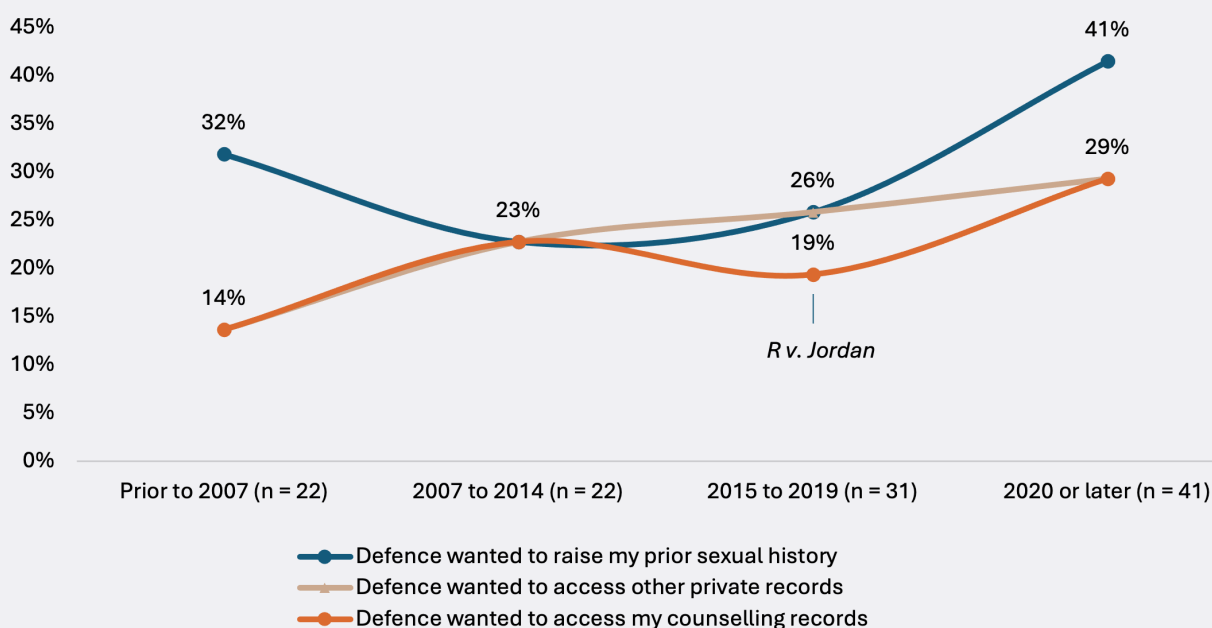
Cases occurring in 2020 or later. The increase in defence applications is even more clear in recent cases. When we filter those responses by year of last contact with the criminal justice system, all indicators are higher in cases that ended in 2020 or later (n = 64):

- » **34% of survivors** said defence wanted to raise prior sexual history

- » **29% of survivors** said defence wanted to access their counselling records or other private records

The *R v. Jordan* timelines, combined with the record regimes, puts survivors in an untenable position⁷⁴

Following the *Jordan* decision, defence was most likely to raise prior sexual history, access therapeutic records and other private records (n = 116)



Parliament has created the sexual history and records production and admissibility regimes with the goal of protecting sexual assault complainants. Since then, the SCC imposed numerical timelines for the prosecution of all criminal offences in *R v. Jordan*.

The arbitrariness of the *Jordan* timelines means that, when the protections of the records regimes are applied, **there is a greater likelihood that a case will be stayed, causing greater harm to survivors and compromising the purpose of these regimes.**⁷⁵

*“All of these amendments were a much-needed change, and they have done a lot to protect survivors’ privacy and dignity. Unfortunately, the increase in the number of these motions and the increase in complexity of these motions causes a lot of delay in the court system. As a result, it can be difficult for the court to provide sufficient resources for these cases so that they can be completed within the timeframe imposed by *R v. Jordan*. Given how much courage it takes for survivors to come forward in the first place, it is devastating for survivors when charges are stayed as a result of the *R v. Jordan* decision.”*⁷⁶

We heard from Crown attorneys across Canada that these protections, and particularly the record screening regime, have resulted in multistage pre-trial motions being required on many sexual violence prosecutions.⁷⁷ Jurisdictions that have been disproportionately affected by *R v. Jordan* offer survivors less protection.

*“For expediency, the judiciary is often skipping step 1 due to lack of time and resources. The gatekeeper function is almost nonexistent. This leads to complainants being forced to hire counsel and lengthy hearings being conducted which cause unnecessary stress on victims of sexual violence (fearing their personal records will be disclosed) and puts significant pressure on our justice system as these hearings and decisions are lengthy.”*⁷⁸

In one stakeholder interview, a senior prosecutor said that trying to impose *Jordan* timelines on sexual assault cases where the SCC has recognized the need for extra protections is unreasonable and **continues to reinforce gender inequality**. They said it does not make sense to allocate the same amount of time to car theft as to sexual assault, when the legal obligations to survivors of sexual violence will predictably take more time. **This increases the risk that cases for gender-based crime will be stayed under *R v. Jordan*.**⁷⁹

One proposal to us was to allow case management judges to deal with sexual history and private records applications. This would encourage early attention and scheduling of these applications and allow specialized expertise to develop among the case management judiciary.

Another senior prosecutor noted that “I believe the focus should be about **effective case management of sex assault cases** and ensuring lawyers follow timelines as much as possible rather than focusing on how complex and time consuming, they make the process. **Complainants should not have to choose between exercising their rights to privacy, equality and dignity** as well as having their own lawyer argue for these rights versus having their trial proceed within the Jordan timelines.”⁸⁰

“Free legal representation, especially in cases of therapy records, is vital to protect the dignity, equality and privacy rights of an individual survivor/complainant.”⁸¹

Another prosecutor noted that these protections are being well managed within her jurisdiction.⁸² *“If they are identified early in the process and effectively managed by judicial pre-trials and case management conferences, there is no reason that they cannot be adjudicated within the timelines established by Jordan. Generally, these are pre-trial applications that should be decided ahead of the trial and the real problems arise when they are brought mid-trial, especially in jury trials.”⁸³*

Mid-trial applications

We heard, very clearly, from Crowns and survivors about the **harmful impact of mid-trial applications to obtain private records**.

“Mid trial applications cause a lot of harm and often make survivors/complainants have to make hard choices. These types of applications should be avoided at all costs and defence counsel should be taken to task by the Judiciary and not allowed unless something new has arisen and it cannot have been anticipated.”⁸⁴

These applications introduced significant delays and **increased the risk of an application for a stay of proceedings**. We also heard that mid-trial applications in a jury trial **increased the risk of a mistrial**.⁸⁵ Some survivors and stakeholders felt like this was an **intentional defence strategy**.⁸⁶

Mid-trial applications have serious impacts on survivors under oath/affirmation.⁸⁷ Whether personal records applications are allowed or not, the mid-trial application harm survivors. There are multiple steps to these applications, and the complainant may be under oath when the application is presented and could be **for weeks or months** while this application is under way. When they are under oath, complainants:

- » cannot discuss anything with therapists, friends, or family.
- » could experience physical and psychological distress in preparing to testify (twice).
- » would be unable to ask questions to the Crown during the application time.

Essentially, **complaints are effectively isolated – just when they need assistance**.

We also heard:

- » Crowns may hesitate to communicate or limit communication with the complainant.
- » Family and friends’ life circumstances are negatively impacted.
- » A prolonged delay is also not realistic for a jury trial.⁸⁸

The harm to survivors happens whether or not the records application is successful – the harm comes from the application and the delay caused by a mid-trial application. These impacts could affect the complainant’s mental health significantly, along with any impacts on their dependants and employment.

Case study – Harmful impact of mid-trial applications on survivor

“This motion was not made in advance in either of my cases, instead defence brought it up as a delay tactic after I was sworn in. A motion was made for counselling records, and I was left sworn in.

I was advised by the judge not to discuss case details with my psychologist or another person until I finished testimony. I could not access therapy to discuss flashbacks, cross-examination, ongoing PTSD for over eight months while the 278.1 was processed.

This process happened to me twice [before I turned 18], with separate defence attorneys. Both waited until I was on stand at trial and sworn in. These motions ARE BEING USED TO DELAY.

My therapist was dismissed and her letter of recommendation for accommodations was entirely ignored and the defence laughed at her when she came in person. My psychologist and I both cried in the courthouse parking lot.”⁸⁹

The increased burden of applications

Many stakeholders believed that applications to introduce other sexual history or to obtain private records were a **significant cause of delays** in the court system. One Crown suggested it was the primary reason the “system is clogged.”⁹⁰

- » We heard that in some jurisdictions, it was standard practice or almost “automatic” for defence counsel in sexual offences to seek therapeutic records, while stakeholders in other jurisdictions said it is quite rare for defence to request counselling records.⁹¹
- » The increase in mid-trial applications and excessive volume of electronic records was the focus of a working group within the Uniform Law Conference Canada.⁹²

Overall, we heard that disclosure requests and production orders for different types of records have increased exponentially. This has led to shortcuts to stay within *R v. Jordan* timelines. Crown attorneys and defence spoke about the significant volume of digital evidence being sought, including text messages, emails, and many other electronic records. One Crown attorney (who was previously a defence attorney) described this as a strategic move:

“I used to do a lot of wiretap cases. And often the name of the game in big complex criminal defence is to make the file as complicated as possible for the Crown so that it collapses under its own weight. I believe defence counsel are now adopting that same strategy in a lot of sexual violence cases, because of a lot of the special rules, and how flexible they are, and how everything requires a specific case analysis. It’s really easy to derail these prosecutions and make them far more complex. What would have been a two-witness trial 10 years ago is now a one-week jury trial with multiple days of pretrial motions, and probably an adjournment that surprises you somewhere in there.”⁹³

Defence counsel agreed that the records regime is a significant factor in delays in the criminal justice system.

- » One person noted that the preponderance of electronic communications (texts, video, chats, emails, voice memos, social media posts) has exacerbated the complexity of the private records regimes.
- » Some defence counsel felt that a victim advocate may help to reduce delays associated with records applications by offering advice about when to consent to the release of the records or helping to explain the complexity of the regime.⁹⁴
- » Defence counsel noted that it is challenging to schedule new dates for defence, Crown, and complainant's counsel in mid-trial applications.⁹⁵
- » One representative of the defence bar felt that it is possible some defence counsel act unethically and use records applications to run the *Jordan* clock, but she explained that defence counsel are also conscious of their liability for unhelpful applications. In addition, she noted that a records application will expose the accused person to the possibility of testimony and cross-examination on the application.⁹⁶

Evidence of a Survivor's Sexual Inactivity

In 2025, the Supreme Court of Canada considered a case where the Crown had relied on the complainant's evidence of a disinterest in sexual relationships.⁹⁷ The Court was concerned about inverse twin myth reasoning and held that evidence of a complainant's sexual inactivity was also governed by the common law procedures governing Crown-led sexual history – effectively mirroring the section 276 regime. The Court said that evidence of sexual inactivity is part a survivor's sexual history and is therefore presumptively inadmissible.

- » This decision reverses prior appeal Court decisions in Alberta and Ontario.⁹⁸ This decision creates a requirement for a Crown *Seaboyer*⁹⁹ application in order to adduce sexual inactivity evidence about a survivor, such as communications by the victim that she did not want to engage in sexual activity. This judgment is turning a requirement designed to protect victims into something that is designed to protect the accused and brings prejudice to the rights of victims.

These new requirements on Crowns in Crown-led sexual history applications and the requirement of two stages will contribute to delays in sexual assault cases, affecting the *Jordan* timelines.

- » *Seaboyer* applications are in two stages. These additional steps will take additional Crown, defence and judicial time as well as courtroom time.
- » Complainants are not automatically entitled to standing in *Seaboyer* applications, but judges can exercise their discretion to grant standing. This may require an additional court date to litigate whether the complainant should have standing prior to the second stage of a *Seaboyer* application.
- » Survivors will want to have legal representation for these applications -which adds to possible scheduling challenges for the Court.

- » Stage two of a Crown *Seaboyer* application will generally require a personal affidavit, which will most often come from the complainant. While the SCC says that this affidavit is not a requirement, they also say that the Crown's application will have little chance of success without it.
- » A personal affidavit from the survivor on this application exposes her to cross-examination on the pre-trial application. Crowns will often be in a situation of having to choose between exposing the victim to early and harmful cross-examination on the application, or forgoing calling evidence that would be helpful to the prosecution.
- » Cross-examinations are one of the most stressful parts of a criminal trial for survivors – this decision has added another possible cross-examination for a survivor.

The records regimes need to better protect therapeutic records in order to protect survivors' *Charter* rights

Even with added protections available to survivors in the sexual history, records production and admissibility regimes, we have heard that:

- » Defence counsel routinely request or threaten to request private records, including therapeutic records, or to adduce sexual history evidence **based on rape myths and stereotypes**.

- » The records production and admissibility regimes have not sufficiently limited the **overbreadth** of defence counsel applications for counselling records.
- » The **mental health consequences** on survivors when their counselling records are requested or disclosed is undeniable.

Section 11(b) rights of the accused can't be considered in isolation

In *R v. Mills*,¹⁰⁰ the Supreme Court of Canada made it clear that none of the principles at stake in third-party records application – full answer and defence, privacy, and equality – were absolute and capable of trumping the others.¹⁰¹ The Court also held that conflict between these rights should be resolved by considering the conflicting rights in the factual context of each particular case. Finally, the Court noted that *Charter* rights are to be read expansively: the balancing of *Charter* rights happens in a section 1 analysis.

In *R v. J.J.*, the Supreme Court considered the record admissibility regime and standing for victims on s. 276 applications. The Court explained that “**Section 11(d) does not guarantee ‘the most favourable procedures imaginable’ for the accused, nor is it automatically breached whenever relevant evidence is excluded ... an accused is not entitled to have procedures crafted that take only [their] interests into account. Still less [are they] entitled to procedures that would distort the truth-seeking function of a trial by permitting irrelevant and prejudicial material at trial... Nor is the broad principle of trial fairness assessed solely from the accused’s perspective. Crucially, as this Court stated in *Mills*, **fairness is also assessed from the point of view of the complainant and community.****”¹⁰² [Emphasis added]

Are the rights of survivors to security of the person being infringed?

In *Morgentaler 1* (1988)¹⁰³ the majority found, “State interference with bodily integrity and serious state-imposed psychological stress, at least in the criminal law context, constitutes a breach of security of the person.”

- » Applying this lens to therapeutic records, the question is whether allowing therapeutic records to be used as evidence limits survivors’ access to care. We think that there is convincing evidence that it does.

In *Canada vs. PHS*,¹⁰⁴ the Supreme Court found that “Where a law creates a risk to health by preventing access to health care, a deprivation of the right to security of the person is made out.”¹⁰⁵

- » Our evidence shows that allowing an accused person to seek access to therapeutic records increases a survivor’s risk to health.

Are the equality rights of survivors being infringed?

The two-step test for assessing a s. 15(1) *Charter* claim “requires the claimant to demonstrate that the impugned law or state action a) creates a distinction based on enumerated or analogous grounds, on its face or in its impact; and b) imposes a burden or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.”¹⁰⁶

- » This test also applies in cases of adverse impact discrimination, which “occurs when a seemingly neutral law has a disproportionate impact on members of groups protected on the basis of an enumerated or analogous ground.”¹⁰⁷

Historically, women, specifically marginalized women, were discriminated against when they alleged rape or sexual assault.¹⁰⁸ Myths, stereotypes, and prejudice were used to discredit and harass women who made allegations of rape.

- » We believe that failing to protect therapeutic records intensifies privacy concerns and further disadvantages those who experience sexual assault.¹⁰⁹

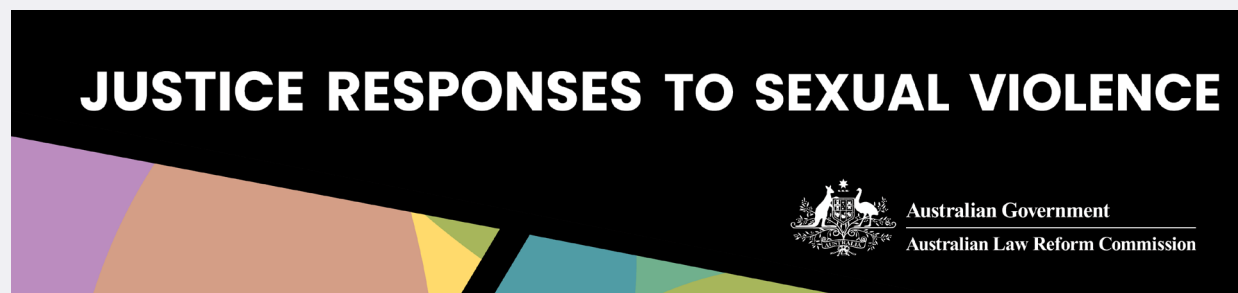
Why identity matters

Differential and intersecting impacts must also be considered for those who experience systemic discrimination.¹¹⁰

- » Survivors who are heavily monitored and documented by systems, including Indigenous women, racialized women, women living in poverty, and women with disabilities, are more likely to be recorded by systems. There are more records available about them – the more records available increases privacy risks and adds barriers to reporting.

- » Those who have been victimized or traumatized in the past are more likely to see a counsellor, and therefore disproportionately impacted by these applications.
- » Members of the 2SLGBTQIA+ community are disproportionately victims of sexual assault.¹¹¹ The Canadian Mental Health Association found that between 2022 to 2023, these populations were more likely to have poorer mental health and to be accessing mental health services.¹¹² This puts these groups at an increased risk of having records that are then requested during the criminal justice process. Coupled with the high rates of sexual victimization of 2SLGBTQIA+ community, these people are at increased risk from the misuse of the records regime.

Other countries are considering this issue



In January 2025, the Australian Law Reform Commission (ALRC) released the final report from their inquiry **Justice Responses to Sexual Violence**. Many of their findings parallel our own.

The ALRC acknowledges that, prior to the inquiry, they believed that regimes to protect counselling records through judicial review balanced the protection of complainants with the rights of the accused. Based on the evidence they collected, they conclude that their private records regime:

- » is not working effectively in practice
- » does not effectively safeguard survivor access to therapy or society's interest in reporting to police
- » causes further harm and trauma to survivors
- » adds time and cost to the justice system

They discussed whether counselling communication privilege should be qualified or absolute.

“If applications to access material are frequently granted, and if the material (once accessed) is frequently and successfully used by the defence, then this may justify retention of a qualified privilege. However, if applications are rarely granted, and the material is rarely of use, this would tend against a qualified privilege and in favour of an absolute prohibition. The justification for exposing all people who have experienced sexual violence to this potential harm becomes less tenable.”¹¹³ (Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence, Australian Law Reform Commission, 2025 at p. 379)

In a significant shift from past decisions, the ALRC argues that an absolute prohibition may be appropriate, but that more data is needed on how the regime is functioning to properly assess the balance. They recommend that the Standing Council of Attorneys-General consider whether sexual assault counselling communications should be absolutely privileged or admissible with leave of the court.

Options for Reform. We heard that the harms to survivors from the records regimes are so severe that the threshold to access therapeutic records should be nothing less than the protections provided to solicitor-client or informant privilege. *“The privilege should be infringed only where core issues going to the guilt of the accused are involved and there is a genuine risk of a wrongful conviction.”¹¹⁴* A stakeholder said,

“If we truly wanted to provide protection [for] counselling records, they should be protected with the same level as lawyer-client privilege. These records are often thoughts and emotions of the survivor during a traumatic time and should not be entered as evidence.”¹¹⁵

Independent Systemic Review in British Columbia:

In June 2025, British Columbia published the final report from an independent systemic review into the legal system’s treatment of intimate partner violence and sexual violence. Dr. Kim Stanton came to similar conclusions about the way private records are being abused in the system, and the need to better protect therapy records:

*“The Review heard considerable concern from support workers and lawyers that there is a rising use of third-party records applications by men who use violence as a further form of control and abuse. The Ministry of Attorney General, in consultation with relevant experts, should consider whether a form of **presumptive evidentiary privilege** (sometimes called a **class privilege**) could be extended through legislation to safeguard confidentiality of communications between survivors and crisis workers in order to thwart the weaponizing of records applications in cases of gender-based violence.”¹¹⁶*

We also heard from feminist legal academics and leading advocates that there should be **an absolute prohibition** on the use of therapeutic records in the prosecution of sexual violence offences.

- » They argue that this prohibition would reflect the SCC directions that sexual violence prosecutions should not require complainants to submit the minutiae of their lives to public scrutiny and the evolution in society that values the mental health and healing of complainants.

The criminal justice system is using women (overwhelmingly victims of sexual assault) to achieve the societal goal of preventing crime, encouraging reporting of crime, and responding to crime.

- » **We believe that the goal is not being met by the system** (preventing crime, encouraging reporting, responding to crime) because it discourages reporting, increases harm and risk of harm.

In *R v. J.J.*, one of the most recent Supreme Court cases on the private records regime, Chief Justice Wagner and Justice Moldaver delivered the majority judgment:

[1] *The criminal trial process can be invasive, humiliating, and degrading for victims of sexual offences, in part because myths and stereotypes continue to haunt the criminal justice system. Historically, trials provided few if any protections for complainants. More often than not, they could expect to have the minutiae of their lives and character unjustifiably scrutinized in an attempt to intimidate and embarrass them and call their credibility into question — all of which jeopardized the truth-seeking function of the trial. It also undermined the dignity, equality, and privacy of those who had the courage to lay a complaint and undergo the rigours of a public trial.*

[2] Over the past decades, Parliament has made a number of changes to trial procedure, attempting to balance the accused's right to a fair trial; the complainant's dignity, equality, and privacy; and the public's interest in the search for truth. This effort is ongoing, but statistics and well-documented complainant accounts continue to paint a bleak picture. Most victims of sexual offences do not report such crimes; and for those that do, only a fraction of reported offences result in a completed prosecution. **More needs to be done.**¹¹⁷

The OFOVC has been calling for reforms to the records regime

In November 2024 in a submission to the Standing Committee on the Status of Women on their Gender-based Violence and Femicides against Women, Girls, and Gender Diverse People study,¹¹⁸ we shared issues with applications for therapeutic records including causing delays and preventing survivors from accessing mental health support.¹¹⁹

In May 2024, we were part of the **Survivor Safety Matters' joint press conference** with members Alexa Barkley and Tanya Couch, calling attention to the need for urgent reform of section 278.1 of the *Criminal Code* (see *Annex D for Survivor Safety Matters' Proposed Amendments for s.278 of the Criminal Code*). This systemic investigation was also highlighted in the Ombud's remarks.¹²⁰

We highlighted problems with the records regime in a February 2024 submission to the House of Commons Standing Committee on Justice and Human Rights.¹²¹



In 2011, the Ombuds made recommendations to the Standing Senate Committee on Legal and Constitutional Affairs on their study of a *Statutory Review on the Provisions and Operation of the Act to Amend the Criminal Code (Production of records in sexual offence proceedings)*. The final report included recommendations for better research into the effectiveness of records regime, looking at data from survivors compared to proceedings and lack of reporting, and changing legislation to ensure judges tell victims about their entitlement to independent counsel in records applications.

TAKEAWAY

A just system ensures that asking for help is not used against survivors.

Justice must ensure private healing is not public evidence.

Endnotes

- 1 SISSA Survivor Interview #461
- 2 Based on a review of 294 available 2024 sentencing decisions for sexual offences in the Westlaw Canada database.
- 3 In this chapter, we are using the term therapeutic records to include psychiatric records, psychological records, counselling records and therapeutic records related to treatment after sexual violence.
- 4 *R v. Barton*, 2019 SCC 33 (CanLII)
- 5 Input from Justice Canada, July 23, 2025.
- 6 *R v. Darrach*, [2000] 2 S.C.R. 443 (SCC 2000-46).
- 7 *Criminal Code*, RSC 1985, c C-46, s 276(3).
- 8 A third party can mean a counsellor, an employer, a private company (such as a pharmacist, a ride-share service), the Crown or the police.
- 9 Donkers H. (2018). *An Analysis of Third Party Record Applications Under the Mills Scheme, 2012-2017: The Right to Full Answer and Defence versus Rights to Privacy and Equality*. CanLII Docs 192.
- 10 *R v. J.J.*, 2022 SCC 28 (CanLII)
- 11 *Criminal Code*, RSC 1985, c C-46, s. 278.5(2)
- 12 Duckett, M., & Ruzicka, L. (2014). *Applications in sexual assault offence cases: Third party records, Section 276, Records in the possession of the accused*. Law Society of the Northwest Territories.
- 13 This is not an exhaustive list of the conditions which a judge can put on the record to protect the complainant's privacy and security.
- 14 *R v. Mills*, 1999 CanLII 637 (SCC)
- 15 Submission to the OFOVC, July 23, 2025.
- 16 In 2018, FPT Ministers Responsible for Justice and Public Safety **recommended extending the application from 7 days to 30 days** to provide more time for complainants to access legal advice or representation. Federal-Provincial-Territorial Meeting of the Ministers Responsible for Justice and Public Safety. (2018). *Reporting, investigation and prosecuting sexual assaults committed against adults: Challenges and promising practices in enhancing access to justice for victims*.
- 17 *Criminal Code*, section 278.994(2) which was discussed in *R v. J.J.* (2022) SCC 28 (CanLII), at para 176-179
- 18 *Criminal Code*, RSC 1985, c C-46, s. 278.92(3)(c), (g), (h).
- 19 Duckett, M., & Ruzicka, L. (2014). *Applications in sexual assault offence cases: Third party records, Section 276, Records in the possession of the accused*. Law Society of the Northwest Territories.
- 20 See our chapter on Enforceable Rights for more about independent legal advice and independent legal representation.
- 21 *R v. J.J.*, 2022 SCC 28 (CanLII)
- 22 *R v. Mund* (2024) QCCQ 5149, at para 68-70
- 23 SISSA Survivor Survey, Response #192
- 24 *R v. T.C.* 2021 ONCJ 299 (CanLII)
- 25 *R v. J.J.* 2022 SCC 28 (CanLII)
- 26 *R v. J.J.* 2022 SCC 28 (CanLII), at para 44
- 27 *R v. Marakah* 2017 SCC 59
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- 29 Du Mont, J., Johnson, H., & Hill, C. (2019). Factors associated with posttraumatic stress disorder symptomology among women who have experienced sexual assault in Canada. *Journal of Interpersonal Violence*, 36(17-18), NP9777-NP9795.
- 30 Fox, V., Dalman, C., Dal, H., Hollander, A. C., Kirkbride, J. B., & Pitman, A. (2021). Suicide risk in people with post-traumatic stress disorder: A cohort study of 3.1 million people in Sweden. *Journal of affective disorders*, 279, 609–616.
- 31 Review of 25 studies, reflecting N = 88,367 participants. Dworkin, E. R., DeCou, C. R., & Fitzpatrick, S. (2022). Associations between sexual assault and suicidal thoughts and behavior: A meta-analysis. *Psychological trauma: theory, research, practice, and policy*, 14(7), 1208-1211.

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48 SISSA Survivor Survey, Response #170

49 *R v. J.J.*, 2022 SCC 28 (CanLII), at para 1

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51 Westlaw data analysis, July 30, 2025. Search terms included: sexual assault, sexual offence, sexual interference, invitation to sexual touching and sexual exploitation (EN/FR bilingual search). Results were filtered using cases, non-appeal courts, criminal. Within filtered results, we searched for the term “suicide” and reviewed all cases identified.

52 *R v. Friesen*, 2020 SCC 9

53 Responses marked “unsure” not shown but accounted for in percentage calculation.

54 SISSA Stakeholder Survey, Response #218

55 SISSA Stakeholder Survey, Response #356

56 SISSA Stakeholder Survey, Response #106

57 SISSA Stakeholder Survey, Response #197

58 SISSA Stakeholder Survey, Response #319

59 **Survivor Scale:** mean 7.71; median 9; standard deviation 2.73; **Service Provider Scale:** mean 7.03; median 7; standard deviation 2.64.

60 SISSA Stakeholder Survey, Response #204

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67 SISSA Stakeholder Interview #201

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69 In the tables that follow, not all types of stakeholders are shown. We have chosen to highlight police, Crown, and defence perspectives within the criminal justice system, and to present perspectives from sexual assault centres and mental health professionals since they are often involved in discussions with survivors about their therapy records.

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71 McDonald, S., Wobick, A., & Graham, J. (2004). Bill C-46: Records Applications Post-Mills, a case law review. Department of Justice Canada.

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73 *R v. J.J.* 2022 SCC 28 (CanLII), at para 1

74 This idea is also explored in our chapter about *R v. Jordan*.

75 SISSA Consultation Table #16: Crown Attorneys

76 SISSA Stakeholder Survey, Response #404

77 SISSA Consultation Table #16: Crown Attorneys

78 SISSA Stakeholder Survey, Response #449

79 SISSA Stakeholder Interview #182

80 Feedback to the OFOVC, July 23, 2025

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82 We discuss the uneven effect of the *Jordan* timelines in our chapter on *R v. Jordan*.

83 Feedback to the OFOVC, July 23, 2025

84 Feedback to the OFOVC, July 23, 2025

85 SISSA Consultation Table #16: Crown Attorneys; SISSA Stakeholder Interview #51

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87 Craig, E. (2021) Private Records, Sexual Activity Evidence, and the Charter of Rights and Freedoms Dalhousie University Schulich School of Law.

88 Craig, E. (2021) Private Records, Sexual Activity Evidence, and the Charter of Rights and Freedoms Dalhousie University Schulich School of Law.

89 SISSA Survivor Survey, Response #611

90 SISSA Stakeholder Interview #173

91 SISSA Stakeholder Interview #51

92 Stakeholder Interview #183

93 SISSA Consultation Table #16: Crown Attorneys

94 SISSA Stakeholder Interview #183

95 SISSA Stakeholder Interview #183

96 SISSA Stakeholder Interview #183

97 *R v. Kinamore*, 2025 SCC 19 (CanLII)

98 *R v. Brothers*, 1995 ABCA 185 (CanLII); *R v. Pittman*, 2005 CanLII 23206

99 *R v. Seaboyer*; *R v. Gayme*, 1991 CanLII 76 (SCC); *Admission of certain complainant evidence for sexual offences – Criminal Law notebook*. (n.d.). The Criminal Law Notebook by Peter Dostal.

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101 *R v. Mills*, 1999 CanLII 637 (SCC), at para 61

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103 *R v. Morgentaler*, 1988 CanLII 90 (SCC)

104 *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (CanLII)

105 *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 (CanLII), at para 93

106 Sharma at para 28 citing *R v. C.P.*, 2021 SCC 19 (CanLII), at paras 56,141

107 *Fraser V. Canada (Attorney General)*, 2020 SCC 28 (CanLII), at para 30

108 The SCC acknowledged this in *R v. Seaboyer*, 1991 CanLII 76 (SCC); *R v. Osolin*, 1993 CanLII 54 (SCC), at para 669-71; *R v. Ewanchuk*, 1999 CanLII 711 (SCC) at para 94-97

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112 Canadian Mental Health Association. (2023). *Mental health at the pandemic's end: Women, non-binary, and 2SLGBTQIA+ people are still reporting poorer mental health and greater service use*.

113 *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143), Australian Law Reform Commission, 2025 at p 379.

114 *R v. McClure*, 2001 SCC 14 (CanLII)

115 SISSA Stakeholder Survey, Response #103

116 Stanton, K. (2025). *The British Columbia legal system's treatment of intimate partner violence and sexual violence*. Government of British Columbia, p. 135.

117 *R v. J.J.* 2022 SCC 28 (CanLII) at para 1-2.

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Trial Fairness and Cross-examination

ISSUE

Cross-examinations are considered a cornerstone of the criminal justice system's truth-seeking function. However, survivors of sexual violence often experience cross-examination as destabilizing, retraumatizing, and humiliating.

*"It was a hell I will never forget or forgive. The system set me up for horror. This kind of treatment on the stand is in itself a crime but not one I can report or get any apology for."*¹

SISSA Survivor Survey, Response #21

IN NUMBERS

In our survey of 1,000 survivors of sexual violence:



87% of survivors who did not report to police² (n = 431) said they **feared the court process**



Overall, only **12%** of survivors felt the court process was fair

Of 100 survivors who participated in a criminal trial:



- » **1 in 5 survivors said they felt protected** from rape myths and stereotypes in court (21%)
- » **2 in 3 survivors said they did not feel protected** (66%)
- » **84%** said cross-examination **negatively affected their mental health**

BOTTOM LINE

Myths and stereotypes undermine the truth-seeking function of a trial. Cross-examination can be rigorous and thorough without humiliating and retraumatizing complainants. Trauma-informed prosecutions can improve trust in the system, increase reporting, and ultimately hold more perpetrators accountable.

KEY IDEAS

Despite important changes to the *Criminal Code*, some cross-examinations still rely on myths and stereotypes

Certain methods of **cross-examination can be dehumanizing**

Survivors with intellectual disabilities or neurodivergence may face disproportionate unfairness

Cross-examination is **traumatic for child survivors** – especially when they have to testify twice

RECOMMENDATIONS

Preliminary Inquiries

4.1 Eliminate preliminary inquiries: The federal government should amend the *Criminal Code* to remove preliminary inquiries for all sexual offences, protecting children and vulnerable complainants from the harm of multiple cross-examinations.

Cross-Examinations

4.2 Review trial procedures to enhance trauma-informed and culturally safe practice: The federal government should review the *Criminal Code* to increase trauma-informed practice for all trials. Trauma-informed practice should include accessibility for people with disabilities and culturally safe, Indigenous specific supports, such as dedicated Indigenous survivor advocates.

4.3 Develop a national justice strategy to protect children and youth: The federal government should consider a coordinated national strategy to uphold the dignity and safety of all children and youth who have experienced sexual violence. This strategy could include national standardization of forensic interview protocols, mandatory training for interviewers, national training standards, and universal access to child and youth advocacy centres.

Our investigation

Background

In the groundbreaking 1993 judgment in *R v. Osolin*,³ Supreme Court of Canada (SCC) Justice Cory wrote, “a complainant should not be unduly harassed and pilloried to the extent of becoming a victim of an insensitive judicial system.”⁴

- » Thirty years later, complainants have shared that they are still being harassed, bullied, and retraumatized while on the stand.

As Justice Sopinka wrote in *R v. Stinchcombe*, “the right to make full answer and defence is one of the pillars of criminal justice on which we heavily depend to ensure that the innocent are not convicted.”⁵ However, while a criminal trial must be fair to the accused, **a trial that is fair only to the accused is not a fair trial.**⁶

“If one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law.”⁷

What we heard

Survivors shared with us that:

- » Cross-examination was very traumatic. It was catastrophic to their mental health and overall wellness,⁸ causing panic attacks for months to follow⁹
- » Cross-examination was humiliating; defence lawyers have “fun” destroying the survivor¹⁰
- » Cross-examination caused them to be very angry¹¹

- » Cross-examination caused them to never report sexual violence again¹²
- » Cross-examination led the survivor to believe that the criminal justice system is fundamentally flawed as a vehicle for justice for sexual assault survivors¹³

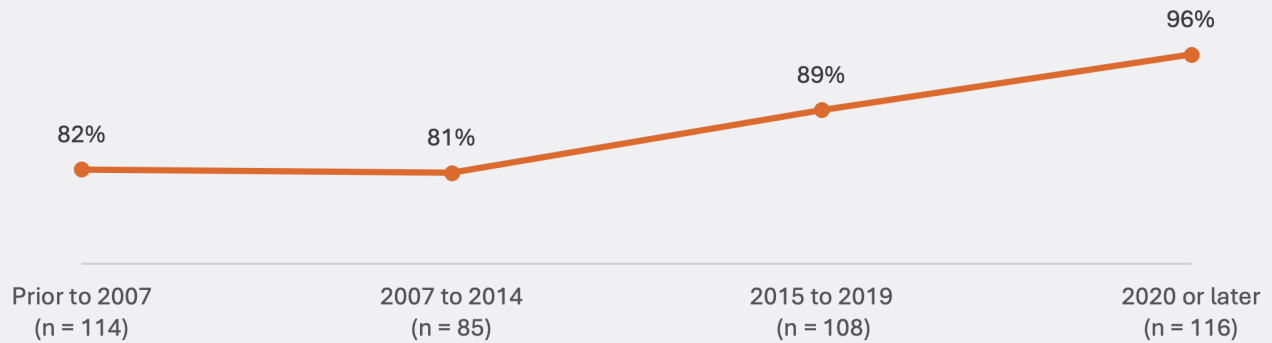
Public confidence in the justice system:

“I was too terrified of reporting because I didn’t want to have to go to court and be cross-examined.”¹⁴

One of the most concerning indicators of how survivors are treated in the criminal justice system, comes from the people working in the system. Stakeholders told us that police often warn survivors that reporting is not worth the pain and suffering it will cause. One judge told us that if their child experienced sexual violence, they would not suggest engaging with the criminal justice system.¹⁵ In our survivor survey, 28% of survivors who went to police to report sexual violence were discouraged from making an official report (n = 499).

- » **Fear of the court process continues to grow.** Of 431 survivors who chose not to report sexual violence to the police, 87% said that one of the reasons they did not report was because they feared the court process.
- » **96% of survivors** who experienced sexual violence in 2020 or later and did not report to police said fear of the court process was one of the reasons for their decision.

Fear of the court process is stopping more survivors from reporting sexual violence to the police, by year of last incident of violence (n = 431)



*“Cross-examination is a very traumatic experience. The sexual assault itself is already a horrific event to endure, but to have an aggressive cold-hearted defense lawyer pressure you into doubting your experience publicly in court to the judge, to your friends and supporters, to the press was **catastrophic for my mental health** and overall wellness.*

***The court system did little if nothing to support us as victims.** The judge and defense lawyer felt like forensic bean counters dissecting every shred of evidence, not displaying any care or empathy that there’s a living human being who’s been gravely hurt here. The defendant assaulted several women and yet the court process seemed to be designed to protect the defendant more so than the victims.”¹⁶*

“I was never told that the defence lawyer ... could laugh at me on stand and yell at me numerous times. I was never told that it would be acceptable for the accused to not only get up there and lie, but to call me fat and call me names and allow that to continue. I was never told that – after having the trial delayed so many times – they would be able to keep me on stand for three days, cross-examining me.”¹⁷

Cross-examination is sometimes premised upon myths and stereotypes

“The cross-examination was awful. I was surprised because they aren’t supposed to question based on myths and stereotypes. The judge didn’t stop that line of questioning.”¹⁸

“My assault took place when I was 6 or 7, and I was asked in court, “what were you wearing at the time of the assault?” Questions like this have a negative insinuation. They are irrelevant and shaming to the victim.”¹⁹

The SCC has repeatedly held that “myths and stereotypes have no place in a rational and just system of law, as they jeopardize the courts’ truth-finding function.”²⁰ In *R v. Kruk*²¹ the Supreme Court provides an overview of rape myths and stereotypes that used to be used to discredit complainants. Those myths and stereotypes perpetuated the view that women were less worthy of belief and did not deserve legal protection against sexual violence. Reliance on them is now an error in law.

Some of these myths include:²²

- » Genuine sexual assaults are perpetrated by strangers
- » False allegations of sexual assault based on ulterior motives are more common than false allegations of other offences
- » Victims of sexual assault will have visible physical injuries
- » A complainant who said “no” did not necessarily mean “no”
- » If a complainant remained passive or failed to resist the accused’s advances, either physically or verbally by saying “no,” she must have consented
- » A sexually active woman is more likely to have consented to the sexual activity that formed the subject matter of the charge, and is less worthy of belief – otherwise known as the “twin myths”

These myths and stereotypes shift the inquiry away from the alleged conduct of the accused and toward the perceived moral worth of the complainant.

- » Negative social attitudes about women were often used to differentiate “real” rape victims from women suspected of concocting false allegations out of self-interest or revenge.
- » Prejudicial beliefs about women who were Indigenous, Black, racialized, persons with disabilities, or part of the 2SLGBTQIA+ community also **influence societal expectations and rules** about sexual assault victims.²³

The twin myths are set out in section 276(1) of the *Criminal Code* and apply to **any part of a proceeding** during the prosecution of a sexual offence.

*“Myths and stereotypes have taken deep root into our societal beliefs about what sexual assault is, and how a true victim of sexual assault should behave. The justice system is not immune to these myths and stereotypes. In fact, there are several well-publicized examples where myths and stereotypes have been employed knowingly or unintentionally throughout the criminal process.”*²⁴

Even though reliance on myths and stereotypes is now an error in law, the ability to distinguish them from legitimate lines of reasoning continues to be a challenge in sexual assault trials.²⁵

- » One legal scholar noticed a pattern that while more judges are trained on sexual assault, more jury trials are being elected by the accused. She thinks it is because defence believes it may be easier to get away with invoking myths and stereotypes with a jury comprised of lay people with no sexual assault training.²⁶
- » One survivor we interviewed explained how grateful she was that the judge interjected each time the defence relied on myths and stereotypes in their questioning.²⁷ Other survivors asked why the trial judge or Crown did not stop that line of questioning.²⁸
- » One person involved in training judges told us that some judges won’t intervene to avoid an appeal based on an allegation of bias toward the victim.²⁹

*“As has frequently been noted, speculative myths, stereotypes, and generalized assumptions about sexual assault victims and classes of records have too often in the past hindered the search for truth and imposed harsh and irrelevant burdens on complainants in prosecutions of sexual offences.”*³⁰

During the **criminal trial of five hockey players accused of sexual assault**, defence lawyers cross-examined the complainant on her text communication with her best friend that occurred the day after the assault.

Defence counsel suggested during cross-examination if she had been sexually assaulted, she would have told her best friend. This “suggestion” explicitly invokes **the myth** that it is common sense for a victim of sexual assault to tell people right away. The Crown objected, stating that that line of questioning relies entirely on myth-based reasoning.

However, the defence justified their questions to the Court by stating that they were part of the context to understand her actions the next day. The judge allowed it.

OFOVC Observation of trial: *R v. McLeod* 2025 ONSC 4319

While a judge may be able to parse out myth-based reasoning from their analysis, a jury may be more easily influenced by the underlying insinuation of the myth and not understand that it is actually **a normal trauma response to not speak out and tell people** about a sexual assault.

- » We know that survivors of sexual assault can experience confusion, trauma, shame, self-doubt, and may not tell anyone what happened, sometimes for years³¹
- » Even if a jury is instructed to not rely on myth-based reasoning, the insinuation can easily lead to a question mark in the minds of judges and jurors and raise a doubt about how a “true” survivor would have behaved

“Juries are laypeople who lack training in interpreting the law and are susceptible to the practised theatrical performance of a defence lawyer. The Crown on the other hand, practices a more respectable form of law, where she doesn’t use erroneous myths and stereotype or attack character; she merely applies the law to the situation. In the dramatized theatrics of a courtroom, the actual truth is muddled, and juries are making a decision based on a TV-drama caricature, not actual facts as they were documented verbatim in the written police statement and interview.”³²

Case Study: Sexual Assault Court Watch

As a part of a three-year project to evaluate criminal legal responses to sexual violence in Canada, **WomenatthecentrE attended 13 sexual assault trials** in Toronto to analyze the administration of justice in the prosecution of sexual offences.

Court watchers noted the use of rape myths and stereotyping of complainants, which they attributed most frequently to judges and defence counsel. They applied a critical anti-oppression lens, including critical race, critical feminism, and critical queer approaches to better understand power imbalances in the courtroom based on gender, race, sex, sexual orientation, socio-economic status, ability, class, and citizenship.

They noted how **the administration of hearings wreaks havoc on survivors**, who were often not notified about changes and may have travelled long distances to attend court, only to be told the case would not proceed and they would have to prepare and travel again another day. When justice staff, accused, or complainants did not show up or were unprepared for trial, new hearings would be scheduled months later.

“We also want to acknowledge the few exemplary justice players who tirelessly called out rape myths and stereotypes, refusing to stand by while complainants were berated and badgered on and off the stand. By the same token, we completely denounce the outrageous and disappointing ways the legal system itself and many within it, continue to treat survivors of sexual violence.”

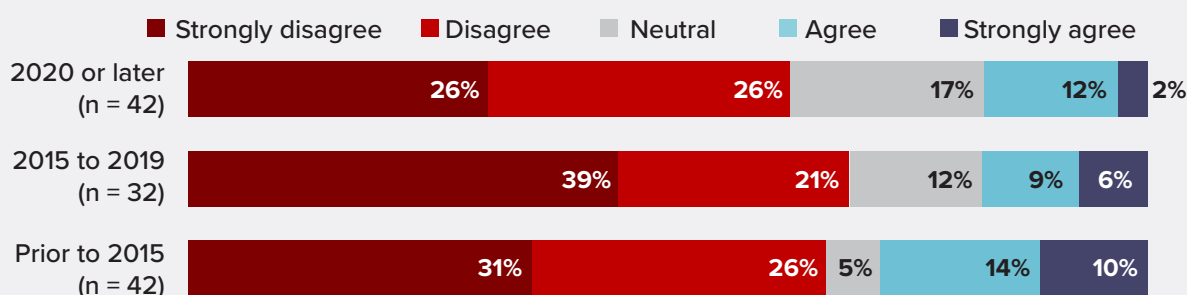
WomenatthecentrE found that external evidence (third party, expert, academic evidence) introduced by the Crown made a significant difference on the outcome of the case, although evidence remains subject to cross-examination and may still be used against the complainant. Cases that did not present evidence beyond the complainant’s testimony were frequently characterized by defence as, “he said—she said.”³³ They also noted that sexual violence complainants are reduced to “witnesses” in the justice system, but their **testimonies are treated with a higher degree of suspicion and disbelief than other witnesses or victims of crime.**³⁴

Survivor survey:

Despite efforts to reduce the prevalence of rape myths and stereotypes in court, survivors told us that they felt unprotected. Of 100 survivors who participated in a criminal trial:

- » **1 in 5 survivors said they felt protected** from rape myths and stereotypes in court (21%)
- » **2 in 3 survivors said they did not feel protected** (66%)

Survivors largely disagreed that they were protected from rape myths and stereotypes in the courtroom, by last year of contact with CJS (n = 117)



Protection is part of a fair process.

Of 66 survivors who did not feel protected from rape myths and stereotypes during cross-examination, only 4 felt like the court process was fair (6%). Overall, only 12% of survivors felt that the court process was fair. 84% said cross-examination negatively affected their mental health and only 12% felt like cross-examination raised relevant facts about their case.

Some methods of cross-examination are dehumanizing

“Victims should not be required to park their dignity at the courtroom door.”³⁵

“The most harmful aspect of the process was being cross-examined... It was demeaning and belittling.”³⁶

“Cross-examination was severely traumatizing and humiliating. He made up things and tried to convince the jury of flat out lies. He tried to take any detail he could and make me look as horrible as possible. It was beyond emotional abuse. I was unable to do any public speaking afterwards until I rehabilitated myself from the trauma. The lawyer was worse than the criminal. I’m sure the criminal enjoyed watching me be humiliated and

created half of the insults himself. It was an extension of the horrors I experienced and should not be allowed.”³⁷

Cross-examination is a key element of the right to make a full answer and defence,³⁸ however, *“the right to cross-examine is not unlimited.”³⁹*

- » Defence counsel must have a good faith basis for putting forth their questions.⁴⁰
- » Trial fairness does not guarantee the accused the best process without considering any other factors. A fair trial also must consider broader societal concerns.⁴¹
- » “The right to a fair trial does not guarantee, the most advantageous trial possible from the accused’s perspective.”⁴²

The goal of the court process is truth-seeking and, to that end, the evidence of all those involved in judicial proceedings must be given in a way that is most favourable to eliciting the truth.

Madame Justice L’Heureux-Dubé in *R v. Levogiannis*, 1993 CanLII 47 (SCC).

Sexual violence is inherently and intentionally traumatizing. It is a crime of power and domination. If survivors must answer difficult questions and relive their experiences to hold perpetrators accountable, they must be provided a fair chance to do so. A fair chance means that the Crown, the defence, and judges must understand the impact of trauma and how it can affect a complainant's testimony.

- » People who have experienced trauma have more difficulty remembering some types of details, such as dates and times.⁴³
- » Trauma survivors are at a further disadvantage in court because they often have difficulty telling their stories in a coherent manner, especially under hostile questioning.⁴⁴
- » Research has shown that there are types of questions that are better suited to trigger a memory.⁴⁵

Fear of Cross-examination

One of the main reasons women give for not reporting sexual violence is **fear of the criminal justice process**.⁴⁶ We learned:

- » Some survivors told us that cross-examination felt like an intentional infliction of mental anguish
- » Some described it as state facilitated sexual harassment⁴⁷ or a second rape⁴⁸

- » Cross-examination feels abusive to many survivors because they do not have the right to refuse to be cross-examined⁴⁹
- » Advocates believe that cross-examination is often used to get the complainants off balance, humiliate them, and pressure them to give up

*"We now know why sexual assault victims are reluctant to proceed with criminal charges. Protected by the presumption of innocence, defendants do not have to testify while the complainant gets mercilessly grilled by defence lawyers in cross-examinations."*⁵⁰

Some examples of cross-examination were so egregious they seem **akin to cruel and unusual treatment**.⁵¹ In those cases, defence appears to be trying to shame and intimidate the victim, in front of the accused and everyone else in court.⁵²

- » Some survivors feel that the defence seems to enjoy mercilessly humiliating them and confusing them while they are publicly reliving their trauma. The defence counsel appear to believe that a torturous cross-examination will advantage their client by discrediting the complainant or making the complainant quit.⁵³

Humiliation as a deliberate tactic

A survivor of intimate partner sexual violence and coercive control was subjected to a prolonged and invasive cross-examination in which the Court permitted the display of multiple hours of graphic video footage, recorded without her knowledge, on a large screen over several days. This footage formed part of the charges of sexual assault and voyeurism.

The Court allowed the defence to pause the video repeatedly while questioning her – so that shocking images of her were projected while she testified. The Court also permitted the creation and distribution of multiple printed booklets containing frame-by-frame stills of the assault. These booklets were visibly stacked on desks in the courtroom and used to interrogate her in extreme detail. She was very disturbed by the thought of who all had seen these images, as surely the lawyer didn't print, cut, and professionally bind these himself.

Rather than recognizing the trauma of being confronted with non-consensual recordings of her own sexual assault, the Court treated these materials as evidentiary tools for discrediting her. This approach not only retraumatized her but created a public and humiliating experience that furthered the original harm. Notably, the judgment did not acknowledge the voyeuristic nature of the recordings, nor the invasive impact of presenting them in this manner to the court.

Survivor Interview #198

Scrutiny about what the victim did or did not do, instead of the actions of the accused, can determine the outcome of a case.⁵⁴

- » A combative style of sexual assault lawyering used to be promoted by senior members of the bar and taught in law schools.⁵⁵
- » Defence counsel who used aggressive techniques of cross-examining to the point of completely devastating the witness were considered brilliant.⁵⁶
- » If the objective of a criminal trial is truth-seeking, we should be asking questions that facilitate that objective rather than interfere with it.⁵⁷

*"Defence was able to throw outlandish statements or lies. 'I'm going to suggest that you wanted this to happen to you...' Trying to rattle you. Meant to get you off balance."*⁵⁸

*"To put a bulldog there to rip the person to shreds is barbaric."*⁵⁹

In *R v. Khaery*, the victim was a 19-year-old racialized woman. She did not want to testify. A roommate and four first responders were eyewitnesses to the rape, but she was **still subjected to five days of cross-examination:**

"I was not prepared for the questions... I thought I could handle it, and by the end of the week, I was drained and just... I couldn't cope with it mentally. I thought I was going to snap."

After the third day of cross-examination, she took herself to the hospital because she was feeling suicidal.⁶⁰

Trauma-informed approaches are grounded in evidence and consider the impact of trauma on the brain. Trauma and violence-informed approaches also take into consideration the impact of violence. They aim to transform policies and practices based on an understanding of the impact of trauma and violence on victims' lives and behaviours. These approaches are compatible with and supported by efforts to make policies and practices culturally safer.⁶¹

- » Trauma-informed prosecutions can help the truth-seeking function of the courts and improve trust in the criminal justice process. Understanding the range of normal responses to trauma can prevent survivors from unfairly being treated as not credible or not reliable. For example:
- » Self-blame and shame are common reactions to sexual assault. Trauma-informed prosecutions apply this knowledge to acknowledge that self-blame and shame do not mean the survivor consented.
- » Sexual contact is a very private and personal topic in all cultures. Trauma-informed prosecutions apply this knowledge to understand that difficulty answering questions does not mean an effort to hide the truth.
- » Misleading terminology can blur the truth for the complainant, the public, and the Court. Trauma-informed prosecutions are careful with words used to describe the acts in question.
- » Terms such as “kissed” when describing an experience of sexual violence confuses an assault with a consensual sexual encounter. Trauma-informed prosecutions use descriptive and factual language such as “put their mouth on your mouth.”⁶²

Trauma-informed prosecutions also take into account that the acts involved in a sexual assault are socially normative under different circumstances. This is not true for other forms of assault.

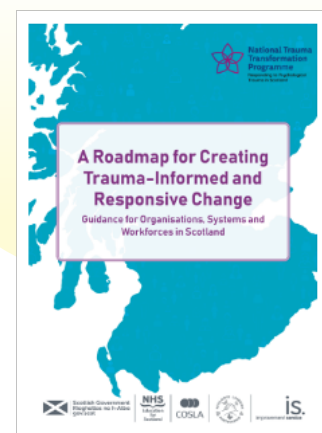
- » A punch to the face is always an assault. A man putting his penis in a woman's vagina can either be a consensual act of sexual intercourse or an act of violence.⁶³

“If they stopped allowing defence attorneys to badger and destroy witnesses on the stand. You can discredit a witness without completely devastating someone.”⁶⁴

Other countries are also working on improving trauma-informed justice.

The Government of Scotland has created a national program with a wide range of sectors and services to prevent and more effectively respond to adverse childhood experiences.

- » The program provides education modules, training guides, and other references for anyone working with people who have experienced trauma.
- » One of the key principles is to prevent further re-traumatization. The program recognizes that services and systems can create further traumatization and that policies, not just service providers, need to become trauma-informed.⁶⁵



Case study: How identity shapes survivors' experience of the criminal justice system

Background

In *R v. N.S.*,⁶⁶ a Muslim woman who wears a niqab reported being sexually abused as a child by her uncle and cousin. As a teenager, she disclosed the abuse to a teacher, but police did not lay charges. As an adult, she came forward again.

At the preliminary inquiry, the accused requested that N.S. remove her niqab to testify, arguing their right to cross-examination required seeing her face. Without legal representation, N.S. explained to the judge that wearing the niqab was part of her religious identity.

Despite this, the Court questioned the sincerity of her faith, pointing to her driver's licence photo, in which her face was visible, implying inconsistency.⁶⁷ The Ontario Court of Appeal later rejected this reasoning and found it to be a form of "othering."⁶⁸

Constitutional Rights in Conflict

On appeal at the SCC, the focus shifted to a constitutional debate over religious freedom and trial fairness. The Court created a four-part balancing test for trial judges to apply when a witness's religious covering is raised as a concern.⁶⁹

In dissent, Justice Abella warned of the **chilling effect**:

*"The majority's conclusion that being unable to see the witness' face is acceptable from a fair trial perspective if the evidence is 'uncontested,' essentially means that sexual assault complainants, whose evidence will inevitably be contested, will be forced to choose between laying a complaint and wearing a niqab, which, as previously noted, may be no meaningful choice at all."*⁷⁰

At a second trial, N.S. was never given the opportunity to testify. The charges were eventually dropped.⁷¹

Bottom line: Survivors from marginalized backgrounds may have their evidence intensely scrutinized or challenged in ways that discredit them and distract from the violence they endured. By insisting N.S. remove her niqab in order to proceed, the accused and the legal system mirrored aspects of the harm she reported, forcing unwanted exposure, shame, and vulnerability upon her.

Some cross-examination methods are unfair to survivors with intellectual disabilities or who are neurodivergent

“The right to cross-examination surely does not extend to the right to take advantage of vulnerable witnesses’ difficulties.”⁷²

“We are making it so easy for men to sexually assault people with intellectual disabilities.”⁷³

“Individuals with intellectual disabilities are four to ten times more likely to experience sexual assault than the general population.”⁷⁴

We heard that:

- » When survivors with intellectual disabilities do get a chance to testify, some defence lawyers intentionally try and shut down their testimony through questions meant to confuse them.⁷⁵
- » Judges did not intervene often enough to assist witnesses with intellectual disabilities to ensure they understood the question.⁷⁶
- » During records admissibility and productions motions, victims with intellectual disabilities may be disproportionately impacted because
 - » they may not understand the reasoning to retain a lawyer
 - » they may disclose private information on their own that could be used against them
 - » they may consent to having their records accessed without knowing the impacts
- » Some advocates believe that traditional methods of cross-examination are discriminatory against people with intellectual disabilities⁷⁷ and the use of complex language and questions may be particularly confusing on cross-examination for individuals with intellectual disabilities. They may be especially vulnerable to the heavily suggestive leading questions often used in cross-examination.⁷⁸

» Chief Justice McLachlin wrote, “to set the bar too high for the testimonial competence of adults with mental disabilities is to permit violators to sexually abuse them with near impunity.”

R v. D.A.I., 2012 SCC 5 (CanLII).

“We must, of course, ensure that those with mental and physical disabilities receive equal protection of the law guaranteed to everyone by s. 15 of the Canadian Charter of Rights and Freedoms.”⁷⁹

Section 15 (1) guarantees that “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”⁸⁰

- » The SCC has underscored that “the concept of equality does not necessarily mean identical treatment and that the formal ‘like treatment’ model of discrimination may in fact produce inequality.”⁸¹
- » For witnesses with disabilities to be treated equally, they must be given a fair chance to express themselves. They should not be treated as less credible because their brain processes information in different ways.⁸²

Important advancements have been made to improve accessibility.

- » Two testimonial aids (support person, testimony outside the courtroom or behind a screen) are presumptive for people with disabilities.⁸³
- » We learned that **depending on where the survivor lives, closed circuit TV for testimony outside the courtroom may not be available.**

Communication intermediaries are another option to increase access to the criminal justice process for people with intellectual disabilities or communication disabilities.

- » Communication intermediaries can assist the Court with witnesses who communicate in a way that a traditional court is not equipped to understand.⁸⁴
- » Section 6 of the *Canada Evidence Act*⁸⁵ can be interpreted to permit and facilitate the use of communication intermediaries and ensure equality rights are respected.⁸⁶

One example of the failure to protect people with disabilities came to light in a horrific situation of sexual abuse where residents with disabilities were sexually abused for years by a worker in their group home.

The person who abused them stated that *“he waited to act on his urges until he was alone with the victims and **targeted them because they were non-verbal and couldn’t report him.**”*⁸⁷

*“I was told by a nurse in the ER that no one would believe me and it was not worth reporting. She said that I would be torn apart on the stand because I am diagnosed with borderline personality disorder.”*⁸⁸

The *International Convention on the Rights of Persons with Disabilities* says: “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life” and “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”¹

¹Article 12

Neurodivergence and credibility

A survivor who is neurodivergent, diagnosed with ADHD [Attention-Deficit/Hyperactivity Disorder] and giftedness, was repeatedly mischaracterized as lacking credibility due to communication and cognitive traits consistent with her profile. For instance, the judge noted that her responses were sometimes so long that she “forgot the question,” implying evasiveness. In reality, this pattern reflects well-documented ADHD challenges with working memory and a tendency to provide detailed, contextual explanations, a common strategy used by neurodivergent and gifted individuals to ensure accuracy.

In one example, she corrected the defence lawyer, who claimed she had testified that the accused “slapped her on the vagina.” She refuted this, explaining that she did not and would not use that term because the vagina is an internal organ, and the accused had struck her vulva and clitoral area. Her precise use of language, driven by a need for factual accuracy and a fear of being perceived as dishonest, was instead interpreted as argumentative and ultimately contributed to the judge’s conclusion that she was not credible.

These examples mirror findings in current research, which demonstrate how neurodivergent witnesses are frequently misunderstood and discredited when their authentic communication styles are not recognized or accommodated in court.

The judge found that such behaviour is characteristic of unreliable witnesses, despite significant research showing that these are common traits among neurodivergent individuals. The judge described her testimony as lacking “spontaneity,” a term often used in credibility assessments to favour neurotypical communication styles.

These assessments failed to consider her neurodivergent cognitive profile and instead pathologized the very behaviours that are consistent with ADHD and gifted processing. Her testimony was judged not for its content or truthfulness, but for the way it was delivered.

SISSA Survivor Interview 198

Cross-examination can be profoundly traumatic for child survivors – especially when they have to testify twice

“He got a four-year prison sentence. But I got a life sentence.”⁸⁹

Cross-examination is one of the most distressing parts of the criminal justice process for child victims.

- » Some defence counsel try to ethically balance arguing for their client while considering the impact of their approach on the child.
- » When the system that children trust to protect them exposes them to the courtroom processes, they can feel manipulated and lose confidence in public institutions.

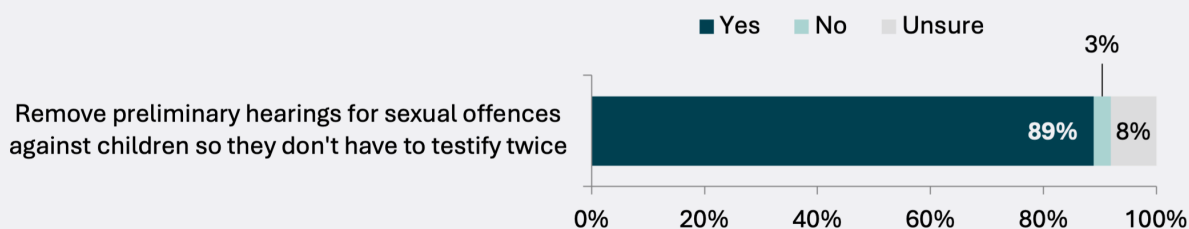
Preliminary Inquiries

“It is unbelievably frustrating to have children testify twice. It doesn’t make sense. It is a spectacularly bad idea.”⁹⁰

Testifying is a difficult, sometimes traumatizing experience for anyone. While procedural reforms have eliminated the need to testify twice for most adult survivors of sexual violence,⁹¹ **children are often still required to testify at a preliminary inquiry and at trial.**

- » Crown prosecutors told us there is zero need for preliminary inquiries.

Stakeholders believed that the *Criminal Code* should be amended to end preliminary hearings for children (n = 361)



In 2019,⁹² Parliament restricted the use of preliminary inquiries, recognizing that the discovery function of preliminary inquiries had become unnecessary since *R v. Stinchcombe*.⁹³

- » Parliament recognized that preliminary inquiries added to trial delays and to victim distress. However, the amendments retained preliminary inquiries for offences carrying a possible sentence of 14 years or more, such as sexual offences against children.

Delays in testifying

The criminal justice process often fails to recognize the urgency of a child's experience. We heard:

- » Two young girls waited over two hours in a courthouse to testify for a preliminary inquiry

for charges of child sexual interference. The courtroom had multiple matters that day. Despite the Crown's request, the judge did not prioritize the children's evidence.

- » To an adult, two hours of waiting may not seem like a long time. For a child, waiting in a courthouse, not knowing when or how they will be called to testify, can trigger physical and emotional distress.
- » It can impact their ability to self-regulate and provide testimony in a coherent way. Yet it is a regular occurrence. This impact is not reflected in the transcripts or records.⁹⁴

Even with a conviction, child survivors often come out of the process with no sense of justice.

An investigator's reflection

During an in-person interview, an adult survivor of child sexual abuse sobbed as she described cross-examination and how she was treated by the defence counsel. She said, "*He shred me to bits.*"⁹⁵

It was painful to sit in that despair, that dreadful acknowledgement that a courtroom full of professionals allowed this woman to be humiliated.

Best practices for trauma-informed justice for children and youth

Many police services across Canada have protocols to ensure that child and youth survivors of sexual violence receive trauma-informed justice.

- » They work together with child and youth advocacy centres that are equipped to conduct child forensic interviewing.

Child forensic interviews are a critical component of the investigative and judicial response to child sexual violence. These interviews aim to gather accurate and reliable information from children and youth in a trauma-

informed, developmentally appropriate manner. Those recorded interviews could be used during trial so the child is not required to testify in court.

- » Access to such interviews across Canada remains inconsistent, with disparities in training, protocols, and availability of services.
- » Equitable access to high-quality forensic interviews is essential for protecting children's rights, supporting their recovery, and ensuring justice.
- » A coordinated national strategy including standardization of forensic interview protocols is needed to address current gaps and uphold the dignity and safety of all children and youth who have experienced sexual violence.⁹⁶

Cross-examination of expert witnesses

During this OFOVC investigation, one of our investigators interviewed an expert on sexual assault law.

The expert asked, “have you ever been cross-examined?” I said no, I hadn’t.

She said, “I have. Twice. I was an expert witness at an inquest and at a human rights hearing. Those experiences were awful. I have refused to serve as an expert witness again.”

I admit, I was taken aback. She is an admired, well-known, well-respected lawyer, academic, and professor. She is confident, well-versed, a leader in the field, and has published on this topic multiple times.

Her experience being cross-examined was so awful, she would never put herself through that again. She wasn’t even the complainant.

How could a complainant, possibly traumatized already, be expected to go through with it when a highly respected and seasoned expert, invited to provide expertise for the courts, finds it unbearable? ⁹⁷

TAKEAWAY

**A just system prevents tactics that retraumatize
rather than test credibility.**

Legal questioning must never become sanctioned harm.

Endnotes

- 1 SISSA Survivor Interview #21
- 2 SISSA Survivor Survey
- 3 *R v. Osolin*, 1993 CanLII 54 (SCC).
- 4 *R v. Osolin*, 1993 CanLII 54 (SCC), at para 669-670.
- 5 *R v. Stinchcombe*, 1991 CanLII 45 (SCC).
- 6 Cunningham, M. (2018). *What Does #MeToo Mean for Crowns? Why Trauma-Informed Prosecutions are Necessary* at p 15.
- 7 Herman, J. L. (2005). *Justice from the victim's perspective*. *Violence Against Women*, 11(5), 571–602.
- 8 SISSA Survivor Survey, Response #7
- 9 SISSA Survivor Survey, Response#175
- 10 SISSA Survivor Survey, Response #21
- 11 SISSA Survivor Interview #004
- 12 SISSA Survivor Survey, Response #386
- 13 SISSA Survivor Survey, Response #439; Mattoo, D., & Hrick, P. (2025). *The criminal justice system keeps failing sexual-assault survivors. There has to be a better way*. The Globe and Mail.
- 14 SISSA Survivor Survey, Response #341
- 15 SISSA Stakeholder Interview #196
- 16 SISSA Survivor Survey, Response #007
- 17 SISSA Survivor Survey, Response #590
- 18 SISS Survivor Interview, #121
- 19 SISSA Survivor Survey, Response #82
- 20 *R v. A.G.*, 2000 SCC 17 (CanLII), at para 2.
- 21 *R v. Kruk*, 2024 SCC 7 (CanLII).
- 22 *R v. Kruk*, 2024 SCC 7 (CanLII), at para 36.
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97 SISSA Stakeholder Interview #200

Testimonial Aids



ISSUE

Testimonial aids help survivors to provide their best evidence to a Court. Survivors are facing systemic barriers to accessing testimonial aids, despite having a legal right to request them under the *Canadian Victims Bill of Rights* (CVBR). These aids are not presumptive for adult survivors, and many are never informed of their availability. Defence counsel contest applications for testimonial aids, and courts sometimes appear to apply outdated legal thresholds, requiring survivors to prove necessity rather than facilitation.

“The goal of the court process is truth-seeking and, to that end, the evidence of all those involved in judicial proceedings must be given in a way that is most favourable to eliciting the truth.”¹

Supreme Court of Canada
Justice L’Heureux-Dubé

IN NUMBERS

In our survey of 1,000 survivors of sexual violence:



71% of survivors who had to testify² said the Crown did **not** ask if they wanted testimonial aids (n = 85)



Almost 40% of survivors said they **did not have access** to any of the testimonial aids listed (n = 113)³

In our survey of 450 stakeholders:



95% of stakeholders⁴ believed survivors should be automatically provided information on how to request testimonial aids (n = 346)



81% believed that testimonial aids should be **presumptive** when requested by the Crown unless it interferes with the ability to make full answer and defence

BOTTOM LINE

Testimonial aids should be presumptive or treated as an administrative matter to help reduce trauma, and enable the truth-seeking function of the court.

KEY IDEAS

Information about **testimonial aids should be proactively offered** to survivors

Access to testimonial aids should be **presumptive, not discretionary**

Testimonial aids **should be available consistently** across Canada

Testimonial aids help survivors participate safely so they can **provide their best evidence**

Court hearings on testimonial aids use valuable resources and **cause delays**

RECOMMENDATIONS

The federal government should amend the *Criminal Code* to increase access to testimonial aids:

Option 1: Administrative approach

5.1 Treat testimonial aids for sexual offences as an administrative matter that does not require a hearing to be awarded, based on the presumptions that sexual offence proceedings create a high likelihood of retraumatization. Testimonial accommodations for victims support the truth-seeking function of the court.

Option 2: Rebuttable Presumption

- 5.2 (a) Create a rebuttable presumption for testimonial aids for adult survivors of sexual offences.
- (b) Require the Court to inquire if a victim has been offered or requested testimonial aids.
- (c) Provide that, where a judge decides that a defence's objection to testimonial aids was frivolous or made in bad faith, the time used to contest the application for a testimonial aid will be attributed as defence delay for the purposes of a Jordan application.
- (d) Provide that, where the judge decides not to order testimonial aids, they must provide written reasons.

Additional provisions

- 5.3 Clarify that victims and witnesses may access multiple testimonial aids at the same time.
- 5.4 Add support dogs as a testimonial aid.
- 5.5 Clarify that the use of video testimony (s 486.2) outside the courtroom also means outside the courthouse.
- 5.6 [If preliminary hearings are not eliminated] provide that any testimonial aids used at a preliminary inquiry are automatically granted for a trial.

Amendment to the CVBR

- 5.7 The federal government should amend the CVBR to set out that victims have a right to testimonial aids (currently it is a right to request testimonial aids).

Background

Testimonial aids are tools provided in the *Criminal Code* that help survivors and witnesses to testify. Testimonial aids include:

- » Excluding the public from the courtroom.
- » Allowing a support person to be the witness when they are testifying.
- » Allowing the survivor to testify outside the courtroom by closed-circuit television (CCTV) or inside the courtroom behind a screen.
- » Preventing a self-represented accused from cross-examining a witness under 18 years or where the charge is a sexual assault offence.⁵

The *Criminal Code* also provides that a judge may make any order for a testimonial aid that is necessary to **protect the security of witnesses** and has several provisions to allow evidence by video, including during preliminary inquiries.⁶

Our investigation

Many survivors were NOT offered testimonial aids according to our survivor survey

- » **Over 71%** said the Crown did not ask if they wanted testimonial aids (n = 85).
- » **25%** said the Crown asked for testimonial aids at trial and they were granted (n = 85).
- » **Almost 40%** said they did not have access to any testimonial aids listed (n = 113).

Stakeholders in our survey believed that testimonial aids should be presumptive:

- » **Over 80%** would support *Criminal Code* amendments for testimonial aids to be presumptive when requested by the Crown unless the accused shows it interferes with the ability to make a full answer and defence (n = 361).
- » **Over 95%** believe survivors should be automatically provided with information on how to request testimonial aids (n = 346).

Why it matters: Testimonial aids can help facilitate both survivor and witness participation and minimize stress when testifying in court.⁷ Many judges and lawyers recognize that testimonial aids can help

witnesses provide their best evidence while not violating an accused person's fair trial rights.⁸

- » The Supreme Court of Canada (SCC) has said that an accused does not have an absolute right to an unobstructed view of a witness who testifies against the accused. That right is subject to broader societal needs, in particular the need to protect and encourage child witnesses when they are testifying.⁹
- » The SCC indicates that testimonial aids “*facilitate the truth-seeking function by allowing a complaint to be able to give her evidence more fully and candidly.*”¹⁰

These aids have been an option in Canada since the 1980s on a case-by-case basis.

- » In 2006, Parliament provided that testimonial aids such as a CCTV, a support person, and video-recorded statements are presumptive for children.¹¹

The CVBR provides victims and survivors with a right to request testimonial aids¹² as part of their right to protection. Consideration of the witness' right to testimonial aids is in the interests of the proper administration of justice.



Testifying behind a screen to block the witness' view of the accused and members of the public in the courtroom. Hurley, P. (2016). A Resource Guide for Justice Professionals Working with Child Witnesses in Northern Canada, Project Lynx.

- » In our view, the **accused should not have standing** on what a survivor needs to participate safely.

How to obtain testimonial aids?

- » Victims of crime or witnesses can ask the Crown prosecutor to request that the Court grant testimonial aids before or at any time during the proceedings. The victim or witness is also allowed to directly ask the Court.¹³
- » If anyone under 18 or a person with a disability requests a testimonial aid, it will be granted unless the Court believes it would interfere with the proper administration of justice.¹⁴

- » An adult may be granted a testimonial aid if the Court believes it would make it easier for the victim or witness to testify fully and honestly or to serve justice. The Court will consider factors such as the witness' age, the nature of the offence, the nature of any relationship between the witness and the accused, and whether the testimonial aid is needed for the witness' security.¹⁵

- » In *F.C. c. R.*, the Court acknowledged that the CVBR changed the threshold for testimonial aids. Applicants now just need to show that the testimonial aid will **facilitate giving their account**.¹⁶

Government action

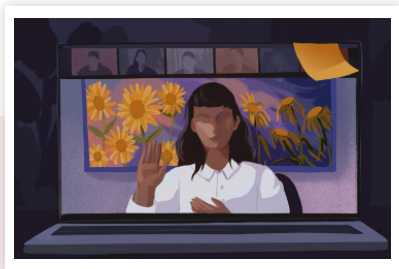
- » The **National Action Plan to End Gender-based Violence** acknowledges that testimonial aids are a positive measure for survivors in the criminal justice system (CJS).¹⁷
- » Between 2015 and 2020, the Federal Victim Strategy provided \$125 million in funding for projects and initiatives, some of which provided greater access to testimonial aids.¹⁸
- » The 2022 report from the Standing Committee on Justice and Human Rights discussed testimonial aids as an option of support and highlighted the need for survivors to have choices such as testifying on video or in person.¹⁹
- » A 2019 Department of Justice study found that one of the biggest obstacles with respect to the use of testimonial aids was professional resistance to their use (reported by 45% of respondents).²⁰

Past OFOVC recommendation

In 2023, the Ombud submitted a brief to the Sub-Committee on the Open Court Principle and highlighted positive feedback around virtual testimony and access such as safety and accessibility. **Victims should be informed of testimonial aids available for both in person and virtual hearings.**

Testimonial aids and virtual participation

A detailed survivor perspective on testimonial aids and the value of virtual court participation for sexual assault survivors is outlined in this article in *The Walrus*.²¹



My Day in Zoom Court: Virtual Trials are a Better Option for Sexual Assault Survivors

Tradition dictates that perpetrators and victims must meet in court. COVID-19 showed that wasn't necessary.

What we heard

Information about Testimonial Aids Should be Proactively Provided to Survivors

*"I was never told about testimony aids."*²²

*"Didn't know any of the testimonial aids existed. Information deficit. Nobody tells you, and you don't get what you need."*²³

*"Crown asked if she wanted [closed circuit television] CCTV and she was surprised. [The survivor] didn't know it was an option. Crown told her judge has to make determination, but she would advocate. Judge allowed it."*²⁴

Many survivors shared that they were not aware or properly informed about testimonial aids.

Information about testimonial aids should be automatically provided to survivors.

*One survivor shared, "I'd also like Crown to share what options a survivor has when testifying (like testifying behind a screen, by video, etc.). I only found that information out from a friend."*²⁵

*"Let survivors testify outside of the court room via virtual testifying in order to not be revictimized."*²⁶

*"The judge got mad at me for uncontrollable crying in the court room and even got mad at my support person who put her arm around me to support me."*²⁷

*"I wasn't told anything about witness accommodations, but a friend mentioned it to me and asked if I'd have some. This caused me to ask the Crown about having a support animal ideally, but anything would help. The Crown said I could, but the jury might not approve and think that because the assaults happened in the context of a relationship that I stayed in, a jury might think I'm now pretending to be scared of him by using accommodations."*²⁸

"Not having to look at the person who did this terrible thing to you while you testify would be a start! I applied for a screen, and it was denied."²⁹

Testimonial Aids: Of 85 survivors who provided further information on access to testimonial aids:³⁰

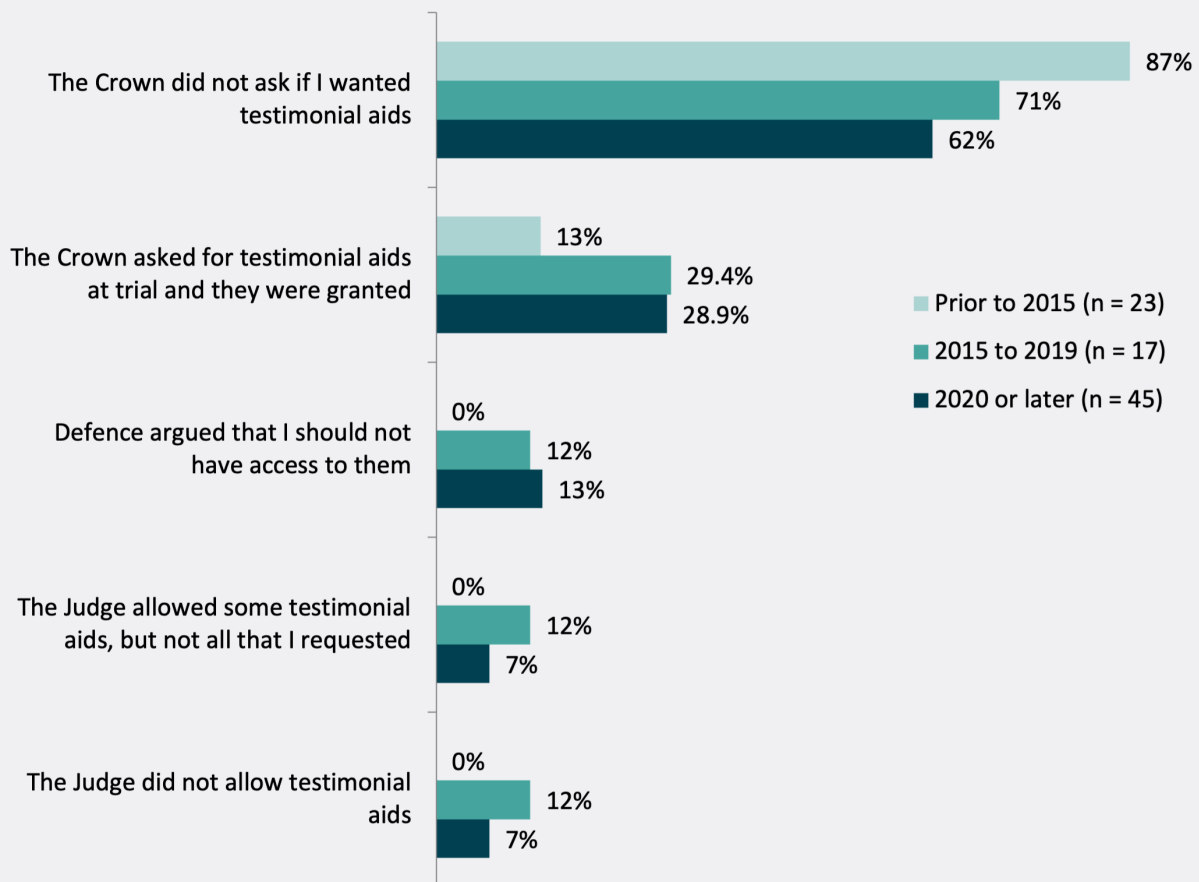
- » 71% said the Crown did not ask if they wanted testimonial aids
- » 25% said the Crown asked for testimonial aids at trial and they were granted
- » 8% said the defence argued that they should not have access to them
- » 6% said the judge allowed testimonial aids, but not all they requested
- » 6% said the judge did not allow testimonial aids.



Adult testifying in Court using a screen as a testimonial aid.

Photo credit: CanadianVictims101.ca

Were you offered testimonial aids to help you testify or feel safer in court? (n = 85)



Improvements over time: When we examined these experiences by last contact with the criminal justice system, the data suggests great improvements in Crown requests for testimonial aids and an increase in granted requests:

- » The proportion of survivors who said the Crown did not ask if they wanted testimonial aids decreased over time: 87% prior to 2015, 71% between 2015 and 2019, and 62% in 2020 or later
- » Requests for testimonial aids that were granted increased from 13% prior to 2015 to 29% in 2015-2019, then remained relatively stable at 29% in 2020 or later
- » Defence opposition to testimonial aids was not reported in our data prior to 2015, but appeared in later periods: 12% in 2015-2019, and 13% in 2020 or later.
- » Judicial decision to allow only some testimonial aids were reported only from 2015 onward (12% in 2015-2019, 7% in 2020 or later).
- » Complete denial of testimonial aids by judges was not reported prior to 2015 but occurred in 12% of cases in 2015-2019 and 7% in 2020 or later.

Access to testimonial aids should be presumptive

Survivors and stakeholders shared that testimonial aids should be automatically offered

These views are consistent with our Office's 2024 recommendation that testimonial aids should be presumptive.³¹

- » One stakeholder said, "Create an automatic process for testimonial aids in all sexual assault cases." ³²
- » Another stakeholder shared that offering testimonial aids should be mandatory unless the defence can prove that testimonial aids would not be in the interest of justice.³³

An **understanding of the neurobiology of trauma** helps us understand that people who have experienced trauma may not be able to testify in the way the court system demands:

"...trauma produces actual physiological changes, including a recalibration of the brain's alarm system, an increase in stress hormone activity, and alterations in the system that filters relevant information from irrelevant." ³⁴

- » Offering testimonial aids might help a person feel safer, which can in turn help their ability to recall information.

A courtroom is already an intimidating place. Testifying in front of a person who harmed you can exacerbate the feeling of intimidation. Ruthless cross-examination can lead to confusion and retraumatization.

- » Testimonial aids can help survivors answer questions by providing some sense of safety, limiting the traumatizing aspects of cross-examination in a courtroom setting and optimizing the truth-seeking goal of the court.

"The way trauma affects the brain has been well studied and it's predictable. Unfortunately, it runs counter to a lot of our notions of what makes a good witness." ³⁵

Trauma-informed practice: decades of research have established how trauma affects the brain and how that affects participation in the court process.³⁶

"Only if we assume that the accused has a right to intimidate the complainant by his presence or facial expressions can this measure be seen as a violation of his rights. As one judge put it, there is no right on the part of the accused to glower at a complainant." ³⁷

We heard that **many judges view testimonial aids positively**.

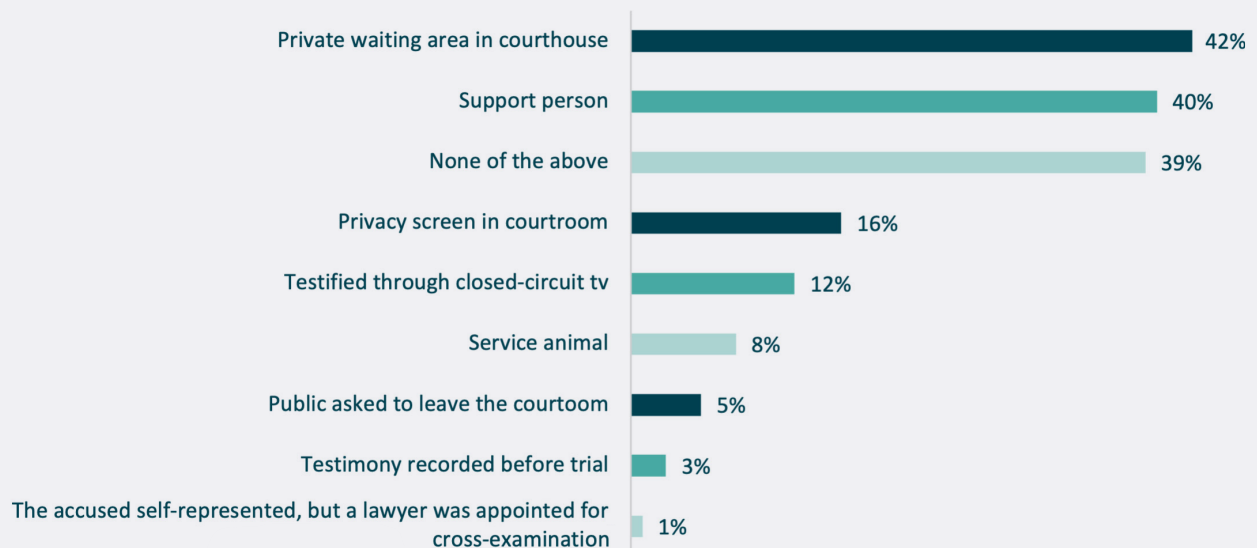
- » A victim services organization informed us that it is a regional practice to have counsel and judge in the courtroom and to use CCTV and have a support person for the survivor. They also shared that judges are able to grant multiple supports at the same time.³⁸

Allow CCTV from any community equipped to provide the service. We heard recommendations to amend the *Criminal Code* to allow greater use of video testimony out of town. This would significantly reduce the burden on survivors living in rural or remote communities who may otherwise need to travel repeatedly for proceedings that are cancelled or adjourned. It would also provide greater protection for survivors who are asked to return to small communities for the trial where they are unsafe.

- » We heard from one survivor who travelled from out of the country to attend a trial that was then adjourned for a medical appointment. The full travel costs including accommodation, time off work, and boarding for pets while abroad was about \$10,000. The compensation which her country of residence provides to support participation in a justice process would be cancelled because the hearing in Canada was not held. This case was referred to the Ombudsperson by a Special Advisor to a foreign Minister of Justice.

- » When we know that the technology exists to allow the survivor to participate virtually from their home country without any additional expenses to the survivor, this situation is beyond regrettable.

Private waiting areas and a support person were common aids while 39% of victims did not access testimonial aids (n = 113)



Access to testimonial aids should be consistent across Canada

“Where I am currently, there is such a lack of testimonial aids compared to where I used to work. It’s actually horrifying.”³⁹

“In one jurisdiction I worked in, one-way screens were available that would come down from the ceiling. These were more efficient than tilt screens or video and allow judges to see witnesses clearly and also (the) accused but shield witnesses from seeing (the) accused. Such screens could be mandatory easily in all cases where requested. Video could be managed in the same way it currently is.”⁴⁰

Limited and inconsistent access to testimonial aids

A stakeholder shared that sometimes testimonial aid applications are granted by the court, but at the last minute, the aids cannot be used due to a lack of human resources, space, or equipment.

- » A private space might be granted, but it is in the corner of a busy victim services office.



Testifying via close-circuit TV. Hurley, P. (2016). A Resource Guide for Justice Professionals Working with Child Witnesses in Northern Canada, Project Lynx.

- » The survivor may be granted the use of a room with CCTV, but it is at an RCMP detachment cell block where the accused is detained.⁴¹
- » We heard that the CCTV or virtual participation will be denied if internet connections are poor. There have been cases where judges will grant virtual appearances but, due to technical difficulties, the survivor is required to come in person.⁴²
- » One lawyer underlined the need to change the *Criminal Code* to allow virtual participation from a location other than the courthouse. Currently courts have varying interpretations of “outside the courtroom.”⁴³

Funding may also have an impact on how the resources are provided

Some survivors have greater assistance with the court process, depending on where they live. Others do not have this type of assistance.

- » Stakeholders who work with children and youth also shared that the limited resources can add delays. For example, having only one child-friendly room means having to wait until it is available to continue with a case.⁴⁴
- » One survivor said, “*Believe them. Support them. And have more support around testifying including financial.*”⁴⁵
- » We also heard that some places in Canada have access to court support dogs while others do not.⁴⁶

10 Paws Up

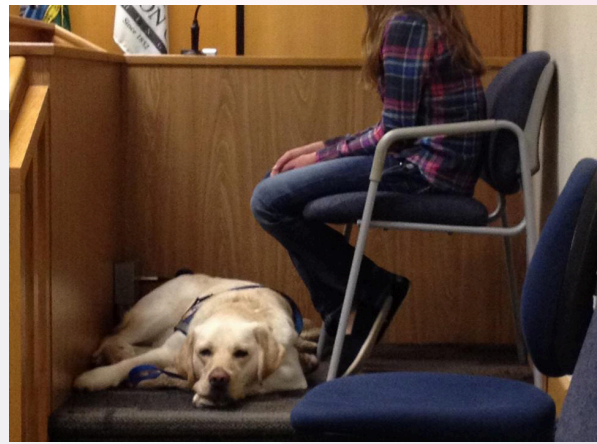
Court support dogs were mentioned as positives for survivors and witnesses when testifying, but lack of resources causes inconsistencies in access.

A 2014 report from the Department of Justice, Let's "Paws" to Consider the Possibility: Using Support Dogs with Victims of Crime, discusses research on support animals that could apply to victims in the courtroom. The report outlines the many benefits of support animals, Animal Assisted Therapy (AAT), and Canadian and American perspectives on using support animals.

In 2022, the Department of Justice continued this research with a new report on:

- » the definitions of service, therapy, and facility dogs
- » literature available on the use of dogs in the court system
- » Canadian case law where the dog handler is considered a “support person” or allowing the dog and handler to be the support person, allowing the dog to be with the witness but not the handler
- » the lack of national standards or regulating bodies for training or testing
- » the lack of research into the types of dogs available such as a facility or therapy dog
- » the focus of many current studies on child victims of sexual abuse

We recommend the *Criminal Code* to be amended to allow for support dogs as a testimonial aid.



Accredited Facility Dogs | Child and Youth Advocacy Centres

Survivors report that defence counsel are increasingly contesting testimonial aids

*“I was not properly prepared for testifying; the Assistant Crown neglected to ask for the lifting of the publication ban as I requested, and defence blocked my ability to have my support person in the room with me while I testified. Throughout the entire process I was dismissed, ignored and disrespected. Defence counsel relied on rape myths and stereotypes to discredit and upset me during my testimony and blatantly ignored a warning about language with no consequences.”*⁴⁷

*“He got the right to refuse court aids in both the criminal and family courts. I wasn’t allowed to have a support person from the shelter or victim services with me, but he was at a friend’s house smoking marijuana on zoom court.”*⁴⁸

A recurring theme from many survivors and Crowns was that **defence counsel are increasingly contesting** all procedural applications, perhaps as a means of incurring delays for the *Jordan* framework.

- » Although the *Criminal Code* was amended in 2015 to provide that testimonial aids should be ordered when they **will facilitate** the evidence of witnesses or survivors, it is the impression of many survivors that

Courts are **applying the harder test** of “are the testimonial aids necessary to give evidence?”

- » **This is an error in law, adding another hurdle for survivors.** The threshold is no longer “is it necessary,” but “will it facilitate giving evidence.”⁴⁹

Some stakeholders suggested that the current practice for testimonial aids should be reversed so **defence counsel would have to prove that the testimonial aid would compromise** how the accused would be able to defend their case rather than the Crown having to prove its need.⁵⁰

- » Given that testimonial aids have been found by the Courts to be entirely compatible with the section 11(b) rights of the accused and with the courts’ truth-seeking function, they believe that survivors should be granted testimonial aid presumptively or upon request.
- » Making testimonial aids presumptive will **reduce delays and costs to the CJS** – that could be reinvested in testimonial aids, increasing their availability across the system. With **finite resources**, this would **improve protection** for survivors **without diminishing trial fairness** for the accused.
- » **Finite resources:** Do we want to continue allowing the accused to use public resources (courtroom time, Crown time, judicial time) to argue that survivors do not need supports when testifying?

One suggestion to respond to these contested applications for testimonial aids was to bring in an expert witness to discuss the specific disability and how it may impact the victim and their ability to testify.⁵¹

“The right to face one’s accusers is not in this day and age to be taken in the literal sense. In my opinion, it is simply the right of an accused person to be present in court, to hear the case against him and to make answer and defence to it.”⁵²

Crown prosecutors and testimonial aids

“Make testimonial aids an automatic practice for all victims of sexual assault (not just children) and enshrined in Crown guidelines.”⁵³

One stakeholder shared how overworked and busy Crown prosecutors do not have the energy to fight for testimonial aids every time

“Crowns are overworked and under-resourced and therefore don’t put time and effort into the cases. They are very quick to suggest resolving matters by way of a lesser option. They are quick to point out how hard testifying is and that matters will likely not even be reached in an attempt to discourage survivors from testifying. There is an insistence on getting an affidavit about the survivors’ fear level and why they want testimonial aids, which can make a survivor feel like they need to justify why they’re afraid. The Crowns have resources in their application (such as SCC decisions about how it’s understandable there is fear of testifying etc.). However, no one seems to understand how to present these arguments in court. Defence relies on how valid the fear is and questions if they’re really afraid, when that is not the test. Crowns aren’t doing anything to correct that and just falling into ‘this is how afraid they are.’⁵⁴

- » One stakeholder said, “Allow testimonial aids without difficulty. Crown quite often doesn’t support testimonial aids.”⁵⁵
- » Another stakeholder shared that the Crown was using testimonial aids as a **“bargaining tool”** with the defence lawyer.⁵⁶

There is an ongoing need for testimonial aids

"I wish I had the option to not testify in front of the abuser regardless of the privacy screen. I hated walking into the courtroom and he looked at me." ⁵⁷

"Zoom option was very helpful. Being in a room with accused triggered PTSD and visceral reactions I can't control. On zoom, put a post-it note over his face to not see him. Nobody gave option to not testify in person. You have to be exposed to the person who abused you. Sadly that's part of the process. Maybe it shouldn't be, but it is." ⁵⁸

We heard repeatedly that **survivors do not want to see the one who caused them harm**

- » Having to testify and go through cross-examination is often retraumatizing. Having to sit in the same room as the accused should not be an added stressor.
- » One survivor shared, *"The victim should be able to decide who is allowed in the courtroom to hear that testimony because it is a very difficult thing to go through. There is so much emphasis on the accused's rights, but little consideration given to the impacts of the process on the victim."* ⁵⁹

The courthouse and courtroom environment are intimidating

Stakeholders told us that the courts are not physically built for survivors. For example, there are common waiting areas, or they do not have comfortable testimony spaces.⁶⁰ The survivor has to put their life on hold, share their experience repeatedly, be denied remote testimony, and wait for hours without knowing when they will testify.

- » **Private waiting areas.** In some communities, there are not sufficient spaces for survivors to wait privately.
 - » In northern Saskatchewan, the Ombudsperson heard about a survivor of child sexual abuse who was asked to wait in a broom closet until they were called into the court room. The victim service workers explained that there were better waiting spaces and access to CCTV in a victim services building across the street, but they were limited with what services could be provided within the courthouse.
 - » Crown Witness Coordinators in the Territories will sometimes use an RCMP truck as a safe and private space to wait with survivors.
- » **Privacy screen.** In small courtrooms, a privacy screen may be insufficient to protect the victim, who may have to sit in such close proximity to the accused.
- » **Video conference.** One child in a northern community was disturbed to find that even though they were permitted to testify by CCTV, the accused's face was still projected on their screen.
- » In a consultation table with Crowns, they expressed concerns about **safety risks** when there is only one location for CCTVs.⁶¹ These concerns included a single entrance for both witnesses and accused, limited waiting spaces for witnesses, overlapping scheduling of multiple matters.⁶²
- » **Culturally safe spaces to testify** were also mentioned. One stakeholder shared, *"There are ongoing language, safety and cultural barriers to support immigrant and newcomers to Canada... It is imperative to ensure the availability of culturally safe places for the survivors in court houses while they are waiting to meet with the prosecutors or for their testimonies."* ⁶³

Calls for increased access to testimonial aids have not changed

In 2018, the Department of Justice held a conference on testimonial aids, with victim services workers, legal counsel, government policy employees and police.⁶⁴ Participants reported challenges when using testimonial aids with vulnerable witnesses such as the resistance to the use of testimonial aids, lack of availability/resources, technology issues (specifically CCTV equipment), and process issues for example providing 30-day advance notice to be able to use CCTV equipment.

They recommended:

1. Changing the process to apply for these aids and **clarify the use of support animals and support people.**
2. **Ensuring broad access to testimonial aids**, especially to remote, Indigenous communities.
3. **Changing logistics of testimonial aids.** Improving screens, allowing survivors to enter court from another entrance, and expressed concerns about CCTV.
4. **Increasing access to technology.**
5. **Increasing education and training for professionals and the public.**

In 2018, the Federal-Provincial-Territorial Meeting of Ministers Responsible for Justice and Public Safety held a conference, *Reporting, Investigating and Prosecuting Sexual Assaults Committed Against Adults – Challenges and Promising Practices in Enhancing Access to Justice for Victims*, where one topic was testimonial aids.⁶⁵ The Working Group recommended:

- » **Testimonial aids be accessible in all court houses** and when Crown prosecutors request them
- » **Allowing a survivor to testify outside the courtroom** to answer questions via a CCTV or a screen **during the application for these aids**
- » **Allowing support dogs** when testifying

In 2025, Dr. Kim Stanton released the Final Report on an independent systemic review of the *British Columbia Legal System's Treatment of Intimate Partner Violence and Sexual Violence*. The report recommends that **testimonial aids should be available in criminal and family courts** (recommendation 20B).⁶⁶

Why identity matters

Adult vs child survivors

*"Make testimonial aids for adult complainants of sexual violence mandatory if requested by the Crown – no exceptions."*⁶⁷

"I think that testimonial aids should be granted regardless of their age and I think

*dogs should be used for adults the same way they are for children/youth."*⁶⁸

*"There should be more opportunities for adults to have access to testimonial aids who have no other underlying reason for it other than that they are very scared of their abuser."*⁶⁹

The discretion given to the Courts to order testimonial aids creates uncertainty and stress for many adult witnesses. We heard that "aging out

of the presumption for testimonial aids can lead to drop out” and that “testifying was the hardest thing I have ever done” when denied these aids.⁷⁰

Some survivors were told that testimonial aids are only available to children.

- » Research has shown that children are more likely to be granted testimonial aids⁷¹
- » While the *Criminal Code* makes testimonial aids presumptive for child survivors,⁷² adults also have the right to request them

Northern and rural survivors

*“Provide expeditious and accessible supports for rural communities – many do not have access to transportation or can’t afford it to access mental health supports and services; nor do they have adequate access to virtual supports due to lack of strong internet or a device to connect.”*⁷³

*“For northern communities, survivors are scared to testify because the accused is usually a neighbour, close family friend, etc. They are scared to testify in their community because they do not want people from their community knowing the details of the incident. Difficult to have venue change at [victim’s] request and closed court room applications granted. Less supports for survivors to access in the north for survivors of sexual assault.”*⁷⁴

*“Community attendance in court: The majority of sexual assault trials in large urban centres are relatively anonymous with lower levels of attendance. In northern communities, going to court is something to do, especially for circuit court. Large portions of a community may attend court for entertainment, which is particularly troubling to sexual assault survivors.”*⁷⁵

*“Returning for trial: Many people from northern communities relocate to more southern locations for different opportunities, or even to get away from a small community where everyone knows about their trauma. It is a significant barrier to have to return to northern communities to participate.”*⁷⁶

Access to testimonial aids in Northern and rural communities

» Accessibility in northern communities.

We met with an inspiring Crown Witness Coordinator for the Public Prosecution Service of Canada (PPSC) who challenged the assumption that the full use of testimonial aids is not possible in the territories. There is satellite internet service across the territories and newer fibre-optic service in some regions.

- » She said that when staff complain about having to bring CCTV equipment to a fly-in community, she asks, “What’s harder, carrying the equipment or testifying in a sexual assault trial?”

» Circuit courts are reluctant to close the courtroom, despite the deep personal nature of the evidence

- » Circuit courts are often seen as a form of entertainment for the communities – which adds to the trauma of survivors who remain in the community long after the circuit court has left.

- » Testimonial aids in circuit courts⁷⁷ are often limited to a support person.

» We were told that there is a particular challenge in northern areas of several provinces where the interpretation of the provision to allow testimony **outside the courtroom** does not allow for testimony **outside of the courthouse**. This limited interpretation requires survivors to travel long distances and to leave their support systems in order to give evidence.

- » An Alberta Queen’s Bench case noted “Once a witness is testifying virtually, there is no practical difference in the trial setting arising from where the witness is physically located: same building, same city, another location.”⁷⁸

- » In our view, the provision can also be interpreted to allow for testimony in another building, another city, another location.

- » Survivors in rural areas indicated that having **courts in smaller communities** would reduce the burden and stress associated with engaging with the CJS.
- » They often have to travel far to meet with Crowns and attend trial.
- » Better internet or capacity for video testimony would also assist these survivors and reduce delays.

Survivors with disabilities

“Greater use of closed-circuit television (CCTV) during trials could help adult survivors with disabilities testify without facing the accused directly. This approach, already used for child survivors, should be expanded to accommodate vulnerable adults.”⁷⁹

“I had accommodations for disability. Heat pad for pain, extra breaks. Had to initiate. Wasn’t asked. No offer of testimonial aids.”⁸⁰

We heard:

- » One survivor mentioned that they were offered and granted a support dog in the courtroom, but the paperwork was not filled out in time, meaning the survivor was provided with false hope and did not have access to the support dog for testimony.
- » Survivors were offered a private room to testify but it turned out to be a corner of a victim services office.⁸¹
- » CCTVs are a good option for adult survivors with disabilities to be able to testify without seeing the accused.⁸²

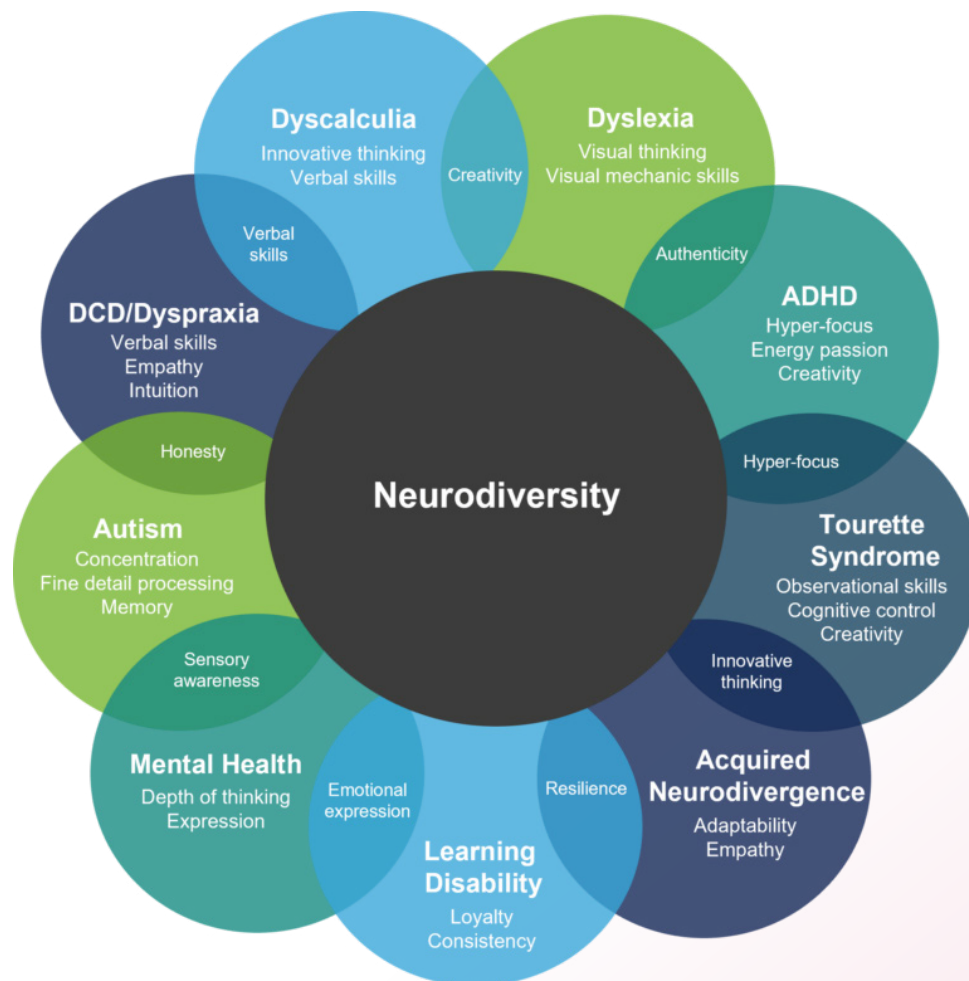


- » Individuals who are autistic, have ADHD, or are gifted are often mistakenly perceived as less credible due to atypical communication styles.⁸³
- » The UK Family Justice Council (2017) recommends the use of intermediaries and tailored accommodations.⁸⁴ Witnesses who are neurodivergent should be offered accommodations such as breaks, communication supports, and question reformulation.

Testimonial aids are particularly important for people with disabilities and neurodivergence

In 2009, Justice Canada conducted a study with twelve victim service providers about their experiences with those who have Fetal Alcohol Spectrum Disorder (FASD). Participants agreed that criminal justice actors were inadequately aware of FASD and did not know that testimonial aids could benefit these witnesses.

- » Recommendations included appropriate training and strategies for working with people with FASD and communication and learning challenges.⁸⁵



Credit: [Genius Within](#)

Case study: No-one challenged this accused

“The man who raped me for years made himself at home in the victim witness room. I had not seen him in decades. It was extremely traumatizing, and he refused to leave. I was due on the stand two minutes later.

I had no time to smudge, prepare, and rebalance myself. I felt this was an assault on my whole spirit and to then be expected to sit on the stand for hours only minutes after.

The abuser then, even though he was told this room was for victims, kept returning to my supposedly safe space throughout the trial and we had to get the court guard to tell him. He and his lawyer then stood in front of my safe space room throughout the trial and then the women’s washroom as well.

The victim’s room was barren of any supportive atmosphere. There should be water, juices (diabetic here), some snacks, the Sacred Medicines, some Grandfather stones.

The court room was freezing, and I was expected to hold my microphone and sit in the most uncomfortable position so my abuser and his ex-wife, who helped cover up his crimes for decades, could hear. His lawyer actually stopped the court numerous times to make me repeat louder as they kept saying they could not hear. So, the abuser and his ex-wife were more important than a disabled woman who was testifying.

Again, no legal representation cared about how absolutely horrific it was to repeat disgusting things over and over with abusers only a few feet away.

His ex-wife was allowed to record the whole trial because she was supposedly deaf or hard of hearing??? What about my rights as the victim to not be exploited by this woman? I to this day fear she is sharing my personal and most painful experiences with others. This should never have been allowed!”⁸⁶

TAKEAWAY

Survivors deserve the tools they need to testify safely and effectively.

Support measures are rights, not concessions.

Endnotes

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- 23 SISSA Survivor Interview #004
- 24 SISSA Survivor Interview #046
- 25 SISSA Survivor Survey, Response #280
- 26 SISSA Survivor Survey, Response #790
- 27 SISSA Survivor Survey, Response #289
- 28 SISSA Survivor Survey, Response #170
- 29 SISSA Stakeholder Survey, Response #37. This would apply both to section 486 provisions of the *Criminal Code* and to the video testimony of witnesses. (s. 715.1 Evidence of victim or witness under 18).
- 30 Multiple responses were allowed.
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- 33 SISSA Stakeholder Survey, Response #37. This would apply both to section 486 provisions of the *Criminal Code* and to the video testimony of witnesses. (s. 715.1 Evidence of victim or witness under 18).
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Victim Impact Statements, Sentencing, and Corrections

ISSUE

Victim impact statements (VIS) are often redacted, which limits or eliminates the authenticity of the survivor's voice. Many survivors perceive these redactions as excessive and overly protective of the offender. Survivors also report receiving little information about their rights during sentencing and post-conviction.

IN NUMBERS

In our survey of 1,000 survivors of sexual violence:



Of the 71 survivors whose cases proceeded to sentencing:

82% were asked if they wanted to submit a VIS

73% submitted, read, or had someone else read a VIS

38% were offered help to prepare a VIS



Improvement over time:

Survivors whose sentencing occurred in **2020 or later** were more than twice as likely to be asked about a VIS (95%) compared to those before 2007 (45%)

“Even my victim impact statement was redacted. It was all blacked over. That was my last hope to be heard. I read it like a prayer to the Creator in hopes I would at least be heard by the Creator.”¹

SISSA Survivor Interview #439

BOTTOM LINE

Survivors continue to face barriers to meaningful participation at sentencing. Flexibility is needed in how victim impact statements are treated, and survivors must receive proactive information about their rights throughout sentencing and corrections.

KEY IDEAS

Redactions of victim impact statements reduce the perceived legitimacy of the criminal justice system (CJS)

Survivors need proactive information about their rights at sentencing and post-conviction

Victims often do not realize that an offender will be released long before their sentence ends

The Federal Ombudsperson for Victims of Crime lacks the authority to access information needed to resolve victim complaints

RECOMMENDATIONS

Victim Impact Statements (VIS)

6.1 Prevent early disclosure: The federal government should amend the *Criminal Code* to provide that a victim impact statement (VIS) is not given to the Crown or the defence until there is a finding of guilt, so it is not subject to disclosure and cross-examination prior to sentencing.

Federal Corrections and Parole

6.2 Allow partial summaries of victim statements: The federal government should amend the *Corrections and Conditional Release Act* (CCRA) to allow victims to request that offenders in federal custody receive a partial summary of their victim statement, limiting details of emotional or psychological harm, while still providing full details on any conditions requested when a statement is used by the Correctional Service of Canada (CSC) or Parole Board of Canada (PBC) for decision-making. The victim should be provided with the summary and with the ability to remove any personal or other information that affects their safety.

6.3 Properly investigate complaints: The federal government should amend the *Corrections and Conditional Release Act* (CCRA) to provide that the Federal Ombudsperson for Victims of Crime (OFOVC) shall receive, upon request, any document, recording, paper, or information relevant to a complaint made by a victim.

Background

Few sexual violence cases reach sentencing.

When they do, survivors have the opportunity to submit a victim impact statement (VIS). This is often one of the only moments in the criminal justice process when a survivor can directly describe the impact of the crime in their own voice.

The opportunity to present a VIS is particularly important in cases resolved through a guilty plea or where survivors have otherwise had little involvement in the criminal justice system. In these situations, the VIS may be their only chance to describe the harm in their own words and have it formally acknowledged by the court.

At the same time, **most sexual violence cases do not result in a federal sentence.**

- » The Correctional Service of Canada indicates that in 2022-23, 11,296 offenders were serving a federal sentence for Schedule 1 offences.²
- » Schedule 1 includes all forms of sexual offences against adults and children, all forms of assaults, some weapons offences, and arson.
- » CSC was not able to tell us how many offenders are serving a federal sentence for sexual offences.

This means many survivors never enter the correctional and parole system, and for those who do, there is limited clarity on how to remain involved or informed after sentencing.

What is a victim impact statement (VIS)?

A VIS is a statement from a survivor that is written prior to sentencing and can be presented to the Court by the victim, a friend, or the Crown. It becomes part of the evidence that the judge must consider in determining the sentence of the accused. The statement can include descriptions of emotional, physical, economic, or safety impacts of the offence. It can include photographs of the survivor, poems, or drawings.

According to the *Criminal Code*, a statement must not include:

- » any statement about the offence or the offender that is not relevant to the harm or loss suffered
- » any unproven allegations
- » any comments about any offence for which the offender was not convicted
- » any complaint about any individual, other than the offender, who was involved in the investigation or prosecution of the offence
- » except with the court's approval, an opinion or recommendation about the sentence

Criminal Code of Canada,
Forms 34.2 and 34.4.

Helpful clarifications about victim impact statements have been published by Justice Canada and many jurisdictions. See [Victim Impact Statement](#).

Our Investigation

What we heard

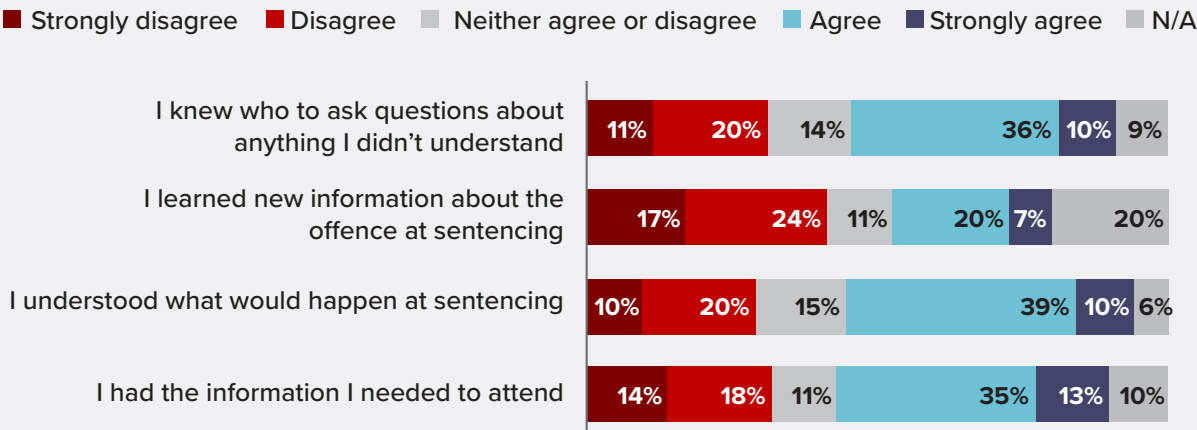
“Why should the victim have to speak so carefully to not hurt the offender’s feelings? Sugarcoating their response.”³

“Victim impact statements contribute significantly to a just sentencing process.”⁴

Of 1,000 survivors who responded to our survey, 71 provided additional information about their experiences at the sentencing stage (7.1%). Fewer than half of respondents felt informed and supported during the sentencing process:

- » 49% of survivors **understood what would happen** at sentencing
- » 48% of survivors **had the information they needed** to attend
- » 46% of survivors **knew they could ask questions** about anything they didn’t understand
- » 27% of survivors **learned new information about the offence** at the sentencing hearing

Survivor perceptions of information on sentencing hearings (n = 71)

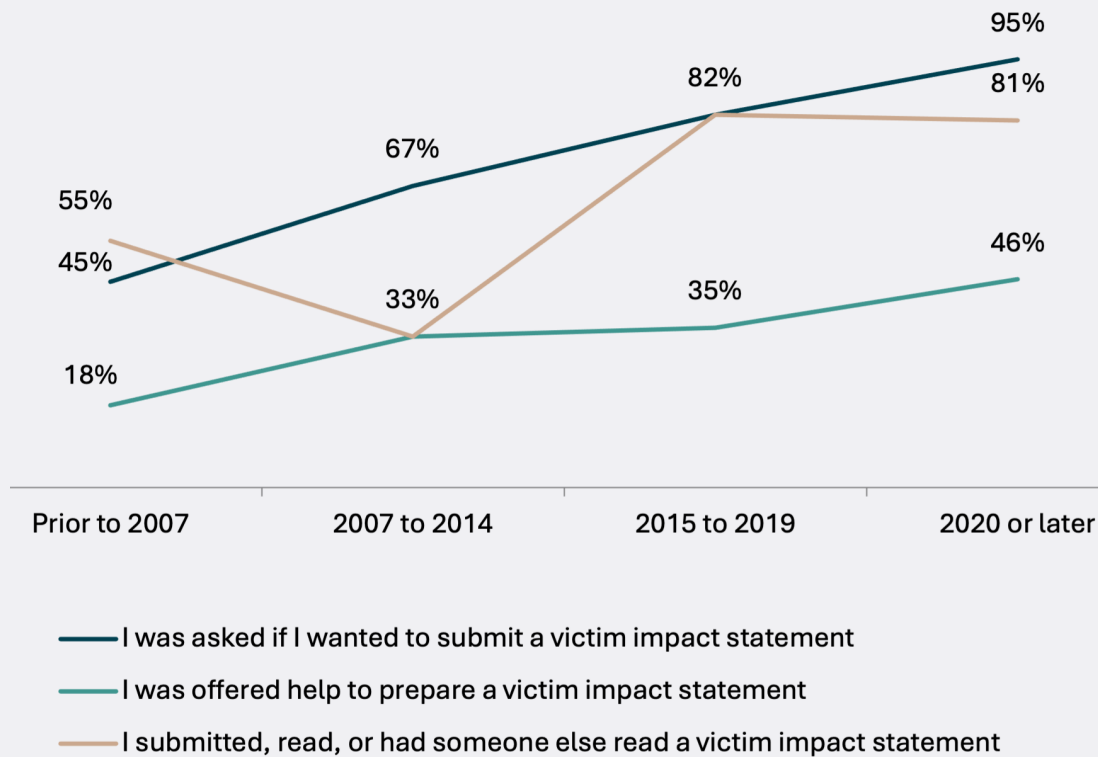


Improvements over time: When we examined these experiences by last contact with the CJS, it was clear that the use of VIS has increased over time.

- » **95% of survivors** in 2020 or later were asked if they wanted to submit a VIS compared to 45% of survivors prior to 2007

- » **81% of survivors** in 2020 or later submitted, read, or had someone else read a VIS compared to 55% prior to 2007
- » **46% of survivors** in 2020 or later were offered help to prepare a VIS compared to 18% prior to 2007

Survivors with more recent contact with the criminal justice system were more likely to submit a victim impact statement (n = 71)



Prevalence of victim impact statements:

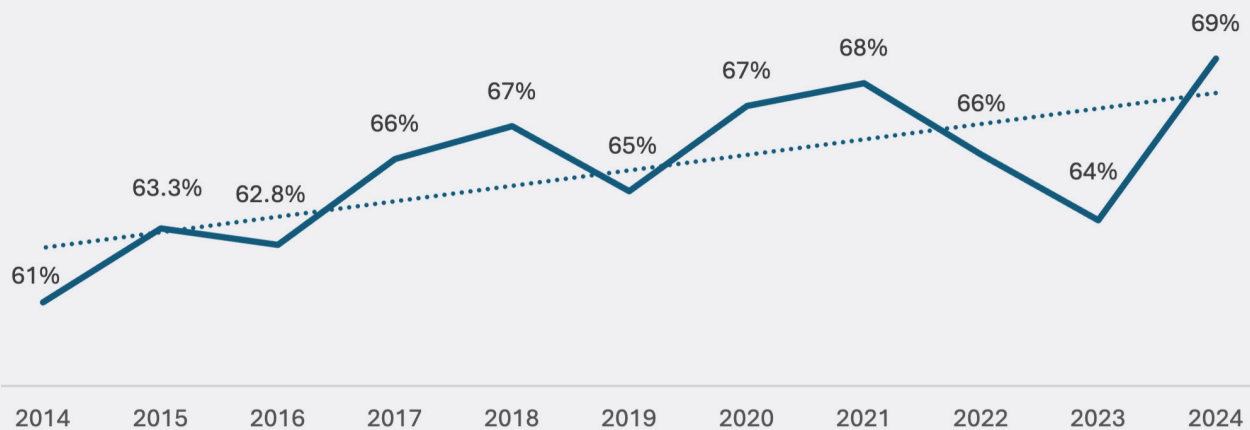
Older research on victim impact statements showed a slower uptake in their use. A 2006 study estimated that VIS were presented in 8% of BC cases, 11% of Manitoba cases and 13% of Alberta.⁵

Case law review: Given the higher rates reported by survivors in our investigation and the absence of reliable national data, we conducted a simple case law review to examine judicial mention of victim impact statements in sentencing decisions. Using the Westlaw Canada database, we examined

available non-appeal court sentencing decisions for sexual offences from 2014 to 2024 to identify trends (n = 3475).⁶

» Sentencing decisions for sexual offences in non-appeal courts that mentioned a VIS rose from 61% in 2014 to 69% in 2024.

Sentencing decisions for sexual offences that mention victim impact statements increased from 2014-2024 (n = 3475)



Note: This includes cases where a judge commented on the absence of a VIS. Retaining only cases where the judge notes content from the VIS, we observed an increase from 52.4% in 2014 to 62.6% in 2024.

Submitting a victim impact statement can be beneficial for survivors.

One study found that victims who submitted a statement were more satisfied than victims who did not.⁷

A 2021 report for Justice Canada noted multiple benefits from the victim impact statement regime:

- » For many victims, the “therapeutic” purposes of the VIS are more predominant than the “instrumental” purposes (Roberts & Erez 2004) – i.e., the process itself seems to be more important than the ultimate outcome, as noted in numerous studies from various jurisdictions:
- » **Marshall (2014:574):** “Interestingly, most victims do not seek harsher punishments, rather they seek participation in the justice system, and it is that participation that helps them in the healing process.”

- » **Rossi (2008:199):** “[S]tudies show that victims are ‘not interested in changing sentencing outcomes,’ and they ‘do not want decision making powers.’ Rather, victims report that they only benefited from delivering victim impact statements because it provided an opportunity to be heard, to be treated with respect, to be informed and involved, to be taken seriously, to receive compensation, and to hear the offender’s admission of guilt.”
- » **Du Mont, Miller & White (2007):** Victims were not motivated to submit VISs to influence the outcome of the sentence; rather, they wanted to relay a message to the offender of the impact of the offence, to have their suffering acknowledged and to begin the recovery process.

- » **Roberts & Erez (2004); Meredith & Paquette (2001):** “Victims feel validated when their VIS is referred to by the sentencing judge, as it communicates to them that the community has recognized the harm they have suffered.” ⁸

Barriers to meaningful participation at sentencing

“Nobody helped me, nobody walked me through everything. I was left to try to figure things out, and then when the VIS deadline was missed, oops, no one reminded me. Everyone was focused on making sure the criminal got all the help.” ⁹

Of 1,000 survivors who responded to our survey, 71 provided additional information on their experiences with sentencing:

- » 42 attended a sentencing hearing (roughly 7.7% of survivors whose cases were reported to police (n = 548))

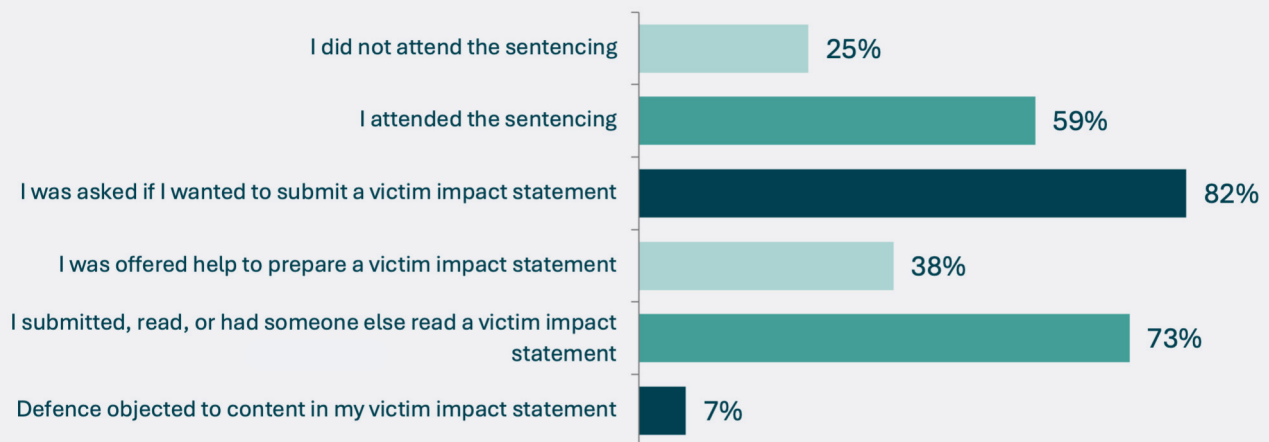
- » 82% were asked if they wanted to submit a VIS
- » 73% submitted, read, or had someone else read a VIS
- » 7% said that defence counsel objected to content in their VIS

Many survivors told us they were offered the opportunity to submit a victim impact statement (VIS) but were left without support to do so.

- » Just 38% of survivors who attended a sentencing hearing were offered help preparing their statement.
- » Some were only informed at the last minute, sometimes the evening before the hearing, and felt unprepared, overwhelmed, or unable to participate. ¹⁰

Victim services can provide support to prepare a victim impact statement. However, stakeholders explained that many offices are understaffed and overburdened and they may not have the capacity to help victims with their VIS if there is too short notice (for example, in a plea resolution).¹¹

Survivor experiences with sentencing (n = 71)



Why identity matters

Survivors who may need more support

Throughout our investigation, we heard that the victim impact statement process does not reflect the realities or needs of all survivors. Stakeholders shared:

- » **Young survivors** often receive generic VIS information sheets that do not reflect their developmental stage or help them articulate long-term impacts of the crime.¹² In 2022-2023, **Child and Youth Advocacy Centres (CYACs)** in Canada supported 180 young survivors in preparing VIS, highlighted both the need and the benefit of specialized supports.¹³
- » **Survivors with intellectual disabilities** may need more help writing a VIS to be able to include the messages they want.¹⁴
- » **Survivors living with mental health challenges and addictions** are often not provided enough time or tailored support to complete a VIS.^{15 16}
- » **Survivors experiencing homelessness** may also be more vulnerable to the process of VIS. We heard that survivors may be notified too late to participate and lack access to devices, internet, or local organizations that could assist them.¹⁷
- » **Newcomers** may face barriers related to language, cultural norms, and discomfort with written statement. Standard French or English VIS forms may not align with their communication styles.¹⁸
- » **Indigenous survivors** may find the written essay-style format of VIS and traditional courtrooms limit their ability to express the impact of the crime. We heard that in restorative approaches (such as healing circles), the impact on those harmed would be shared in a much different format.¹⁹

Are defence increasing their objections to victim impact statements?

In our survey, **1 in 10 survivors** who submitted a VIS said that defence raised objections to content of their statement during sentencing (9.6%, 5 of 52 survivors). These objections, while not widespread in our dataset, raise important concerns about how survivors' voices are handled in adversarial processes.

A survivor shared their experience:

“The defence cross-examined my victim impact statement to try to make it seem like I was the problem versus the family member that abused me. No one stopped him. The defence also had all my journals, as my parents took them without my consent, and they didn’t tell me they had them (or the Crown) and were planning on using them for cross-examination purposes. I didn’t know until after the court process was over and they released them to someone else to give to me. They used them in cross-examining my victim impact statement.”²⁰

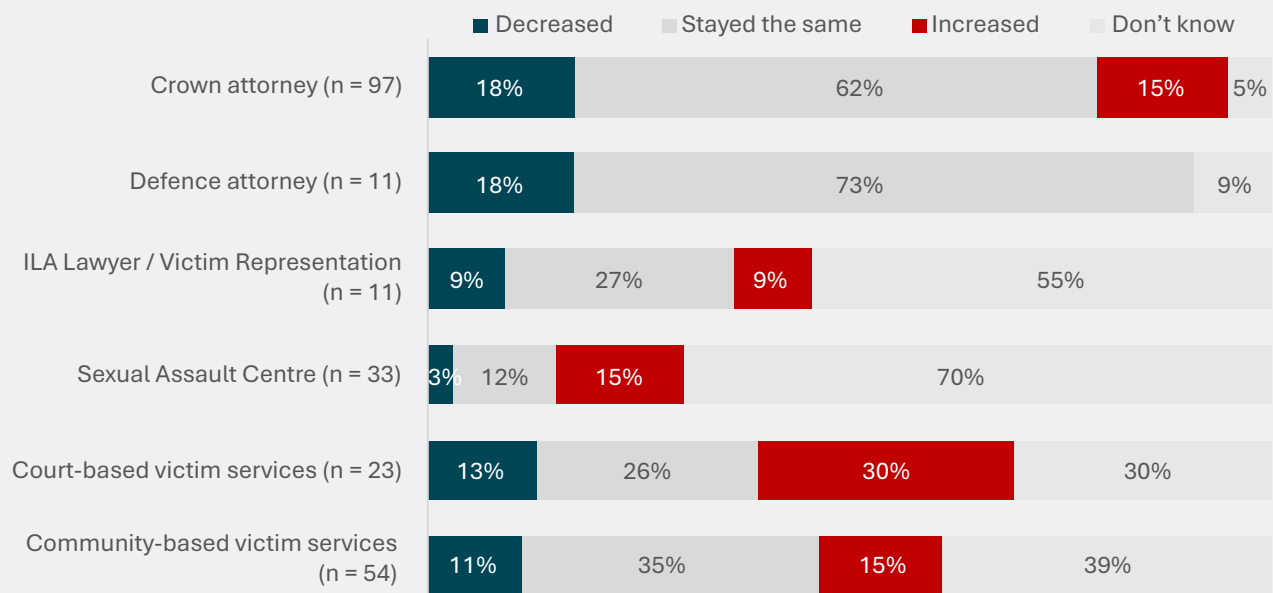
Stakeholders are divided on whether defence objections are increasing. Having heard similar concerns from interviews with court-based victim services and in the absence of formal court data to establish prevalence, we asked stakeholders for their perceptions of how frequently defence lawyers challenge VIS content over the past 5 years. Responses varied by role:

- » **Most stakeholders** believed the prevalence of defence objections to VIS had stayed the same over the past 5 years or felt like they did not know enough to comment
- » **Defence lawyers** (n = 11) believed the prevalence had stayed the same (73%) or decreased (18%)
- » **Crown attorneys** (n = 97) also believed the prevalence had stayed the same (62%) and were slightly more likely to believe the prevalence had decreased (18%) than increased (15%)

- » **Court-based victim services** (n = 23) were the most likely to believe the prevalence had increased (30%)

These findings suggest differing perceptions across roles, particularly between service providers supporting survivors and legal professionals.

Stakeholders had mixed opinions on whether defence objections to content in victim impact statements had increased or decreased in the past 5 years (n = 229)



Redactions and procedural decisions reduce the perceived legitimacy of the criminal justice system

“My VIS was redacted. I never got a chance to go into a court room and explain what happened to me. It was hard to swallow and a slap in the face. I wish I had the opportunity to tell my story.”²¹

Victims’ voices are being diminished

Survivors and stakeholders consistently raised concerns about how victim impact statements were redacted, often without consent, consultation, or clear justification:

- » Numerous victims and victim services professionals told us that the scale of the redaction was so complete that the statement was no longer their voice.²²
- » Some survivors only learned after sentencing that their VIS had been sanitized by the Crown, without their knowledge or agreement.²³
- » They were left with the impression that the Crown was more concerned about protecting the sensitivities of the offender than hearing from the victim
- » They had to prepare their statement so early in the criminal justice process that it felt “incomplete” when it was time to present the VIS to the Court
- » They were unable to change the statement to reflect their additional or new evidence
- » Allowing redactions to VIS contributes to the public’s sense of the futility and illegitimacy of the criminal justice process.

Redactions are not required

In 2015, the *Criminal Code* was amended to give judges the explicit authority to disregard any portion of a victim impact statement they find inappropriate. Section 722(8) states:

“In considering the statement, the court shall take into account the portions of the statement that it considers relevant to the determination referred to in subsection (1) and disregard any other portion.”^{24 25}

Redaction is not necessary because the Court can “take into account the portions of the statement I consider to be relevant and to disregard the remainder.”²⁶

While redaction by the Crown or victim services may be a way to manage defence applications to redact, limit, or remove victim impact statements, a **VIS is often the only way** the survivor can bring their evidence of impact of the offence **in their own voice**.

In fact, **redactions may violate the victim’s rights under the CVBR** to “convey their views about decisions to be by appropriate authorities in the criminal justice system that affect the victim’s rights under this Act and to have those rights considered” and “to present a victim impact statement to the appropriate authorities in the criminal justice system and to have it considered.”²⁷

Case law supports this interpretation. In *R v. C.C.*,²⁸ the Court noted that judges may exclude inappropriate portions of a VIS but also emphasized that “requiring the victims to rewrite their statements would be both insensitive and unnecessary.”²⁹ Other Courts have used the power given in section 722(8) to disregard – without redacting – information that is not relevant or appropriate.

- » “Other matters found in a victim [impact] statement, such as a sentencing recommendation, criticism of the offender, assertions as to the facts of the offences, statements directed to the offender and descriptions of other offences committed by the offender, are not properly included within a statement delivered under s. 722 of the *Criminal Code* and must be disregarded in accordance with s. 722(8) of the *Criminal Code*.”³⁰
- » “Rather than trying to judicially redact portions of certain statements, I find it to be sufficient to simply identify certain areas of concern and confirm my treatment of same.”³¹
- » The Supreme Court noted that a victim impact statement “***will usually provide the best evidence of the harm that the victim has suffered.***”³²
- » In *R v. CC*,³³ the Court notes that “*A Judge may choose to exclude inflammatory or offensive parts of victim impact statements that create the appearance of unfairness in the proceedings or reflect negatively on the integrity of the administration of justice.*”

- » The Court specifically notes that the approach contemplated by 722(8) “*strikes an appropriate balance between the right of the offender to a fair trial and the rights of the victims to a fulsome opportunity to express the impact that his crimes have had on their lives.*”³⁴

In our 2024 report *Worthy of Information*, we recommended “**Allow greater flexibility for the voices of victims to be heard:**

- » The guidelines for Victim Impact Statements at sentencing and Victim Statements used by the CSC and PBC should be more flexible to ensure that freedom of speech and freedom of expression of victims of crime are not unnecessarily limited.”
Worthy of Information and Respect: Improving Support for Victims of Crime: A response to the House of Commons Standing Committee on Justice and Human Rights (JUST) – Canada.ca

Victim impact statements and the CVBR

In the Nunavut case of *R v. Aklok*,³⁵ the Court discussed the CVBR obligation to provide a victim with the opportunity to present a victim impact statement.

[54] In 2015, Parliament enacted Bill C-32, the *Canadian Victims Bill of Rights*. The purpose of the legislation can be found in the law's preamble, which states, in part:

Whereas crime has a harmful impact on victims and society;

Whereas victims of crime and their families deserve to be treated with courtesy, compassion and respect including respect for their dignity;

Whereas it is important that victims' rights be considered throughout the criminal justice system;

Whereas victims of crime have rights that are guaranteed by the Canadian Charter of Rights and Freedoms.

[55] Among other things, this legislation established the right of victims of crime to participate in the sentencing process by filing, or reading aloud in court, a victim impact statement.

[56] Parliament also mandated an ongoing supervisory role for judges to ensure that this right is respected. Section 722(2) continues:

722 (2) *As soon as feasible after a finding of guilt and in any event before imposing sentence, the court shall inquire of the prosecutor if reasonable steps have been taken to provide the victim with an opportunity to prepare a statement referred to in subsection 1.* 2020 NUCJ 37 (CanLII) | R v. Aklok | CanLII

[57] However, more than five years after the *Victims Bill of Rights* came into effect, the Crown continues regularly to ask this Court to sentence offenders without victims having been informed of their right to be heard.

[58] As I noted above, I adjourned this case to allow the Crown to contact the victim. This Court requires prosecutors to contact victims regardless of whether the accused has entered an early guilty plea, whether the victim has a telephone, or whether the police have provided contact information for the victim. ***“The police and the prosecution have a statutory duty to establish a protocol ensuring that victims of crime receive early notice of their rights.”***³⁶

In a case of sexual abuse of a four-year-old girl by the mother and her boyfriend, the Supreme Court of Canada said:

*“When possible, **courts must consider the actual harm that a specific victim has experienced as a result of the offence.** This consequential harm is a key determinant of the gravity of the offence. Direct evidence of actual harm is often available. In particular, **victim impact statements, including those presented by parents and caregivers of the child, will usually provide the ‘best evidence’ of the harm that the victim has suffered.** Prosecutors should make sure to put a sufficient evidentiary record before courts so that they can properly assess, ‘the harm caused to the child by the offender’s conduct and the life-altering consequences that can and often do flow from it.’”*³⁷

Some survivors don't want to keep exposing their private lives to the offender

*"It's important but it sucks a lot to have the offender who purposefully hurt you get confirmation that they hurt you."*³⁸

*"Many survivors struggle with whether they will complete a Victim Impact Statement or not. Some survivors have said that they don't want to give their trafficker additional power by having their trafficker become aware of how their experience has hurt them."*³⁹

*"It should be a closed court for vulnerable children and when the victim impact statement is read."*⁴⁰

Many survivors do not want an offender to know the extent of the harm done.

This perspective is grounded in the fact that sexual violence most often occurs between people known to each other. It is a crime of power, not a crime of passion. Submitting a VIS or a victim statement with information about how the crime has impacted them and how they feel is another slight on their privacy, or feeding future manipulation.

It is important to share the full impact with decision-makers.

Some victims have indicated that they do not want to describe the ongoing harm to an offender who was motivated by sadism or racism, but they still want a Court or Parole Board Members to know the ongoing effect of the offence.

- » **It is not necessary to describe all the graphic details** to convey violent or sexual assault in what becomes a public document.
- » **We propose that offenders receive a summary of the information at a parole hearing.** This would address the duty of procedural fairness to inform offenders of the information used in decisions about them, while allowing the survivor to retain some privacy. An example could be, "victim described ongoing psychological harms from the offence."

- » The CCRA already allows offenders to be provided with a summary of information where the information would "jeopardize the safety of any person, the security of a penitentiary or the conduct of any lawful investigation".⁴¹ This is in the context of a decision taken by the CSC.

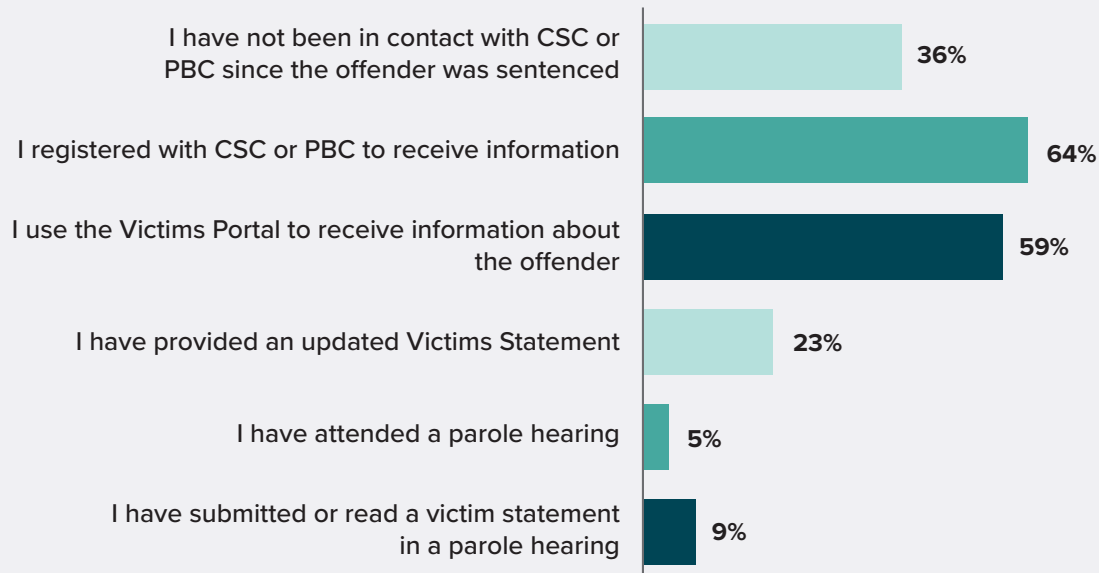
Victims need proactive information about their rights after the offender receives a federal sentence

We asked survey respondents whose cases had resulted in the offender being sentenced to federal custody about their information preferences.

What we heard from survivors:

- » **Most wanted information but didn't know how to access it as they have to opt in to receive updates.** Among survivors whose cases led to a federal sentence (n = 26),
 - » 91% said they wanted to know as much as possible about corrections and parole (n = 23)
 - » 64% were registered to receive information with the CSC or PBC (n = 22)
 - » 36% were not in contact with CSC or PBC since the offender was sentenced (n = 22)
- » **Survivors were caught off-guard by parole hearings.** Some survivors were not notified of parole hearings or told about their rights to submit a victim statement for parole.⁴² Others discovered too late they had missed their opportunity to participate.⁴³

Survivor contact with CSC and PBC (n = 22)



Gaps in registration lead to missed safety-related information

If survivors are not registered, they miss critical updates, such as parole hearing dates, offender release dates and conditions, or geographic restrictions. If survivors have been receiving information and participating in the prosecution up until sentencing, many people assume that they would receive information about corrections and parole. **The system does not notify survivors unless they ask to be notified.**

Survivors carry the burden of navigating a complex system

Once an offender is in federal custody, the responsibility shifts entirely onto survivors to:

- » Understand how CSC and PBC operate
- » Know their rights in order to be able to advocate for themselves and their loved ones
- » What information to ask for, whom to ask, and what to do within the appropriate (and rigid) timelines

The onus is on victims and survivors – those who have suffered harm – to navigate a complicated system in which they are treated as an afterthought.

- » One survivor shared the Parole Board did not update them for 6 months due to a computer error. They said their safety was on the line for all this time.⁴⁴

Gaps in support and accountability

The OFOVC regularly hears from victims who didn't know that they had to register with CSC or PBC to stay informed, or who were confused over their right to submit **Parole Board victim statements**.⁴⁵ For many, especially those who had already submitted a VIS at sentencing, repeating their story or preparing another detailed account, without legal or therapeutic support, can be difficult.

Recent legislative changes offer some promise.

Bill S-12 introduced a requirement that victims and survivors be asked whether they wanted to receive information about corrections.⁴⁶ The OFOVC will continue to monitor the implementation of these provisions.

Help us to help survivors. When survivors raise concerns or file complaints with the OFOVC, the OFOVC does not have the legislative ability to compel evidence used to make a decision directly affecting the survivor. As a result, victims are often forced to resubmit their information, and explain their situation again, without knowing what documents the agency used or what conclusions were drawn.

- » This is an administrative and emotional burden on the victim.
- » In contrast, the Office of the Correctional Investigator (OCI) has the power to compel any information relevant to their investigations – a power the OFOVC does not currently have.⁴⁷

Processes must reflect the realities of marginalized survivors. For Indigenous and racialized survivors, existing processes need to reflect **culturally grounded understandings of healing, harm, or justice**. Survivors may not trust the institutions managing offender release and may feel excluded or tokenized when they try to participate.

Survivors are forced to make an impossible choice – privacy or safety

“Observing my ex’s day parole hearing last year and the full parole hearing this year was validating in many ways, but it was also harmful. As you are likely aware, during a parole hearing, victims are restricted to their prepared statements and otherwise are committed to silence even when untruths are spoken and they are disparaged by the offender or their representative.”⁴⁸

In cases of sexual violence, where coercive control and psychological abuse are common, offenders may exploit federal parole and conditional release systems. We heard:

- » Victims heard offenders lying during parole hearings, where victims have no opportunity to rebut inaccurate statements, leaving them feeling unheard and revictimized.⁴⁹
- » Parole hearing took place in a healing center and the survivor had to walk through what was “his community” and “his home” with all of “his support” there. The parole report said he was low risk and “only” a risk to his intimate partner (the survivor).⁵⁰
- » Parole Board commended the offender for taking a plea agreement and “essentially sparing me from a trial.”⁵¹
- » When parole hearings are held in a minimum-security prisons and healing centres, survivors can feel that these hearings are not “safe”. Survivors feel that they are in the living space of the offender.⁵²

Requesting conditions shouldn't be a painful choice between safety and privacy

“We shared concerns with your Office about offenders being released on parole or moved to an institution within the same community where their victim(s) live and being out in the community on escorted and unescorted release. While we recognize offenders eventually are released into the community, from a victim safety perspective, more care and attention must be given to their safety and security concerns.”⁵³

To request protective conditions (e.g., geographic restrictions), survivors must often submit personal details about the ongoing effects of the offence. This information is disclosed to the offender. Knowing that this information will be shared with the offender creates **an impossible choice between personal safety and personal privacy**.

Some victims have indicated that they do not want to describe the ongoing harm to an offender who was motivated by sadism or racism, but they still want a Court or Parole Board Members to know the ongoing effect of the offence.

- » **We propose that offenders receive a summary of the information at a parole hearing.** This would address the duty of procedural fairness to inform offenders of the information used in decisions about them, while allowing the survivor to retain some privacy. An example could be, “victim described ongoing psychological harms from the offence.”

What is a Victim Statement?

It is a statement written by a survivor and presented to the PBC or CSC when they are making decisions about an offender. The statement

- » describes how the offender's crime has impacted them
- » reports any safety concerns

The content and limits on a victim statement are found in policy documents of the PBC and CSC.

Helpful clarifications about victim impact statements and victim statements have been published by Public Safety Canada. See [Infographic: Preparing a Victim Statement – Canada.ca](#)

- » **It is not necessary to describe all the graphic details** to convey the harms of violent or sexual assault in what may become part of a public document from a court or a parole board.

Survivors are often surprised to learn that conditions from pre-sentencing do not apply while the offender is incarcerated – unless a Court has ensured that the order stays in force.

- » Survivors can ask for specific conditions and explain the reason for their request to both correctional and parole authorities. Board members can also independently impose any special conditions – regardless of whether a victim sought them.
- » The information must also be provided to the offender. We have heard from survivors that they feel they must choose between sharing personal information with strangers or with the offender and the safety of themselves and their families.

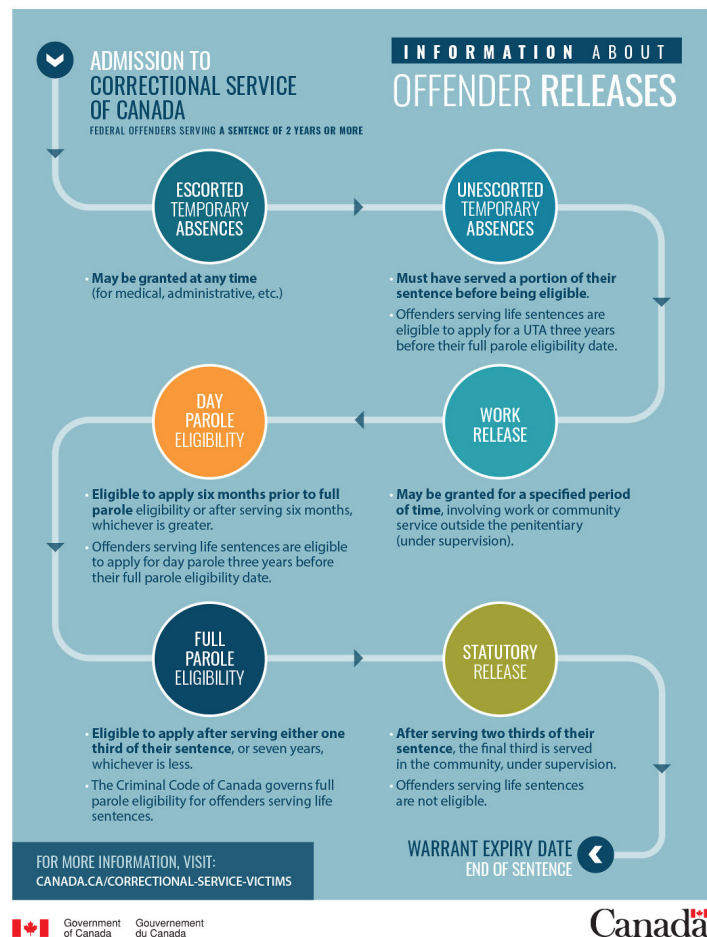
Survivors do not understand that, in the current correctional system, an offender will be released long before their sentence ends

“The offender received a guilty verdict and a significant sentence – 2 1/2 years jail time. I thought he wouldn’t be eligible for parole until 1/3 of sentence, but actually, he is not available for FULL parole until 1/3 of his sentence. He was given day parole even earlier.”⁵⁴

“There are so many examples that... span across Canada of offenders who get sentenced and spend the bare minimum time incarcerated just to get out and immediately reoffend. I know in my particular area there is a pedophile who has been in and out of custody for years. When I learned of this person, he had just been released and literally within days was back in custody as he had already reoffended. When he was finally convicted, he received a 10-year sentence. However, he is eligible for UTA as early as this year. He is eligible to apply for parole as early as 2026 and his SR [statutory release] date is 2029. This means he will only be locked up for a maximum of 6 years after he spent 30+ [years] abusing innocent children. Destroying their childhoods. Ripping away their innocence.”⁵⁵

Survivors are often surprised to learn that the sentence length announced in court does not equate to the actual time the offender will spend in custody.

- » Survivors have described feeling betrayed by the system.
- » We heard that this contributes to a sense of injustice, as offenders cascade through security levels quickly and apply for temporary absences and eventually parole.
- » The OFOVC regularly hears myths and inaccuracies, sometimes based on entertainment sources, about the corrections and parole systems, and the criminal justice system in general.
- » The CSC has published helpful information about offender releases.



TAKEAWAY

Justice for survivors means having their voices respected, not redacted.

Respecting dignity starts with listening.

Endnotes

- 1 SISSA Survivor Interview #439
- 2 Correctional Service Canada. (2025, July). *Corrections and Conditional Release Statistical Overview 2023* (Table C20c: Total offender population serving a sentence for a violent offence, 2022/23). Government of Canada.
- 3 SISSA Stakeholder Interview #056
- 4 *R v. Gabriel* 1999 CanLII 15050 (ONSC)
- 5 M. Lindsay. (2015). *Victim Impact Statements in a Multi-site Criminal Court Processing Survey*.
- 6 Caselaw review of sentencing decisions for sexual offences, 2014-2024. Westlaw analysis, July 31, 2025.
- 7 Young, A. Dhanjal, K. (2021) *Victims' Rights in Canada in the 21st Century*. Department of Justice Canada.
- 8 Young, A. Dhanjal, K. (2021) *Victims' Rights in Canada in the 21st Century*. Department of Justice Canada.
- 9 SISSA Survivor Interview #394
- 10 SISSA Survivor Survey, Response #176
- 11 SISSA Stakeholder Survey, Response #98
- 12 SISSA Written Submission #13: Canadian Centre for Child Protection Inc.
- 13 Strumpf, B. (2024). *Results from the 2022-2023 Child Advocacy Centre/Child and Youth Advocacy Centre National Operational Survey*. Research and Statistics Division, Department of Justice Canada, p. 19.
- 14 SISSA Consultation Table #07: Human Trafficking - Crown Attorneys, Police and Victim Services. For a discussion on justice needs of survivors with intellectual disabilities, see Spaan, N. A., & Kaal, H. L. (2018). *Victims with mild intellectual disabilities in the criminal justice system*. *Journal of Social Work*, 19(1), 60-82.
- 15 Consultation Table #07: Human Trafficking; Consultation Table #16: Crown Consult; Consultation Table #17: Law Enforcement; Consultation Table #14: Victim Services
- 16 SISSA Survivor Survey, Response #176
- 17 SISSA Consultation Table #07: Human Trafficking; Consultation Table #16: Crown Consult; Consultation Table #17: Law Enforcement; Consultation Table #14: Victim Services
- 18 SISSA Consultation Table #06: Newcomers
- 19 Annex D: SISSA Written Submission #31: Ontario Native Women's Association
- 20 SISSA Survivor Survey, Response #867
- 21 SISSA Survivor Interview #38
- 22 SISSA Stakeholder Survey, Response #132
- 23 SISSA Stakeholder Survey, Response #122
- 24 *Criminal Code*, RSC 1985, c C-46, s 722(8).
- 25 *R v. Chaulk*, 2021 NLPC 1319A00729 2021 CanLII 81813 (NL PC) | *R. v Chaulk* | CanLII; *R. v. I.F.L.*, 2022 ONCJ 310 (CanLII), 2022 ONCJ 310 (CanLII) | *R. v. I.F.L.* | CanLII
- 26 *R v. K.P.*, 2022 SKQB 66 (CanLII) at para 40.
- 27 *Canadian Victims Bill of Rights*, SC 2015, c 13, ss 14–15.
- 28 *R v. C.C.* (2018) ONCJ 542
- 29 *R v. C.C.* (2018) ONCJ 542, at para 27

30 *R v. Solorzano Sanclemente* 2019 ONSC 695, at para 18; *R v. KP* 2022 SKQB 66; *R v White Quills* 2020 ABPC 177

31 *R v. Adamko* 2019 SKPC 27, at para 34

32 *R v. Friesen* 2020 SCC 9, at para 85

33 *R v. C.C.* (2018) ONCJ 542.

34 *R v. C.C.* (2018) ONCJ 542, at para 24.

35 *R v. Aklok*, 2020 NUCJ 37 (CanLII)

36 *R v. Aklok*, 2020 NUCJ 37 (CanLII). Emphasis added. Footnotes omitted.

37 *R v. Friesen* 2020 SCC 9, at para 85

38 SISSA Survivor Interview #537

39 SISSA Written Submission #46

40 SISSA Consultation Table #05: Child & Youth EN

41 *Corrections and Conditional Release Act*, RSC 1992, c 20, s 27(3).

42 SISSA Survivor Interview #382

43 SISSA Survivor Interview #519

44 SISSA Survivor Survey, Response #129

45 SISSA Survivor Survey, Response # 382

46 Parliament of Canada. (2024). *Bill S-12, S-12 (44-1)*. LEGISinfo.

47 *Corrections and Conditional Release Act*, RSC 1992, c 20, s 172.

48 SISSA Written Submission #02

49 SISSA Written Submission #02

50 SISSA Survivor Interview #048

51 SISSA Written Submission #02

52 SISSA Stakeholder Survey, Response #304

53 SISSA Written Submission #13

54 SISSA Survivor Interview #048

55 SISSA Survivor Interview #684. In this quote, SR means statutory release date.



Restorative and Transformative Justice

ISSUE

Restorative justice (RJ) remains largely inaccessible to survivors of sexual violence due to provincial and territorial policies that prohibit its use in these cases. While the *Canadian Victims Bill of Rights* (CVBR) provides a right to information about RJ, it is not routinely offered or explained.

*“More options for restorative justice, I didn’t think that my assaulter would go to jail, nor do I necessarily think he should have... I wanted to make sure that he **knew what he had done was not okay and that he would not repeat his actions.** I also wanted my experience to be known in case it happened to somebody else by him, there would be a record of it being a pattern. **Ultimately, I also just wanted some closure.** It would’ve been really helpful for me to know that he was doing therapy, or regretted his actions, or to have an apology from him.”¹*

SISSA Survivor Survey, Response #284

IN NUMBERS



A national survey found **55% of Canadians were unfamiliar with RJ**²



86% supported giving victims a chance to share the impact of the crime with the offender³

In our survey of 1,000 survivors of sexual violence:



83% did not receive information about RJ (n = 503)



In our survey of 450 stakeholders:

86% believed that **information on RJ programs** should be provided to sexual violence survivors **automatically** (n = 328)

BOTTOM LINE

RJ programs can benefit some survivors of sexual assault but are not equally available across Canada. Removing policy barriers, providing adequate resources, and proactively informing survivors about alternatives to the criminal justice system (CJS) are essential for informed, survivor-centred choices.

KEY IDEAS

RJ can be a consent-driven process promoting accountability to survivors

Some are concerned that RJ decriminalizes sexual violence

RJ for sexual violence requires training to address power imbalances

Policies that do not allow RJ for sexual violence limit survivor choices

Transformative Justice (TJ) uses community-led practices outside the CJS

RJ programs are under-resourced, limiting availability and quality

Survivors are demanding the right to choose

RECOMMENDATIONS

- 7.1 Review restrictive policies:** The federal government should, in collaboration with provincial and territorial governments, review policies that prohibit the use of restorative justice models for sexual violence and exchange knowledge on promising practices already used in parts of Canada.
- 7.2 Expand and stabilize funding for restorative and transformative justice:** The federal government should explore joint funding models with provinces and territories to provide adequate and sustained funding to support restorative justice programs and other alternatives to the criminal justice system, such as transformative justice.
- 7.3 Proactively inform survivors:** The federal government should amend the *Canadian Victims Bill of Rights* to require that victims be automatically informed of available restorative justice programs.

Our investigation

Specific actions

We held three consultation tables discussing alternative, restorative, and transformative justice models. One was a multidisciplinary group comprised of defence lawyers, Crown prosecutors, judges, and community advocates, keen on alternatives to make the process fairer for survivors and accused. We also interviewed survivors who participated in RJ programs and stakeholders working in specialized restorative and transformative justice programs for survivors of sexual violence. We also interviewed academic RJ experts in Canada and internationally. The Ombudsperson attended a national conference on RJ and was able to conduct additional interviews.

People in the field provided us with information about promising practices and emerging alternatives. We had discussions with the [Gatehouse](#), a non-profit organization that provides trauma-informed services and supports to people who have experienced childhood sexual abuse. They are advocates for RJ practices and were instrumental in helping us bring together RJ advocates from across the country to learn from their work and knowledge.

We met with [North Shore Restorative Justice Society](#), a Vancouver-based organization focused on RJ which has Indigenous roots.⁴ We also learned about alternatives such as *Project 1 in 3* in Sarnia-Lambton, Ontario, a pre-charge diversion program for youth who have engaged in sexual crimes, and who qualify for the program. The program explores topics such as the purpose of diversion, gender norms, consent, emotional regulation, and survivor empathy. Youth must complete all 8 weeks of lessons and write an apology letter to the survivor (delivery pending survivor request) to graduate from the program.⁵

We also met with the Transformative Justice Collective at University of Ottawa and with WomenatthecentrE about their transformative accountability and justice initiative that explores alternative models of justice for survivors of sexual assault.

Background

Restorative Justice is built on mutual consent

RJ is an approach to justice that seeks to repair harm. RJ is a voluntary, consent-based approach, which can allow survivors to participate more safely and on their terms. It models consent, respect, and healthy communication. This process can provide opportunities for those harmed and those who take responsibility for the harm to communicate and address their experiences and needs.⁶

RJ differs significantly from an adversarial, retributive approach to justice:

- » Wrongdoers recognize the harm they have done and accept responsibility for their actions.
- » Those affected directly by the harm may come forward to share the impact of the harm on their lives.⁷
- » A trained facilitator supports the process.

RJ offers many alternative approaches depending on the specific situation. For example, the victim and the person who harmed them are not necessarily required to meet face to face. There are diverse RJ styles.

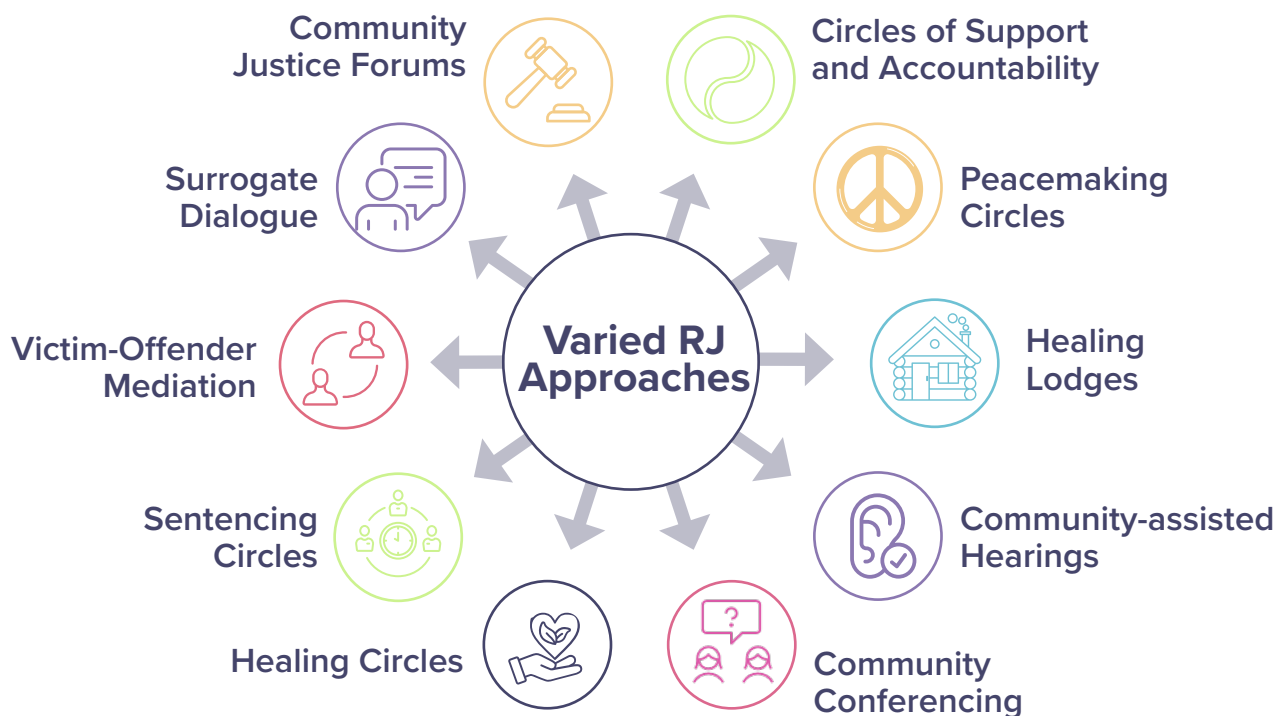
Many people do not view the CJS as an opportunity for justice to be served. Those who experienced harm from the CJS don't trust it to offer a just process or just outcomes.

- » A leading victim rights organization has said that an overwhelming number of survivors are retraumatized by the criminal justice process.⁸
- » RJ can be an alternative to what some view as state abuse and an option to access justice for those who are typically “*excluded or discriminated against in the conventional legal system.*”⁹

Origins

Many RJ programs draw their theory of change from Indigenous legal traditions, which have been used by Indigenous peoples to resolve disputes for thousands of years.¹⁰ RJ values are consistent with and have been informed by the beliefs and practices of many faith communities and cultural groups in Canada.¹¹ RJ has been used to some extent in the CJS in Canada for over 40 years.¹²

Varied Approaches¹³



Some of the Principles for Restorative Justice*

- » **Respect, compassion, and inclusivity.**
- » **Acknowledging** and addressing the harm done to people and communities.
- » **Voluntary** participation and informed, **ongoing consent** (with ability to withdraw).
- » **Empower** and support survivors in making informed choices and ways forward in their lives.
- » **Safety:** Attend to the physical, emotional, cultural, and spiritual safety and well-being of all participants.

* Principles and Guidelines for Restorative Justice Practice in Criminal Matters (2018) – CICS

RJ is practised differently across Canada.¹⁴ It can be used separately from the system entirely, in addition to pre-charge, post-charge, pre-sentencing or post-sentencing stage of the CJS.¹⁵

» Referrals may come from police, Crown Attorneys, or victim service workers. In some regions, charges can be withdrawn or stayed if resolved through RJ.

» RJ is used in cases involving young people and adults, first-time offenders, repeat offenders and for crimes ranging from minor to serious.¹⁶

Why use restorative justice? Why not?

Potential Benefits	Potential Criticisms
RJ has shown positive results for some sexual violence cases, such as survivor healing, participation, satisfaction, and empowerment.¹⁷ Some advocates have argued that flexible approaches are better positioned to empower and heal victims because they provide a safe space for them to confront the person who harmed them and allow them to have input into justice outcomes. RJ allows for more survivor consent, like being able to pause, discontinue, have a change of mind about ways of participation, change location, ask their own questions, etc. An RJ approach also allows space for considering the context surrounding the harm, (social economic), as well as addressing trauma and mental health.¹⁸ Advocates for the use of RJ in sexual violence cases have noted the conventional justice system’s shortcomings in meeting the needs of survivors of intimate partner violence (IPV) and sexual violence. “Anything is better than that”¹⁹	Sexual violence is a crime of power. There are concerns that people who perpetrated sexual violence harms could manipulate the process, given the power dynamics involved in sexual violence and GBV. There are numerous concerns about using RJ for cases of sexual violence, such as safety, the possibility of revictimization, power imbalances, and that RJ is too lenient a response.²⁰ There is some concern that if RJ is used as a diversion in sexual violence cases, it is counter to the long-standing goal of women’s rights activists to move violence against women from the private to the public sphere and establish it as a public crime.²¹

What we heard

“Currently, police are not likely to refer a more serious sexualized violence as a pre-charge referral to RJ. Many sexual assaults go unreported – wouldn’t it be better to do something that is along with the victim’s wishes than for no report at all to be made?”²²

“We see and hear of a need for restorative and transformative justice approaches as options for survivors and as creative responses to survivors’ access to justice needs.”²³

During our investigation, we heard:

- » Some survivors strongly agree that RJ benefits sexual violence cases, while others strongly disagree. This highlights the need for an individualized approach, with a greater range of options available to survivors.

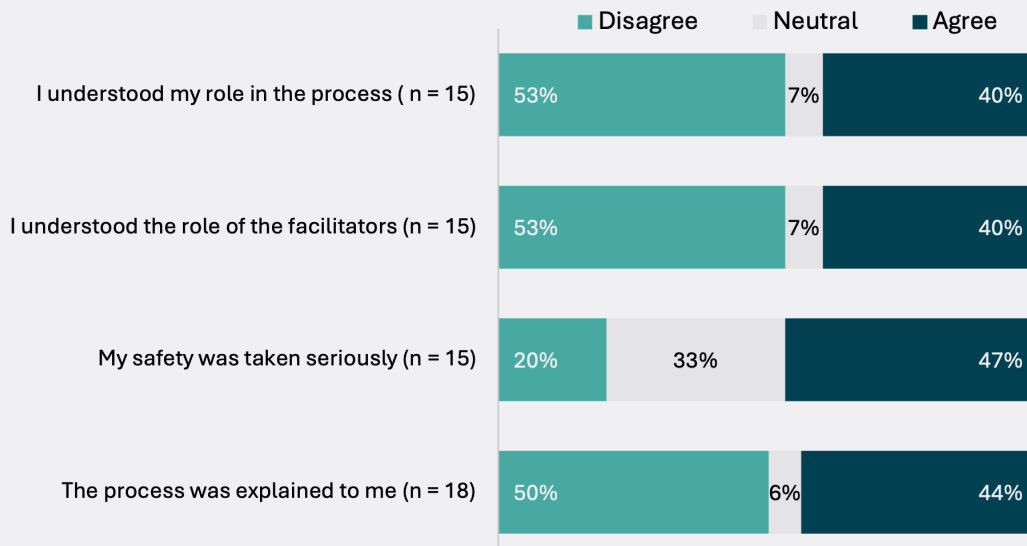
- » In some jurisdictions, police downgrade sexual assault charges to enable RJ referrals.²⁴
- » Crown prosecutors may face disciplinary actions if they go against their Crown policies and refer sexual assault cases to RJ.
 - » A survivor had found the criminal justice process retraumatizing and looked for an alternative. A Crown referred her to RJ which became a healing and life-changing process for her, but the Crown was reprimanded for her involvement.

We heard several survivors say that the criminal “justice” system:

- » Says to survivors that the system is protecting you but violates your consent in many of its processes, like taking your private records, submitting you to painful examinations and humiliating cross-examinations²⁵
- » Takes the experience of the survivor away from them and doesn’t allow them to decide²⁶
- » Is a monolithic approach that will never serve the needs of all victims²⁷

Survivor survey: A small group of survivors responded to questions about their experiences with restorative justice (n = 18). The number of responses is too low to provide reliable conclusions but still offers some value.

Survivor experiences with restorative justice in cases of sexual violence (n = 18)



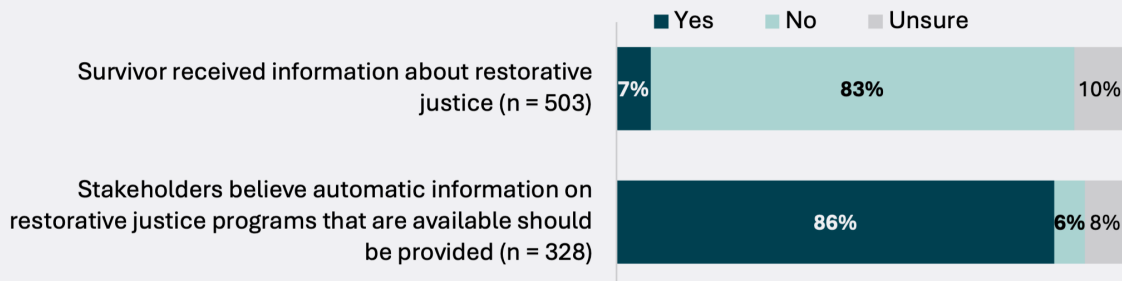
The lack of awareness of RJ options limits informed choice

“Really interested in restorative justice, tried to ask for that, but RCMP didn’t know and didn’t help me to find out.”²⁸

“A big barrier to RJ includes the misconceptions. A person can show up enraged. Doesn’t have to be about forgiveness. Also, the idea that it cannot be used for SA [Sexual Assault] or IPV.”²⁹

In our survivor survey, we learned about information gaps

Most survivors of sexual violence are not provided information about restorative justice, but many stakeholders believe they should be



Under the **Canadian Victims Bill of Rights**, victims have the **right to information, upon request**, about services available to them, including RJ programs.³⁰

- » The problem is that **a person would have to be aware of the right and service to be able to ask for it.**
- » **The CVBR should be amended to proactively inform survivors** of the availability of these programs.

Qualitative interviews with survivors of violent crime in Canada and Belgium reveal that survivors prefer being proactively provided information about RJ rather than having to ask about it.³¹ This allows them to make informed decisions and come back to options at a later time.

Survivor Shamed for Wanting Restorative Justice

We heard from one survivor who was retraumatized by the Crown responsible for her case after expressing her desire to proceed with RJ. Although both the perpetrator and defence counsel agreed to RJ, the Crown told her:

*“Feminists fought for years for marital rape laws and that justice won’t be served because she’s not testifying... [The Crown attorney] yelled at me via zoom and said I was not being brave and courageous because I did not want to testify. I wanted to do restorative justice instead, which the defendant and his lawyer agreed to.”*³²

More survivors, criminal justice actors, and the public need to be informed on RJ

In 2024, a national survey found **55% of Canadians were unfamiliar with RJ** and **86%** supported giving victims a chance to share the impact of the crime with the offender.³³

One of our consultation tables noted RJ is often viewed as controversial. Stakeholders noted that some criminal justice actors are not aware of RJ and therefore cannot properly inform survivors of this alternative.³⁴

Restorative options for child and youth victims

Child and youth advocacy centres (CYACs) are an important place to implement and pilot restorative and transformative justice given the integrated, multidisciplinary environment, trauma-informed child-centred environment. CYAC’s principles of trauma-informed justice (i.e., safety, trust, choice, coordination and collaboration, support, and empowerment) demonstrate a readiness for piloting restorative justice practices. Moreover, CYACs are uniquely positioned to facilitate restorative processes that prioritize healing, accountability, and community involvement, in cases involving children and youth. Their existing infrastructure supports safe dialogue, emotional regulation, and long-term support—key components of restorative justice.

*“By embedding restorative options within CYACs, we create a more compassionate justice pathway that not only addresses harm but also fosters resilience and repair.”*¹

¹Stakeholder interview 195

In 2023, Public Safety's National Office for Victims (NOV) held a roundtable with victim stakeholders and non-governmental organizations around victim rights and federal corrections. The roundtable recommended:³⁵

- » Expanding public legal education and information resources.
- » Increasing the availability of training and online resources about RJ.
- » Informing victims of their CVBR right to information on RJ.

Restorative Opportunities Program - Correctional Service of Canada

Under the **Corrections and Conditional Release Act** section 26.1 (1):³⁶

- » CSC must provide registered victims with information about its RJ and victim-offender mediation programs.
- » CSC may take steps to offer those services upon request.



Correctional Service of Canada (CSC) offers **victim-offender mediation** through the Restorative Opportunities Program. CSC receives ongoing qualitative feedback from participants.³⁷ From 1992 to 2024:

- » **317 federal offenders** participated in face-to-face mediation.
- » **28%** of those cases included sexual offences.³⁸

RJ programs are under-resourced, limiting availability and quality

“For the amount of money that’s spent on policing and jails – to very little effect and zero repair for those harmed – we could easily fund trauma- and violence-informed restorative and transformative justice initiatives. Shoving someone into jail increases the likelihood that they themselves will experience sexual violence at the hands of corrections officers or other inmates. That is neither helpful nor rehabilitative.”³⁹

Access to RJ varies across **provinces and territories** due to inconsistent practices and funding. We learned that

- » Nunavut has no RJ option for sexual violence⁴⁰
- » Stakeholders felt that decisions to fund RJ often appear to be **based on perceptions of its effectiveness and necessity**
- » Policies that prohibit the use of RJ, such as moratoriums, impact funding for programs that offer RJ

Limited funding impacts the availability of **trained** facilitators, the **timeliness** of any available processes, survivors' **access to culturally or trauma-informed models**.

- » A stakeholder shared that they wish their organization could support anyone who is looking for restorative options, which they could if they had more funding, and suggested a fully **funded pilot project** to develop best practices for referrals.⁴¹

Policies that prohibit the use of RJ for cases of sexual assault

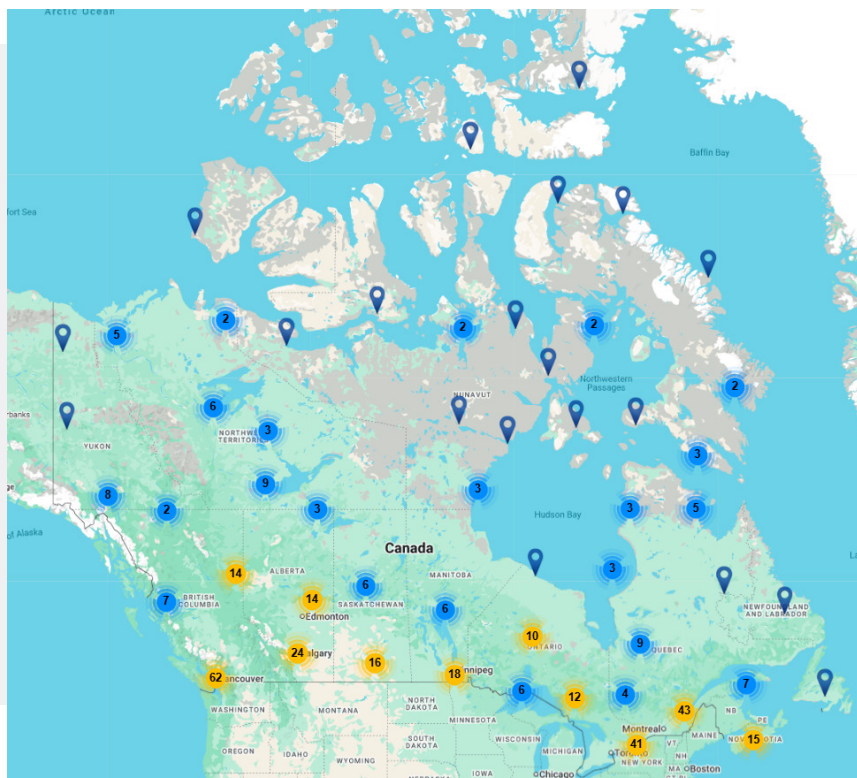
RJ can only be used in sexual assault cases if the Attorney General of a province or territory allows it. Federal, provincial, and territorial governments have **significant variance** in which cases are appropriate for RJ and how they should be handled.⁴²

In some provinces, policies that prohibit the use of RJ, such as moratoriums,⁴³ prevent RJ in sexual assault cases altogether.

Policies that prohibit the use of RJ, such as moratoriums, prevent any chance for RJ options

“RJ was amazing. A restorative circle. Incredible. It changed my life. So meaningful. Trauma informed, time for emotions, no expectation to be the perfect victim, supportive and humane. All my needs were met. There was community support. My mom was invited to join.”⁴⁴

“Felt empowered, hopeful, and provided a sense of closure, which was such a contrast to the preliminary hearing where she felt blamed, defeated, and exhausted.”⁴⁵



Directory of Restorative Justice programs in Canada

The Department of Justice Canada maintains a Directory of Restorative Justice programs, which currently lists 395 RJ programs across Canada.⁴⁶ However, these programs operate at different stages of the CJS and vary in scope, funding, and accessibility.⁴⁷ There is also currently no search option for RJ programs specifically for cases of sexual assault.

» Feminist organizations advocated for moratoriums, but many believe they were not supposed to be permanent.⁴⁸ They were meant to be temporary to provide more time

for provinces to adapt and to explore safe RJ practices for survivors of sexual violence.⁴⁹

» Provinces and territories have the jurisdiction to review and remove these policies.

Prohibitions on the use of Restorative Justice in Canada



Consequences of moratoriums

LEAF explored these barriers in a 2023 report.⁵⁰ This comprehensive report notes that consideration must be given to whether these policies should be lifted as they can restrict survivor choice and access to RJ without providing proper information, ultimately impacting access to justice.

» Some view this as a restriction on survivor agency, which goes against trauma-informed practices.

» This restriction can also impact Crown discretion to divert cases as they see fit. Crowns shared frustrations with the RJ policy, which they thought undermined their ability to do their job effectively.⁵¹

These policies, including moratoriums have slowed training and capacity-building in the RJ/TJ field.

» Some GBV practitioners do not view RJ practitioners as having appropriate experience for these cases.

» RJ service providers can feel diminished when their approaches are viewed as “*more lenient and less legitimate.*”⁵²

Does the use of restorative justice risk decriminalizing sexual violence?

No – Some advocates argue that RJ does not decriminalize sexual violence. Instead, they see RJ as a better way to address the harm caused by these offences. Key points include:

- » **Survivor Choice:** RJ gives survivors the option to choose between the criminal justice system (CJS) and a restorative process.
- » **Distrust in CJS:** Many survivors have lost trust in the legal system's ability to take violence against women and gender-diverse people seriously.
- » **Healing and Closure:** RJ can provide a sense of healing and closure that the CJS often fails to deliver.
- » **Alignment with Survivor Wishes:** Some view RJ as reflecting survivors' needs as part of broader transformative justice approaches.⁵³

Yes – Other advocates believe RJ could undermine accountability and risks shifting gender-based violence (GBV) back into the private sphere.⁵⁴ Key concerns include:

- » **Historical Context:** Feminist movements in the 1970s fought for GBV to be treated similarly to other crimes by the state; RJ may be seen as reversing this progress.
- » **Minimization of Harm:** Some anti-violence advocates argue that sexual violence is already minimized by the CJS and fear RJ could worsen this.⁵⁵
- » **Safety Risks:** Unequal power dynamics in GBV cases may make RJ unsafe for survivors.⁵⁶
- » **Decriminalization Concerns:** Critics worry that expanding RJ could lead to the perception, or reality, of decriminalizing sexual violence.

Survivors want the perpetrator to take accountability

"It was not my fault. [The perpetrator] was wrong. And yet his actions made sense. Two things can be true at the same time. The criminal justice system doesn't allow for two truths to be held at the same time... I knew none of [the RJ practices] would be remotely possible through the criminal justice system. It's not just a broken system it's the wrong system. It doesn't need reformation, it needs replacement."⁵⁷

Survivors are not always interested in the perpetrator receiving jail time

"In my experience survivors say they want the perpetrator to acknowledge the harm done and take responsibility for their actions. Even with a guilty verdict this may not happen."⁵⁸

Many view jail as ineffective or not rehabilitative but still want the person who harmed them to take accountability. For some, RJ offers the only path to healing and closure, especially when they have unanswered questions about the offence.⁵⁹

Restitution is a common outcome for RJ

Restitution agreed to during an RJ process is more likely to be paid to the victim than standalone restitution orders issued by a Court.⁶⁰

In fall 2021, OFOVC released a special report, Repairing the Harm: A Special Report on Restitution for Victims of Crime, that discussed restitution, the rights and barriers to accessing support, as well as RJ approaches in which reparations can include restitution. It recommended an increase in the use of RJ programs and that the Minister of Justice launch a public awareness campaign on victim rights to restitution.

RJ can better support the needs of a diverse population in a respectful and healing manner

“I would like to see an explicit path and evidentiary protections for restorative and Indigenous justice options. Remove all doubt that statements by the victim and the accused made in these contexts cannot be used in subsequent criminal proceedings. This could allow for referral of more serious cases if the threat of prosecution could be more effectively maintained.”⁶¹

Restorative Justice in Indigenous Contexts

We heard from Indigenous participants and those working with Indigenous communities:

- » RJ can support healing.
- » Sexual violence must be approached holistically, with support for both offenders and the community.⁶²
- » Alternative models must be funded and supported through Indigenous communities to respect the survivor and community needs,⁶³ as some Indigenous Justice programs are not transferable to a western context.⁶⁴

Pilot Project in Alberta

Justice Beverley Browne was a member of the Queen’s Bench of Alberta and founded the Restorative Justice Committee, also known as Wîyasôw Iskweêw, conveying the meaning of “*Woman standing with the law*.”⁶⁵

The Committee assesses referral guidelines and can refer appropriate cases in court to restorative justice programs. This Committee is comprised of justices from the Court of Queen’s bench and Provincial Court, Crown prosecutors, defence lawyers, Indigenous organizations, victims’ rights organizations, RJ practitioners, police, and other stakeholders.

This pilot project allows all matters coming before criminal courts to be considered (the project hopes to expand to family and civil matters) and includes specifically matters already before the court (post charge – pre-sentencing).⁶⁶

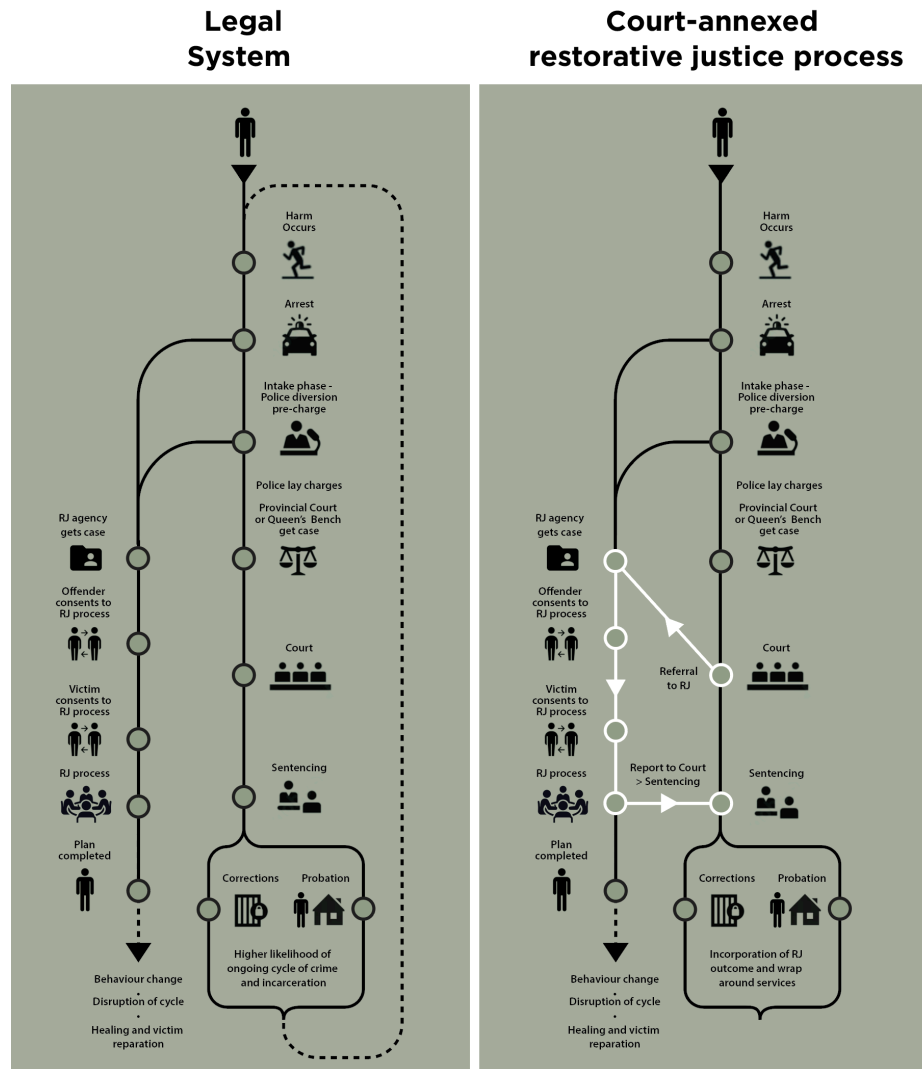


Figure. Alberta Restorative Justice Pilot Project Timeline of Legal System versus Court-annexed restorative justice process⁶⁷

MMIWG Calls for Justice⁶⁸

MMIWG Calls for Justice include specific recommendations around Indigenous Courts and restorative justice programs.

“5.11 We call upon all governments to increase accessibility to meaningful and culturally appropriate justice practices by expanding restorative justice programs and Indigenous Peoples’ courts.”

The 2025 Department of Justice Federal **Indigenous Justice Strategy**⁶⁹ discusses the importance of considering individual needs and providing tailored support.

Resistance to RJ. We also recognize that RJ is not practised in some Indigenous cultures and there is resistance to having it colonially imposed on Indigenous communities. There are also various views about RJ, for example some Indigenous stakeholders emphasized the cultural value of conversation over a meal instead of a facilitated process.

Transformative Justice (TJ) uses community practices outside the criminal justice system

“The Transformative Justice model developed as a grassroots movement by Black people, especially Black women, queer, trans and disabled communities, as well as activist communities, to operate outside of the criminal legal system, because their communities were

*often the victims of state-sanctioned, as well as inter-personal violence. Therefore, the idea of going to that system expecting justice was antithetical to the systems' own ideas of who deserved justice.”*⁷⁰

Transformative Justice (TJ) adopts a broader set of strategies than RJ but still uses RJ and restorative practices. Because TJ places an emphasis on structural factors, interventions can include education, advocacy, training, and other actions to counter oppression.⁷¹

We heard that transformative justice

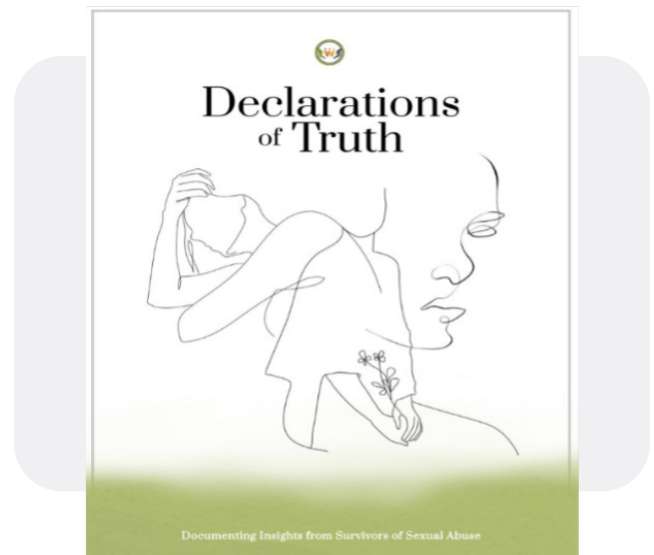
- » recognizes that the systems in place are not keeping survivors safe and cause further harm⁷²
- » gives more consideration to the influence of structural factors like oppression, marginalization, and privilege, and asks, *“Why do we live in a culture where sexual violence happens?”*⁷³
- » aligns with Black, trans, and abolitionist feminism views of the legal and carceral system
- » aims to foster accountability outside the criminal “legal” system⁷⁴

Essential Reading: Declarations of Truth⁷⁵

In *Declarations of Truth*, WomenatthecentrE proposes a model of transformative justice that is responsive to the concerns and unmet needs of survivors.

- » **WomenatthecentrE** is a Canadian incorporated organization created by survivors for survivors, with membership around the world.⁷⁶
- » Their research affirmed that *“the **legal system does not equate to justice or accountability** for those who have caused harm, nor does it equate to justice and safety for survivors.”*⁷⁷

This three-year project, funded by Women and Gender Equality Canada (WAGE), focused on finding an alternative model of justice for



sexual violence survivors. WomenatthecentrE identified three fundamental principles of justice that need to be embodied in effective responses to sexual violence:

1. **Aggressor accountability**, remorse, and change in attitude and behaviour, having recognized the harm caused by their actions.
2. **Survivors feel heard**, believed, and validated.
3. **Societal acknowledgement** of the role it plays in navigating and negotiating these elements.

Case study – Transformative and restorative justice

“Why would I report someone who did something homophobic to a homophobic system?”

For me justice looked like...try to prevent this from happening again to someone out there. It looked like forgiving him while still acknowledging he was wrong.

A restorative justice process could have helped with this.

We could have been in circle, and he could have apologized...could have been provided therapy. That would have been even better justice, and it wouldn't have been put on me to do the work myself... There is a growing population who know retributive justice is not justice and we aren't seen or served by the existing systems.”⁷⁸

Survivors Are Demanding a Right to Choose

Open letter. In June 2025, Survivors 4 Justice Reform, founded by Marlee Liss, published an open letter calling on the Ontario Attorney General to reform Crown Policy D4, which deems sexual violence cases ineligible for community justice programs.⁷⁹ They are urging that the Ontario policy be revised to allow survivors of sexual violence to access RJ options when they choose to pursue this path. The letter has over 50 signatures from individuals and organizations in the field.

News article.⁸¹ In June 2025, the Executive Directors of the Barbra Schlifer Commemorative Clinic and LEAF co-released an opinion piece, *“The criminal Justice system keeps failing sexual-assault survivors. There has to be a better way,”* about the criminal trial of five hockey players.⁸² RJ is highlighted as an alternative that, with increased public interest, could be a beneficial option for survivors of sexual violence. They call for lifting Crown restrictions, further exploration and expansion of these programs, and increased investment to provide survivors with alternatives.

» Marlee Liss did an interview with CBC News on restorative justice in the context of sexual violence and the limitations of the criminal justice system.⁸⁰ She highlights barriers including lack of awareness, lack of funding, and Crown policies banning referrals to RJ process, as well as underscoring the need for informed consent for survivors.



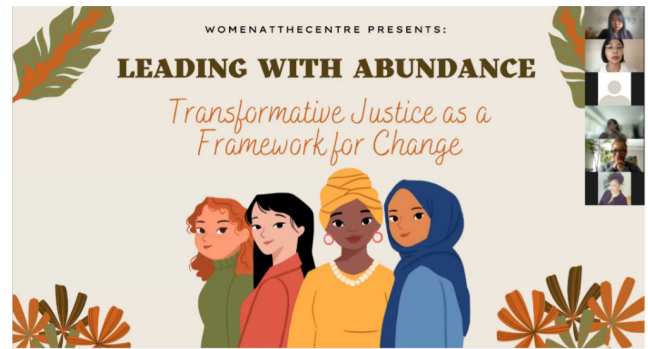
Film: *The Meeting*⁸³ [1h 36m]

The film is based on a real meeting that took place in Ireland between Ailbhe Griffith and the man who, nine years earlier, subjected her to a horrific sexual assault that left her seriously injured and fearing for her life.

Griffith, in an extraordinary move, chose to play herself in this unique drama about RJ.

Webinar: Transformative Accountability & Justice Initiative

WomenatthecentrE has a three-part webinar series⁸⁴ that provides further context and detail on transformative justice in Canada. The webinar also profiles Salal Sexual Violence Support Centre's *Transformative Justice Pilot Project*.⁸⁵



Recommendations from stakeholders

According to the Women's Legal Education and Action Fund (LEAF) 2023 report, Crowns shared frustrations with the RJ policy, which they thought undermined their ability to do their job effectively. LEAF recommends that the Office of the Attorney General re-evaluate moratoriums in each province and territory that impact RJ use in sexual violence cases. Anti-violence advocates and RJ experts must be consulted, and collaboration must continue with the goal of providing options to survivors.⁸⁶

In Dr. Kim Stanton's (2025) final report on the Independent Systemic Review: The British Columbia Legal System's Treatment of Intimate Partner Violence and Sexual Violence,⁸⁷ recommendation 21 calls for the Ministry of Attorney General to create a BC working group to examine RJ processes for sexual violence and IPV cases. Dr. Stanton writes:

"If managed carefully and with appropriate safeguards in place, restorative processes have the potential to respond more comprehensively to the needs of both survivors and perpetrators. Restorative processes, if adequately funded and with feminist anti-violence experts involved, may provide survivors with greater control over their pursuit of justice and offer supports to perpetrators in their healing, growth and efforts to make amends."

Dr. Kim Stanton

TAKEAWAY

Survivors deserve real choices, and respect, for the justice paths they choose.

Restorative and community-led models can be more responsive to survivors' needs.

Endnotes

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- 24 Weingarten, N. & MacMillan, S. (2025). *Sexual assault survivors calling on Ontario to lift policy that limits access to community justice programs*. CBC News.
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- 26 SISSA Focus Group #5: Transformative Justice
- 27 Consultation Table #34: Transformative Justice
- 28 SISSA Survivor Survey, Response #436
- 29 SISSA Survivor Interview #94
- 30 *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2.
- 31 2016; Wemmers and Van Camp 2011 as cited in Wemmers, J. (2021). *Judging victims: Restorative choices for victims of sexual violence*. Victims of Crime Research Digest No.10.

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- 35 Public Safety Canada (2025). *2022-2023: National Victims Roundtable on the Canadian Victims Bill of Rights*.
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Legal Representation and Enforceable Rights



ISSUE

Survivors typically have no legal standing in criminal proceedings, even when their rights are at stake. Without legal representation, their rights under the *Canadian Victims Bill of Rights* (CVBR) and the *Canadian Charter of Rights and Freedoms* (Charter) are frequently overlooked or treated as optional. Simple and feasible changes to the CVBR would improve its impact, implementation and enforceability.

*“While the substantive law regarding sexual assault in Canada has undergone positive reform over the last 30 plus years in favour of women’s equality,the government has failed to implement procedures that provide complainants with consistent protection, information and participation regarding the criminal process. These missing procedures could help prevent retraumatizing experiences, guard against harmful applications of gender stereotypes and rape myths and accommodate psychological trauma. However, **the government’s failure to implement these crucial procedures has resulted in a criminal process that is harmful to female sexual violence victims, which make up 86% of all victims of sexual offences.** This failure amounts to adverse impact discrimination against women.”¹*

Karen Bellehumeur, counsel to survivors of sexual violence

IN NUMBERS

450 stakeholders responded to our survey.
Among them:



60% believed that survivor **access to independent legal advice (ILA)** has increased or stayed the same compared to 5 years ago (n = 354)



93% agreed that survivors should be provided **information automatically** on how to access ILA (n = 347)

BOTTOM LINE

Survivors need access to independent legal advice, enforceable rights and recourse when their rights are not met.

KEY IDEAS

Legal representation matters.

Survivors need access to independent legal advice (ILA) and independent legal representation (ILR) to meaningfully assert their rights

Child victims face unique harms. Children are especially vulnerable to secondary trauma when their rights are ignored or unsupported

The CVBR can be a powerful tool. It needs to be strengthened and enforced

Rights must be enforceable. The CVBR and *Charter* rights should not be treated as optional or symbolic

Federal leadership is essential. The federal government must take responsibility for CVBR compliance and ensure its primacy is respected

RECOMMENDATIONS

8.1 Fund legal representation where victims' rights are at stake: The federal government should immediately invest in independent legal representation (ILR) and independent legal advice (ILA) programs whenever a victims' Charter or CVBR rights are engaged within the criminal justice system. This includes for testimonial aid applications, private records applications, crossexaminations, preparation of victim impact statements, and parole hearings.

8.2 Provide information proactively: The federal government should immediately amend the *Canadian Victims Bill of Rights* (CVBR) to remove "on request" from victims' rights to information.

8.3 Create meaningful enforcement powers: The federal government should immediately amend the *Canadian Victims Bill of Rights* (CVBR) to allow victims to challenge violations to their rights by creating standing, appeal rights and a remedy from federal agencies in order to allow victims to challenge violations of their rights.

8.4 Show CVBR consistency in proposed legislation: The federal government should immediately amend the *Department of Justice Act* to require that the Minister examine every Bill to ascertain whether any of the provisions are inconsistent with the purposes and provisions of the *Canadian Victims Bill of Rights* and report any inconsistency to the House of Commons at the first convenient opportunity.

8.5 Show CVBR implementation in proposed legislation: The federal government should immediately amend the *Department of Justice Act* to require that the Minister of Justice shall table, for every Bill introduced in or presented to either House of Parliament by a minister or other representative of the Crown, a statement that sets out potential effects of the Bill on the rights that are guaranteed by the *Canadian Victims Bill of Rights*.

8.6 Clarify the analysis of the Charter rights of victims of crime: The federal government should amend the *Department of Justice Act* to require that Charter Statements include an analysis of how legislation may affect the rights of victims of crime under the *Canadian Charter of Rights and Freedoms*.

Background

Independent legal representation (ILR) is “a retainer in which a licensee (lawyer or paralegal) acts as the client’s legal representative for a specific matter or transaction. Licensees (lawyers or paralegals) providing ILR enter a standard lawyer-client or paralegal-client relationship and must adhere to the same professional obligations owed to all clients.” ²

Independent legal advice (ILA) is “a limited scope retainer in which a licensee (lawyer or paralegal) provides objective and unbiased legal advice to clients about the nature and consequences of a specific decision to be made but does not otherwise represent the client with respect to their matter or transaction.” ³

The *Canadian Victims Bill of Rights* came into force on July 23, 2015, representing a monumental step in acknowledging and upholding the rights of victims of crime within Canada’s justice system. Victim rights in Canada have progressed slowly but steadily, with the CVBR marking a key step toward a fairer justice system for all.

- » “The *Canadian Victims Bill of Rights* (CVBR) ... established statutory rights at the federal level for victims of crime. Through the CVBR, victims of crime have the right to information, protection, participation, and to seek restitution. Victims can also make a complaint if they believe their rights have been infringed or denied.” ⁴
- » The CVBR limits these rights: “These rights must be applied in a reasonable manner so that they are not likely to interfere with investigations or prosecutions, endanger someone’s life or safety, or injure national interests such as national security.” ⁵

The CVBR is enforced through a complaint mechanism. The OFOVC receives complaints once a federal agency has decided on a survivor’s initial complaint.

- » “A victim may file a complaint if they are of the opinion that their rights under the CVBR have been infringed or denied (i.e. not respected) by a federal agency or department during their interaction with the Canadian criminal justice system. When it is a federal government department or agency about which a victim would like to complain, they should use the internal complaint system of that department or agency. If a victim has a complaint about a provincial or territorial department or agency, including police, prosecutors, or victim services, they may file a complaint under the laws of the province or territory.” ⁶

Our investigation

Specific actions

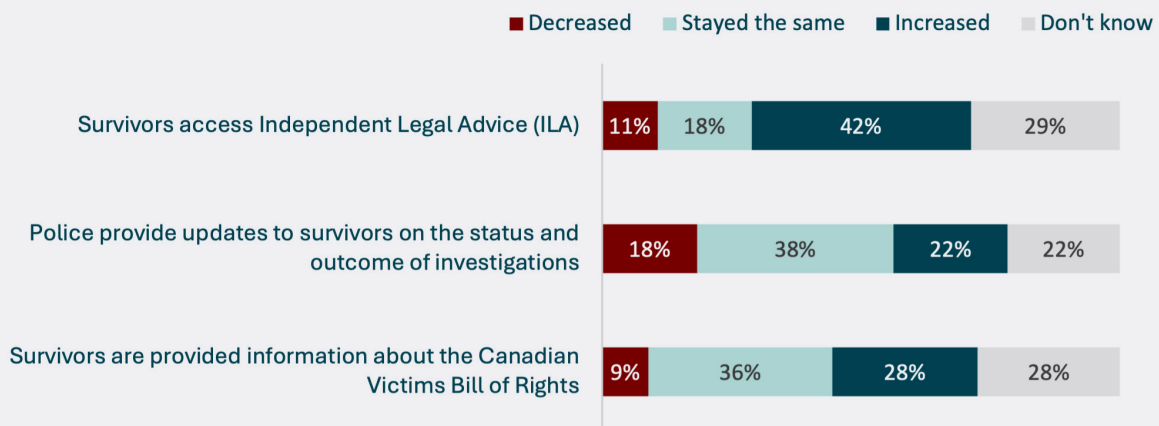
We held two consultation tables specific to the issue of ILR/ILA. We asked survey questions about the CVBR including information rights, protection rights, participation rights and enforceability.

In 2024, the Office of the Federal Ombudsperson for Victims of Crime published an [Open Letter to the Government of Canada: It’s time for victims and survivors of crime to have enforceable rights.](#) ⁷ Our recommendations include:

- » When victims report a crime to the police, tell them their rights – don't expect them to ask.
- » When ILA is available, tell victims so they are better protected.
- » When a restitution order is made, help the victim collect the funds.
- » Ensure testimonial aids are not unreasonably withheld.
- » Monitor the implementation of victim rights through updated statistical measures and commit to ongoing evaluation and training.

“The Act does not provide a comprehensive national solution, in part because it provides a limited complaint mechanism for federal agencies only. This has the effect of promising rights but not providing a means to enforce them.”⁸

Survivors are more likely to access ILA, receive updates from police and be informed about their rights now than 5 years ago (n = 354)



What we heard

Survivors need independent legal advice and representation programs

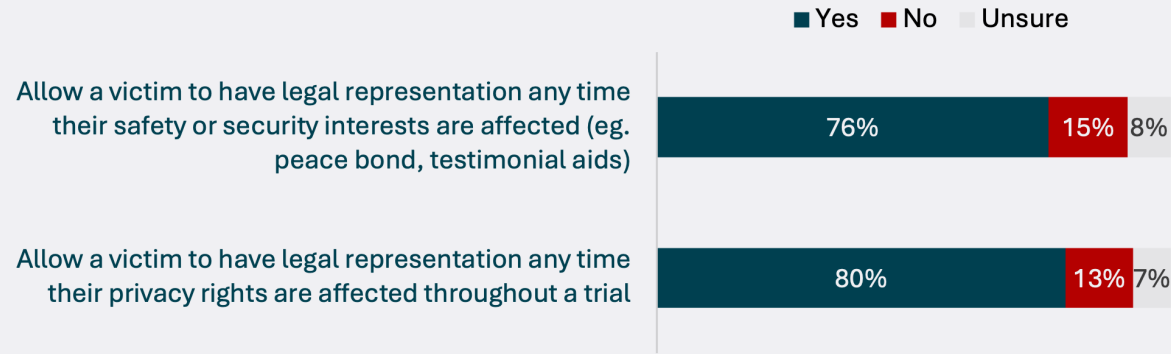
“Had I left it in the hands of the officer I reported to and not advocated for myself and accessed the free legal advice program, I strongly believe nothing would have happened and my abuser who is in prison currently would still be free on the street harming more people. I had this experience in one of the biggest urban centers in Canada and could not imagine reporting somewhere rural with less resources.”⁹

We heard that stakeholders believe that ILA/ILR can help survivors make informed decisions and be adequately supported in their path forward.

“We hope to see the Federal Ombudsman advocate for an expansion of ILA to ensure that all survivors, regardless of their geographical location across Canada, can have access to free legal advice to assess their options following sexual assault.”¹⁰

“The most obvious change that is needed is why do victims not have legal representation in the criminal system? The Crown represents the queen, the government, the state etc.”¹¹

Stakeholders agreed survivors should have access to legal representation when their Charter rights are affected (n = 361)



Positive experiences with ILA and ILR from survivors and stakeholders¹²

“When I was debating about reporting the rape, I researched online and found that BC had an amazing service to provide victims of sexual crimes with up to three hours of free legal advice. I took advantage of that and it was amazing. Phenomenal. The lawyer was so completely helpful and understanding – I can’t even think of all the words to say how supported I felt by them.”¹³

Some survivors told us that they had an excellent experience with ILA/ILR and that it made a big difference for them.

- » We heard that having a lawyer to represent them, reduces anxiety and helps them understand the process.¹⁴
- » We heard that it is extremely beneficial for survivors to be given ILA before reporting.¹⁵

We heard from **Crowns that they feel conflicted** knowing that their role does not include representing the victim but they can see, from their experience and expertise, the complainant would benefit from legal advice or representation. This adds to the vicarious trauma of many Crowns and court workers in this field.¹⁶

Without ILR, the *Charter* and CVBR interests of survivors are not always being heard

We heard a judge at a conference on victims’ rights indicate that they are relying on parties to make submissions about victims’ rights and interests.¹⁷ This judge did not feel empowered to bring this perspective if it was not argued by the parties.

- » It is our observation that, if victims are **rarely represented** in Court proceedings, victims’ rights and interests will be **rarely considered** by the Court.
- » When survivors don’t have standing, courts make decisions without hearing from all the parties who have a genuine interest in the case.

Lack of ILR also means that there are **limited opportunities to refine and develop the law about victim rights**.

- » The current limited jurisprudence from the CVBR has come from represented survivors, Crowns and advocates – not from accused, self-represented or unrepresented complainants
- » ILR will add to the body of jurisprudence which refines and explores the rights of victims of crime. In our common law tradition, this is a necessary part of an effective legal system
- » ILR will develop jurisprudence to guide an understanding of victims’ rights unique to the Canadian constitutional, bilingual and bilingual context
- » With ILR, CVBR and *Charter* rights for survivors will be considered more often and lead to a fairer balance within the criminal justice system. This will increase public respect for the justice system

Justice Canada Pilot Projects

Between 2016 and 2019, several provinces and territories accessed Justice Canada funding to set up their own ILA/ILR projects.¹⁸ In Budget 2021, the Government of Canada announced an investment of \$48.75 million over five years through two Justice Canada programs to ensure access to free ILA and ILR for survivors of intimate partner violence (IPV) and sexual assault.¹⁹

- » **ILA:** provides survivors with tailored legal advice regarding their options
- » **ILR:** provides survivors with legal counsel to represent their interests in specific instances as provided in the *Criminal Code*

of Canada (i.e., in other sexual history and private records applications in a sexual assault trial)

Justice Canada has two funds supporting ILA and ILR. The Justice Partnership and Innovation Program (JPPI)²⁰ supports the development and implementation of pilot models of ILA and ILR for survivors of IPV. The Victims Fund²¹ supports **pilot models of ILA and ILR for survivors of sexual assault.**

- » This funding expires in March 2026 which will leave thousands of survivors without access to these resources unless it is renewed.
- » We recommend that this funding be immediately renewed.

Qualitative Research Results

Justice Canada conducted in-depth qualitative interviews²² with 18 not-for-profit organizations in five jurisdictions (Prince Edward Island, Ontario, Manitoba, Alberta, and British Columbia) who had been funded for ILA/ILR projects.²³

Strengths	Challenges
» Timely uptake once funding provided. » Victims and survivors were accessing justice in ways that they had not been able to prior to the projects, beginning by speaking directly with lawyers and other professionals who were providing information and advice in trauma-informed ways. » Proud to help clients take at least one concrete step to achieving their goal that could help them feel safer, stronger, and more in control. » Trust built with clients. » Effective roster of lawyers. » Collaboration between clinics, such as on public legal education.	» High demand or potential demand will outstrip funding. » Lack of lawyers with trauma-informed approaches/IPV expertise, conflict of interest in smaller communities. » Siloed nature of justice systems (family, criminal and child protection). » High volume of unrepresented litigants in the family justice system. » Vicarious trauma and the importance of self-care. » Project funding is cyclical, not sustainable or permanent. » Legal advice is short-term – those providing legal advice do not follow the case through, likely won't know the path taken by the survivor who accessed their services.

Innovative ILA / ILR programs

Ontario. The first ILA program for survivors of sexual assault was established by the **Ontario** Ministry of the Attorney General in 2016 across Ontario in several pilot projects.²⁴ The program is currently delivered by the **Barbra Schlifer Commemorative Clinic** and is open to all women, men, trans, and gender-diverse people, aged 16 years and older, living in Ontario, and where the sexual assault occurred in the province. Eligible applicants can receive up to four hours of legal advice.²⁵

- » We learned about an effective Justice Canada funded program, **Your Way Forward**,²⁶ where nine Ontario legal clinics provide multidisciplinary and holistic legal services to survivors of sexual violence and other forms of gender-based violence (GBV).²⁷
- » Their overarching goal is to increase access to just outcomes for survivors of sexual violence and intimate partner violence.
- » Survivors do not have to demonstrate financial need or meet legal aid thresholds to access these services. These clinics are filling an important gap in access to justice for survivors of GBV.²⁸

New Brunswick. We heard of the promising ILA/ILR programs, such as the ILA Plus Program offered by Sexual Violence New Brunswick. The program provides direct advocacy and support for clients who are currently undertaking or thinking about undertaking legal steps relating to sexual violence.²⁹

- » When survivors are connected with a lawyer for other sexual history or private records applications, advocates and survivors believe they are more likely to have their rights respected.³⁰
- » When defence counsel issues a subpoena for private records, the client is allowed to have a lawyer, but they cannot always afford to hire a lawyer.³¹ These programs make a difference for survivors.

Newfoundland and Labrador. The Journey Project³² is an inspiring and innovative collaboration between two leading non-government organizations (NGO)s offering free legal information and system navigation to any person in NL who has experienced sexual violence or intimate partner violence.

- » Journey Project staff or collaborators may provide legal advice, accompany a survivor to court, hospital or police station, offer referrals to community services and take third party police reports.

ILA/ILR are not accessible to all victims across Canada

We heard that funded legal representation is not available in some provinces/territories.³³

- » **Demographic gaps** – some programs limit eligibility requirements to survivors residing in specific areas.³⁴
- » A survivor who moves from one province to another before a trial takes place can become ineligible for funding.³⁵

Funding limitations. We heard that ILA/ILR programs are underfunded, which impacts the quality, scope and reach of services.

- » Programs may have to prioritize certain cases over others.³⁶ Victims may receive support for a limited number of hours (such as 4-5 hrs).³⁷
- » Some organizations with funded programs have had requests far outstripping their ability to fund.³⁸
- » We heard that compensation for independent counsel is inadequate, which creates a shortage of lawyers willing to do this work³⁹ and delays in connecting survivors with independent counsel in an already long and difficult process.⁴⁰
- » Victims may feel unsupported if they receive ILA but no ILR. ILA is a good start, but then victims may be left to represent themselves.⁴¹

Additional benefit

In jurisdictions where there is funded legal advice for other sexual history and private records applications, an inadvertent benefit of these applications is a solicitor-client privileged relationship for a survivor. The survivor can ask questions about the criminal law and criminal procedure and get an understanding of the defence's actions.

List of ILA/ILR lawyers requires updating.

We learned that not all lists of ILA/ILR funded jurisdictions are up to date with legal professionals with training in sexual assault law⁴² as well as with knowledge on potentially overlapping issues such as immigration, family, and employment law, and who are *willing to take cases*.

- » We heard that Ontario's ILA list included lawyers who were not willing or able to take cases or who were retired, and that the list did not allow new lawyers to be added. Recently we learned that the **list was updated** in June 2025.⁴³

Age restrictions. We learned that ILA in Ontario is not available to survivors under 16 and child protection services do not offer legal advice to children.⁴⁴

- » We heard that organizations such as *Justice for Children and Youth*⁴⁵ provide services to help address this gap.

Increased awareness is needed. Providers in the gender-based violence service sector may not be aware of ILA programs.⁴⁶

- » Some survivors told us they weren't aware of ILA until they discovered the service online and advocated for themselves.⁴⁷

Prioritizing resources

When considering criminal justice policy options, it is important to consider the relative impact of spending on public safety.

- » In 2023-24, the cost to maintain a single offender in a federal maximum-security facility for one year was \$231,339.⁴⁸
- » This amount is equal to **3 full-time counsellors in sexual assault centres** or the costs of **ILA for 365 survivors in Ontario**.⁴⁹

Wouldn't another lawyer just add more delays?

*"The system cannot handle having a third lawyer present throughout the whole of every trial."*⁵⁰

Stakeholder survey responses. We asked stakeholders for their views on legal representation for survivors. A common concern was that **additional legal representation would cause significant delays⁵¹ that would fall on the Crown,⁵² lengthen and complicate proceedings,⁵³ and risk overrunning *R v. Jordan* timelines.⁵⁴**

We heard that there would be a delay while the complainant's counsel is appointed, then again when setting dates for hearings and trials in three lawyers' calendars.⁵⁵

“I instinctively want to agree that victims should have legal representation, but these proceedings are already so complex that even relatively simple cases quickly become unwieldy and risk overrunning the Jordan deadlines. Adding a third voice to the debate exacerbates this problem exponentially.”⁵⁶

We also heard contrasting positions from others who felt ILA/ILR would **save time and reduce delays**.

- » Senior sexual assault Crowns and defence counsel told us that **timely and early involvement of counsel for survivors can save time, simplify issues and reduce delays**. For example, counsel for survivors can advise survivors on other sexual history and private records applications which can lead to uncontested disclosures, reduce the volume of records, simplify submissions and consolidate applications.

Child victims face additional trauma when their rights are ignored

We heard:

- » The CJS is not equipped to take a statement from children and youth with disabilities who are non-verbal, or support them to testify, which causes charges not to be laid⁵⁷
- » Crown prosecutors and judges need to be educated on 2SLGBTQIA+ children and youth. One judge said to a transgender youth they could not understand how they were sexually assaulted because they did not know what transgender meant⁵⁸
- » Special investigative policing teams are available for child victims, but in remote areas the trained specialist would have to travel to where the person is, which cause delay⁵⁹

Children who experience sexual violence often face additional trauma when they engage with the criminal justice system. They may experience isolation, anxiety, confusion, and long-term harm, particularly due to delays, lack of support, or adversarial procedures.⁶⁰

Secondary victimization occurs when the criminal justice response re-traumatizes victims, due to:

- » Lack of information provided to the victim
- » Absence of enforceable legal rights for victims
- » Disregard of the victim’s needs throughout the court procedures by the authorities
- » Serious sexual assault charges, including against young children, being stayed

The consequences of secondary victimization might be even greater for children because of their inherent vulnerability.⁶¹

- » One stakeholder noted that, as childhood and teenage years are pivotal times in one’s life, long court processes can become their identity.⁶²

Isolation from caregivers

Children are dependent on adults and caregivers. When a child is abused and the CJS gets involved, children are often isolated from their support systems.

- » Police and legal professionals may instruct parents not to discuss the abuse with their child to avoid influencing the case. This can be devastating both for the child and their caregivers who feel unable to provide comfort to the child during a time of crisis and emotional upheaval.
- » Parents may not know the details of what happened to their child until it is revealed in court.⁶³
- » This forced distance can dysregulate both the child and the parent, leaving the child without emotional support when they need it the most.⁶⁴

Parents have no legal standing to intervene when procedures become emotionally overwhelming for their child. This forced silencing of their caregiving can last for years while awaiting trial and can have even longer-term repercussions that go far beyond the trial.

Intersectional Barriers

Indigenous children, children with a disability, racialized children, 2SLGBTQIA+ children, children in care, children living in rural and remote places face even greater hurdles accessing their rights and are at risk of secondary trauma as they try and adjust to the CJS.⁶⁵

Mother of a youth asked to leave courtroom

“Court happened 2 yrs after the rape. I was 16 years old and being cross-examined by defence. My mother was asked to leave the court room because she mouthed the words, “It’s OK, baby.” They said she was coaching me. I learned never to report rape again. I’ve been raped since but will never go to the police about it ever.”⁶⁶

Emerging practices to safeguard procedural fairness for survivors

Specialized sexual assault courts

- » **Québec** is the first Canadian province to enact a specialized court to exclusively address sexual violence matters. Pilots began in 2022 and rolled across Québec. Québec politicians pointed to the South African specialized court model when they proposed the idea of a sexual offences court for the province in 2018.⁶⁷

- » **South Africa** has a national sexual offences court initiative. Piloted in Wynberg in 1993, early successes included a victim-centred approach, coordination and integration with service providers, and improved processes that contribute to increased reporting and conviction rates.⁶⁸

- » **New Zealand sexual violence court pilot** had positive results: dedicated judges, less retraumatization among survivors, control of cross-examination.⁶⁹

- » **Rape Crisis Scotland** supports the establishment of a specialist sexual offences court, which was under consideration by the Scottish Government in 2023.⁷⁰

Crown review. A Crown review scheme allows survivors of crime to request a review of certain decisions made by the police or a prosecution service. Specifically, it provides a process for victims to challenge decisions like not to prosecute or to discontinue a case. The scheme aims to ensure victims have a voice and a mechanism to seek reconsideration of decisions that may not align with their expectations or the evidence.

British Columbia. The Final Report of the Independent Systemic Review on sexual violence and intimate partner violence recommended that an automatic review mechanism for sexual violence case be implemented, as well as a complaint mechanism for Crown conduct and decisions.⁷¹

England and Wales. In 2013, England and Wales’ Crown Prosecution Service introduced an internal administrative review process (the Victims’ Right to Review Scheme, “VRR”) for victims to seek recourse when a decision is made not to prosecute.⁷² Victims have a right to review decisions not to charge and to discontinue or otherwise terminate proceedings.

Judicial review is also available to victims when a decision is made not to prosecute, but such a request will only be considered if the decision has already been reviewed under the VRR scheme.

- » Judicial review is broader than the VRR scheme as it allows decisions to prosecute to be challenged.
- » The High Court will intervene “only in very rare cases” involving prosecutorial decisions generally,⁷³ and when a review has been

conducted under the VRR scheme, it is highly unlikely that judicial review will succeed.⁷⁴

- » From April 2018 to March 2019, there were a total of 1,930 requests for review received, with 205 of those requests being upheld.

Case Study: The Victims’ Right to Review (VRR) Process in England and Wales

A recent study has shown mixed results about the effectiveness of the VRR process.⁷⁵ On the one hand, meaningful input into the process allowed for greater accountability while also giving victims a sense of control.

- » Victim support workers noted that the process had benefits for victims – it gave them a voice, validation, and some control – regardless of the outcome of the case.
- » It also gave victims information about the reasons behind why the matter did not proceed, and these explanations provided victims with a sense of closure, regardless of what the final decision was.
- » Several problems were also identified, which “reduce[d] victim perceptions of legitimacy in the process, thereby hindering the potentially beneficial role of the reform,”⁷⁶ including (a) its limited use, (b) issues of accountability/independence (since the Crown Prosecution Service reviews their own decisions), (c) limited data available on the process, and (d) that limited information was provided to victims about the process.

Survivor rights should not be treated as optional or depend on individual advocacy or geographic region

“There are many issues in remote and northern communities that are not considered when central governments make policy and legislation. There are complicated jurisdictional issues with reserves, limited resources to deliver comparable services, and the voices of northern and Indigenous people are often excluded. Also, many judges deny testimonial aids.”⁷⁷

Many survivors receive excellent supports and services. Those supports are, too often, reliant on grassroots organizations with minimal funding or individual service providers who care deeply about survivor rights and make personal efforts to ensure supports are provided. Survivors told us that **those people and those services were lifelines** for them.

Those excellent services tend to be dependent and not system-based.

- » We met with a service provider who had been working for 30 years in a northern community with victims of crime. She is getting ready to retire and is worried there won’t be funding to hire someone to take her place and victims will be left stranded

- » Survivors are told, apologetically, that they can't access testimonial aids, or legal advice or representation, or protect their private documents – all of which are rights as victims of crime.

We are able to guarantee an accused's constitutional rights, no matter where they live in Canada, rightfully so. We should also be able to guarantee the rights of the person who was harmed no matter where they live.

"For all the new initiatives, victims have gotten far less than promised. Rights have been

*unenforced or unenforceable, participation sporadic or ill-advised, services precarious and underfunded, victims needs unsatisfied if not further jeopardized, and victimization increased, if not in court then certainly in the streets. Given the outpouring of victim attention in recent years, how could this happen?"*⁷⁸

Like rights for people accused of a crime, **victim rights should be firmly entrenched in law, policy and practice.**

Case study: Wrongful convictions, factual innocence

In the 1980s, Ivan Henry was convicted of 10 sexual offences with eight victims, named a dangerous offender, and given an indeterminate sentence. The cases from each woman were similar. These women believed that Mr. Henry would be in jail for his lifetime.

In 2006, the case was reviewed by a Special Prosecutor due to alleged misconduct by the Crown Prosecutor.

- » The Special Prosecutor determined the Crown purposely did not disclose documents that could have helped Mr. Henry's case.
- » In 2010, BC Court of Appeal ruled that Mr. Henry was wrongfully convicted and acquitted him on each count.
- » **The media treated the wrongful conviction as factual innocence. The complainants were not given a voice.** Even though there was a wrongful conviction, it was still possible that Mr. Henry committed these crimes.

In 2010, Mr. Henry brought a civil action related to his wrongful conviction.

- » The Court found that the Crown breached Mr. Henry's *Charter* rights under ss. 7 and 11(d). He was awarded over \$7.5 million in *Charter* damages, compensatory and special damages. The Court did not determine whether Mr. Henry was guilty of sexual offences.

The women filed a lawsuit. Five of the victims did not have the chance to participate in the civil cases brought by Mr. Henry after the review in 2006 of his convictions by a Special Prosecutor.

- » The civil lawsuit brought forward by the victims sought to prove that, **on a balance of probabilities**, Mr. Henry was the one who sexually assaulted them.
- » The burden of proof in criminal cases is **beyond a reasonable doubt**, which is high. Civil cases rely on a different standard, **a balance of probabilities**, requiring plaintiffs to show that it is more likely than not that the alleged behaviour happened.

Conclusion: The judge found that on a balance of probabilities, Mr. Henry was the person who sexually assaulted each plaintiff. Each plaintiff was awarded \$375,000 for general and aggravated damages. An appeal was dismissed by the BC Court of Appeal.

Broader implications

Given the recent adoption of **C-40 Miscarriage of Justice Review Commission Act**, the media and the public must be careful around the messaging between wrongful convictions and factual innocence.

The CVBR is a powerful tool that needs to be strengthened and enforced

“It is not unreasonable that victims expect that a government espousing rights for victims will ensure that those rights can be actualized. A false expectation may be worse than no expectation at all.”⁷⁹

We heard from survivors that:

- » Survivors continue to fight for their rights to basic information, such as hearing dates.⁸⁰
- » Survivors continue to struggle getting publication bans lifted. One survivor shared that the prosecutor in her case told her he was too busy to follow up on lifting the publication ban and that she had to wait. She spent \$10,000 to hire a lawyer for the publication ban to be lifted.⁸¹
- » Victims struggle to obtain transcripts of the trials that directly impact them. When they do obtain them, they have to pay for them!
- » Victims struggle to get information about plea bargains.

- » Victims struggle with the notion that they are sometimes not allowed in the courtroom to observe the hearing that is about them.
- » Survivors with intellectual disabilities struggle with accessing rights or knowing what information to request. They may also have difficulty understanding complex legal processes and may find the rapid questioning during interviews or trials overwhelming.⁸²

A comprehensive report done in Québec, *Rebâtir la confiance*, (Rebuilding Confidence), noted that the CVBR speaks in generalities: **its wording does not allow victims to know what information they can be given, what their participation in procedures could be, when and how they will be given the opportunity to be heard.**¹

¹Report *Rebâtir la confiance*, Québec, 2021.

The CVBR is more powerful than is often recognized

CVBR has quasi-constitutional status.⁸³ It was a significant advancement for victims and survivors of crime in Canada, marking a culture change in Canada’s legal framework.

- » The broad range of rights it endows, along with its **primacy** over other legislation, gives it the **potential for considerable impact**.

- » Consistently applied, it would provide victims with a stronger voice in the CJS, better access to information, increased attention to their safety, and enhanced opportunities for restitution.⁸⁴

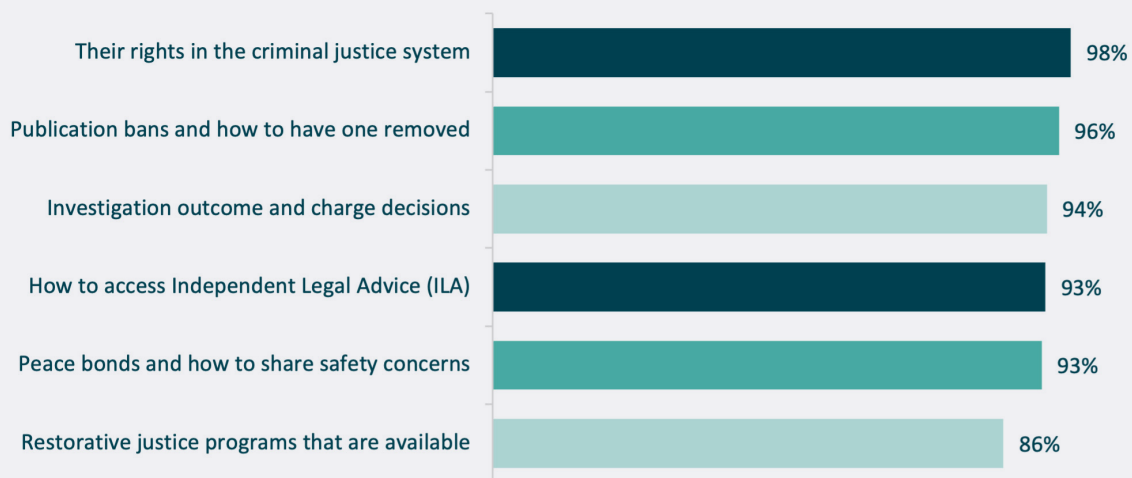
The House of Commons Standing Committee on Justice and Human Rights (JUST) conducted a study, resulting in the December 2022 report: Improving Support for Victims of Crime. This

report reflected input from victims, survivors, advocates, and experts, and showed **strong all-party support to improving how victims are treated within the justice system**.

Information needs to be provided proactively

We received a lot of feedback about the CVBR's lack of proactive information rights and limited enforceability in our investigation. We heard that **victims' needs for information are not being met**.⁸⁵

Overwhelmingly, stakeholders agree survivors should be provided with information automatically (n = 347)



We believe that it is **problematic to put the onus on the victim** to request information about their rights⁸⁶

"Victims don't know what they don't know – 'on request' in the CVBR is ridiculous." ⁸⁷ "This is an obstacle in CVBR rights – makes the bill almost pointless." ⁸⁸

*"Victims should be **read their rights**, similar to how an accused is read their rights." ⁸⁹*

In general, we heard that **victims and other stakeholders, including some prosecutors, do not have a good understanding of victim rights under the CVBR**.⁹⁰

- » We often heard the criticism that victim rights are not enforced or enforceable⁹¹ under the CVBR.

- » One legal advocacy group pointed out that there is gender disparity when the (male) accused in sexual violence allegations is read their rights and automatically provided with legal counsel while the (female) complainant is provided with no information and no representation about asserting and protecting their rights.⁹²

Victims need to be **made aware of their rights in plain language**.⁹³

- » One victim described finding out about the CVBR themselves, after 8 years of following up on inaction in response to their own case.⁹⁴

Stakeholders told us that they sometimes struggled with wanting to provide victims with their rights but not having time or other resources. We heard that the CVBR needs funding to be realized.⁹⁵

- » Some prosecutors explained that they **wished they could meet with survivors earlier in the prosecution process**, to fully explain the criminal justice process and their rights under the CVBR.
- » One prosecutor stated that they wish they had *“More time to meet and prepare them for trial. My heavy workload makes it extremely difficult to meet with survivors more than once to prepare them for trial.”*⁹⁶ Another stated, *“At best, I might have time for a phone call after the first court appearance, and then nothing until 1-6 months before trial.”*⁹⁷

The CVBR can help with systemic barriers

The Ontario Native Women’s Association in their written submission to our Office, noted some CVBR limitations.

- » It does not include the right to be treated with dignity, compassion and respect by criminal justice personnel and it does not mandate the provision of trauma-informed or culturally competent services or behaviour by criminal justice personnel.
- » Systemic racism within the justice system, lengthy legal processes, and re-traumatization from disclosure and testimony frequently discourages Indigenous Survivors from reporting violence or participating in legal processes. There is a need for reforms to the CVBR to require responsive approaches from the justice system that attend to the unique lived experiences of Indigenous Survivors.⁹⁸

Validating Survivor Choice and Agency

Victim rights have recently been strengthened in relation to publication bans.

- » **Survivor choice is now central.** Judges must ask whether a victim wishes to be subject to the order; prosecutors must advise victims of the order, ask whether they wish to be the subject of the order and advise them of their right to modify or lift a ban.
- » **Survivors can speak freely.** They may share their own identity with trusted individuals without breaching the order.
- » **Easier to lift a ban.** Survivors can now apply to revoke the ban without a mandatory hearing unless others’ privacy rights are implicated.
- » **96% of stakeholders** from our survey (n = 347) **agreed** that **survivors** should **automatically** receive **clear accessible information** about publication bans and how to remove them.

Bottom line

Bill S-12 marks a necessary shift toward survivor agency. Implementation of these changes – such as proactive information to survivors – will be key.

Federal accountability for the CVBR can be strengthened

*“Of all the highlighted flaws regarding Canadian policy omissions, the most flagrant is the complete unenforceability of victims’ rights legislation in Canada. The issue was raised and determined in *Vanscoy v Ontario*. In that case, the claimants had not been provided with informational rights contained in the Ontario Victims’ Bill of Rights. The Court dismissed the claim, ruling that no remedy was available under the Bill. The Court interpreted the Bill to contain only a “statement of principle and social policy beguilingly clothed in the language of legislation ...”. Consequently, the decision has been applied across the country and victims’ rights bills across Canada are now considered to be legally unenforceable, containing only **principles of good practice that are recommendations but not mandatory.**”⁹⁹*

The *Department of Justice Act* requires the federal Minister to examine all legislation for inconsistency with the *Canadian Charter of Rights and Freedoms* and table in Parliament a statement of the potential effects of the Bill on the rights and freedoms set out in the *Charter*.

- » Justice Canada indicates that “Charter Statements”
 - » ensure the rights and freedoms of Canadians are respected and considered throughout the law-making process
 - » identify potential effects that a bill may have on rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*
 - » explain considerations that support the constitutionality of a proposed bill
 - » increase awareness and understanding of the *Charter*¹⁰⁰
- » We believe that victims’ rights under the CVBR deserve no less attention.

Our scan of the *Charter* statements from the 45th and 44th Parliaments shows that:

- » The *Charter* statements include the benefits to victims of some legislation
- » The statements rarely mention the *Charter* rights of victims
- » The statements do not show where legislation will enhance the *Charter* rights of victims of crime

In our view, since it was the intention of the federal government to bestow quasi-constitutional status on the CVBR, the Department of Justice should be examining all criminal and correctional legislation for compliance with the CVBR and victims’ *Charter* rights.

- » Respect for *Charter* rights of victims throughout the criminal justice process does not undermine the *Charter* rights of accused. If there are conflicting rights, there must be a balancing exercise – as in all situations where there are competing *Charter* rights.

Why should changes be made?

In our conversations with decision-makers, policy experts and government lawyers, their **commitment to doing better for survivors was clear.**

- » We also know that they are **balancing conflicting priorities**: shared FPT jurisdiction for the criminal justice system, litigation liabilities for the federal government, stewardship of the criminal law.
- » *Charter* statements which would clearly express a consideration of victims' *Charter* rights – and our proposed CVBR Compliance Statements – would allow them to “**show their work**”.

The CVBR needs a stronger enforcement mechanism

We heard from stakeholders:

*“It doesn’t matter how many considerations or words are on paper, if there is no clear process for holding agencies or officials accountable, it ends up just vaporizing.”*¹⁰¹

*Most people (victims, police, crown) do not know about the Canadian Victims Bill of Rights (CVBR); thus, victims are not being informed of their rights under the CVBR.*¹⁰²

*“A lot of people enter the court process for the same reasons I did. They are signing up to be hurt, because they know the system is going to hurt them. Willing to take the pain to try and protect the public, but ideally, we shouldn’t have to.”*¹⁰³

The seminal Québec report, *Rebâtir la confiance*, noted that, for victims to complain about a breach of their rights,

*“They have to find their way through a maze of procedures that often have the effect of weighing them down, if not discouraging them. Many of them receive no support or guidance. ... Lack of knowledge and complexity of the mechanisms in place, cumbersome procedures, lack of follow-up and transparency, a feeling of not having been taken seriously or respected: for the majority of respondents, the experience was disappointing.”*¹⁰⁴

While the CVBR promises certain rights to victims, there is **limited enforcement for breaches of these rights**.

- » Victims cannot go to court to assert or defend their rights
- » No oversight body is mandated under the CVBR, although the OFOVC can hear complaints
- » No one can be held accountable for violations

In our view, the **CVBR needs to be amended** to delete the provisions which remove standing, a cause of action, appeals and judicial review for victims and replace those provisions with **a positive duty on criminal justice actors to implement victims’ rights and a remedy** if those rights are not respected.

Enforcement must be meaningful

The CVBR has quasi-constitutional status but it is often treated as optional or symbolic.

- » Because the remedy for victims is a complaint mechanism to the same agency that conducted the alleged violation, few complaints are made, and fewer are made public.

The **Department of Justice** received **36 CVBR complaints and 290 enquiries during 2023-2024**.¹⁰⁵

- » One of these complaints was under the Department’s CVBR responsibilities around right to information but a review found no infringement of the person’s right.
- » The rest of the complaints and enquiries did not go further and over half of these complaints and enquiries were provincial jurisdiction related to administration of justice.

Public Safety Canada released a report, *Public Safety Canada Portfolio Report: Victim Complaint Resolution Mechanisms, Canadian Victims Bill of Rights*, for the fiscal year 2021-2022.

» For the entire Public Safety portfolio, there were 30 complaints between **April 2021 – March 2022** in one year.¹⁰⁶

PS Dept. or Agency	Admissible	Inadmissible ¹⁰⁷	Total Received
PS	0	0	0
CSC	11	1	12
PBC	1	5	6
CBSA	0	0	0
RCMP	10	2	12
Grand Total	22	8	30

- » In the 10 years since the CVBR came into force, there is little jurisprudence to guide its interpretation.
- » **In 10 years** since it was brought into force, **there are 102 reported cases**. Most of these cases mention the CVBR without analysis.

» **In a common law system, which uses litigation and judicial decisions to bring increased understanding to statutes, this is a worrying sign.**

In Canada, **other quasi-constitutional laws are backed by enforcement mechanisms and oversight bodies**. The CVBR stands out as an exception.

Law	Enforceable	How	Provides remedies
<i>Canadian Victims Bill of Rights</i>		Limited enforcement through weak complaints process	
<i>Canadian Human Rights Act</i>		Enforced by Canadian Human Rights Commission and Tribunal	
<i>Privacy Act</i>		Enforced by Privacy Commissioner and courts	
<i>Access to Information Act</i>		Enforced by Access to Information Commissioner and courts	
<i>Official Languages Act</i>		Enforced by Commissioner of Official Languages and courts	
<i>Personal Information Protection and Electronic Documents Act</i>		Enforced by Privacy Commissioner and courts	

TAKEAWAY

Survivors deserve enforceable rights and legal representation.
They should be empowered to participate safely, confidently, and meaningfully in the justice system.

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« Elles doivent se repérer dans un dédale de procédures qui ont souvent pour effet d'alourdir leur parcours, sinon de les décourager. Bon nombre d'entre elles ne sont pas accompagnées ou guidées dans leurs démarches. ... Méconnaissance et complexité des mécanismes en place, lourdeur des démarches à entreprendre, manque de suivi et de transparence, sentiment de ne pas avoir été pris au sérieux ou respecté : pour la majorité des répondants l'expérience s'avère décevante. »
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Access to Services



ISSUE

The majority of survivors of sexual violence in Canada turn to sexual assault centres, independent organizations, and other community-based services for support. Yet many continue to face serious obstacles in accessing these services due to systemic underfunding, regional disparities, and lack of information on what is available.

“Survivors of assault need better access to resources, legal support, counselling, and advocacy. These services should be easily accessible, confidential, and trauma-informed, helping survivors feel empowered to make decisions in their own time and space.”¹

SISSA Survivor Survey, Response #405

IN NUMBERS



83% of sexual violence agencies have experienced increased demand post-pandemic.²



80% of sexual violence organizations reported having a waitlist.³



Women in remote communities were **3x more likely** to report having no local sexual assault centres.⁴

Access to services matters.

In our survey of 1,000 survivors of sexual violence:



3 out of 4 accessed support services (75%), most commonly:

- » Counselling (58%)
- » Sexual assault centres (36%)
- » Victim services (33%)

BOTTOM LINE

Survivors need culturally responsive, trauma-informed, and accessible services.

KEY IDEAS

Canada lacks national **data on access to services and unmet needs**

Barriers to accessing services persist, particularly for underserved communities

The gender-based violence **(GBV) workforce in Canada is under-resourced** and overburdened

Survivors and stakeholders expressed **support for integrated, community-based models and wraparound services** for victims of sexual violence

RECOMMENDATIONS

9.1 Guarantee a right to assistance. The federal government should amend the *Canadian Victims Bill of Rights* to add a “right to assistance.”

9.2 Provide independent survivor advocate:
The federal government should provide sustained operating funding to sexual assault centres to support access to independent, community-based survivor advocates. It should also fund Indigenous-led survivor advocate programs that reflect the needs of Indigenous communities.

9.3 Sustain Child and Youth Advocacy Centres:
The federal government should establish funding partnerships with the provincial and territorial governments, to ensure that Child and Youth Advocacy Centres (CYACs) are available in every region in Canada.

Background

Understanding the Victim Services Landscape

Throughout this chapter we refer to different types of supports and services available to survivors of sexual violence. The following typology describes the main models of victim service delivery across Canada:

System-based victim services

Delivered by provincial and territorial governments, these services support victims throughout the criminal justice system. This may include, but is not limited to:

- » providing information, support and referrals
- » referrals to short-term counselling
- » court preparation and accompaniment
- » Victim Impact Statements preparation
- » liaising with police, courts, Crown and Correctional Services

Police-based victim services

Typically offered shortly after the victim's first contact with the police, they may be housed within police detachments but are often staffed by civilian coordinators or trained volunteers. In many cases, police may refer the victim to a systems-based victim services or advise victim services to make contact with the victim. Services usually include:

- » Crisis response and emotional support
- » Referrals to other agencies
- » Court orientation and information

Court-based victim services

These services assist victims and witnesses directly involved in criminal proceedings. Support typically includes:

- » Explaining court processes and roles
- » Preparing and accompanying victims for testimony
- » Coordinating testimonial aids
- » Assisting with Victim Impact Statements
- » Providing updates on case outcomes

Some court-based victim services are only available for certain clientele such as children or victims of domestic violence.

Community-based victim services

These services operate outside the criminal justice system are typically run by non-governmental or grassroots organizations and may include:

- » Sexual assault centres and crisis lines
- » Indigenous-led and culturally specific supports
- » Survivor advocacy
- » Peer support and counselling

Note on language: This chapter uses 'victim services' to refer to court, police or system-based services affiliated with the criminal justice system. We use terms like 'community-based supports', 'sexual assault centres,' 'culturally specific supports' to refer to services delivered outside of those formal structure.

Canada has international obligations

Canada is a party to multiple United Nations Conventions⁵ with provisions about preventing victimization and appropriate support services when people experience violence.

Selected International Treaties and Declarations		 United Nations
United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985),⁶ particularly Principles 14 and 15, affirms that victims should receive and be informed of medical, psychological, legal, and social assistance.		
United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)⁷ requires states to protect Indigenous women and children from all forms of violence and discrimination and ensure that Indigenous peoples have access to social and health services to attain the highest standards of physical and mental health.		
United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁸ obliges states to eliminate discriminatory practices and ensure appropriate remedies for survivors.		
United Nations Convention on the Rights of Persons with Disabilities (CRPD)⁹ requires states to ensure that support services for victims of violence are available, accessible, and culturally appropriate.		
United Nations Convention on the Rights of the Child¹⁰ obliges states to protect children from sexual abuse and provide necessary social supports in cases of maltreatment.		

Canada and Japan are the **only G7 countries** in which victims of crime do not have a right to be told about the services available to them.¹¹

How does the CVBR fit in?

The *Canadian Victims Bill of Rights (CVBR)* is quasi-constitutional federal legislation guaranteeing victims of crime across Canada the **right to ask for information** about support services available to them, including restorative justice programs.

- » The federal right to information does not currently provide a proactive responsibility on the state to inform victims about support services.

» Provinces and territories in Canada also have victim rights legislation that apply only to their jurisdictions, and some provide proactive rights to information about victim services.

- » For example, s. 3 (1)(b) of the *Nova Scotia Victims Rights and Services Act* says that a victim has the right to access: “... social, legal, medical and mental health services that are responsive to the needs of the victim and the needs of the victim’s dependents, spouse or guardian.”¹²
- » In 2020, the Federal Ombudsperson for Victims of Crime released a five-year progress report on the CVBR and made a clear recommendation to Parliament to amend the law to automatically provide

victims of crime with information on their rights.¹³ The Ombudsperson also recommended adding a right to access victim assistance or support.¹⁴

A right to services

In 2020, Former Senator Pierre-Hugues Boisvenu introduced Bill S-265 in the Senate, which proposed a series of amendments to the CVBR, including a right to support and assistance services:

13.1 Every victim has the right to have access to legal, social, medical and psychological services that are suited to their needs and circumstances.

» These proposals align with the expectations set out in articles 14–17 in the *UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power*.¹⁵

A right to access services will always depend on the availability and accessibility of services. Some of these gaps reflect larger structural issues: insufficient funding, fragmented service delivery, jurisdictional challenges, and different standards across Canada which have been documented by many studies and stakeholders.

» **The Truth and Reconciliation Commission of Canada (TRC)** acknowledged that Indigenous women face unique barriers to seeking help, including a lack of culturally appropriate supports and inaccessibility of services.¹⁶ Call to Action 40 urges governments to work with Indigenous peoples to establish **adequately funded**

and accessible Indigenous-specific victim programs and services, with appropriate evaluation mechanisms.

» **The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG)**¹⁷ calls for governments to **eliminate jurisdictional gaps and neglect** that result in denied or improperly regulated services, particularly for Indigenous women, girls, and 2SLGBTQQIA people (Call for Justice 1.6).¹⁸

» Canada's **National Action Plan to End Gender-Based Violence (NAP)** aims to address many of these challenges by strengthening support for survivors and their families, investing in prevention, building a more responsive justice system, implementing Indigenous-led approaches, and enabling the “social infrastructure” to support healthy and equitable relationships across society.¹⁹

» Budget 2022 committed \$539.3 million over five years to support provinces and territories in implementing the National Action Plan to End Gender-Based Violence (NAP).²⁰ This is a significant investment, but once it is allocated to all provinces and territories to be distributed, there are limits to the level of impact it can have on wait times in front-line services.

» We heard this funding has not consistently been reaching community-based sexual assault centres on the ground and advocates have been calling for these crucial gaps to be filled and for the NAP to be expanded and fully funded for 10 years.²¹

What we heard

It is difficult to measure the demand for services across Canada

Types of services. There are many different types of services for survivors of sexual violence.

- » There are services focused on different population groups, such as services for First Nations,²² Inuit,²³ and Métis²⁴ people, trans survivors,²⁵ men,²⁶ or children.²⁷
- » There are services specific to types of violence, like sex trafficking²⁸ or sexual exploitation of children online.²⁹
- » For survivors living in urban areas, there may be choice in the type of service, but there are fewer options for those in rural or remote areas, and almost nothing in First Nation communities on reserve.

Victim Services Directory (VSD). The development of a national VSD has improved efforts to support access to victim services in Canada.³⁰ The VSD helps service providers and victims locate services for victims of crime across Canada. Agency information for the VSD is populated by the Policy Centre for Victims Issues in collaboration with victim serving agencies. The VSD includes agencies in all provinces and territories across the country.

Independent sexual assault centres provide crisis support, advocacy, individual counselling, peer support, crisis lines, healthcare, education, independent legal advice, court advocacy programs, and more.³¹ There are also legal advocacy programs and non-governmental organizations (NGOs) that advance the interests of survivors in policy and law.³²

- » Most provinces and territories have a network of sexual assault services that collaborate nationally through the Ending Sexual Violence Association of Canada (ESVA Canada).³³

- » **ESVA Canada – getting help.** ESVA Canada maintains a detailed resource list of organizations across Canada that serve survivors of sexual violence. It includes information on sexual assault centres, crisis lines, shelters, transition houses, and other supports.³⁴

Gaps in data. Given the complex network of organizations working with survivors of sexual violence across Canada, we do not have strong national data on service use. Most services maintain strong client data (often tied to funding requirements), but this information is rarely aggregated across jurisdictions or disaggregated by identity, geography, or other key factors.

- » **Canadian Victim Services Indicators (CVSI) survey.**³⁵ In 2015, the Office of the Federal Ombudsperson for Victims of Crime worked with the Canadian Centre for Justice and Community Safety Statistics (CCJCSS) at Statistics Canada to identify data that could be used to measure the impact of the CVBR.
- » **Phases 2 and 3.** The Policy Centre for Victim Issues (PCVI) at Justice Canada funded the next two phases of the project, which included consultations with provincial and territorial representatives to determine what variables should be used and the piloting of a victim services survey. The intent was to map how victims of crime access services throughout the justice system.
- » **The study concluded** that jurisdictional differences in the delivery of victim services make it too difficult to develop standardized measures across Canada.

This highlights a key gap: **we still lack national disaggregated data on who accesses support services, who does not, and why.** Without this information, it is difficult to ensure that services for victims of crime are responsive, equitable, and effective throughout the continuum of the criminal justice system.

- » The significant modernization efforts during the COVID-19 pandemic have increased the use of digital data collection and reporting across government and victim services.
- » Modern case management systems and interactive dashboards make it easier to manipulate data and explore different angles. These systems are more adaptable, and the continued evolution of AI-driven technology may increase the possibility of data alignment in the future.

We know the demand for service is increasing

Without clear national data, we need to look at more segmented indicators to understand demand for service. A review of different data sources establishes that there are clear increases in demand for support services linked to greater public awareness following the #MeToo movement³⁶ and the COVID-19 pandemic, which has created a sustained increase in service delivery.³⁷

- » A national survey of over 100 sexual violence organizations in 2022–2023 found 83% of agencies saw increased demand compared to pre-pandemic.³⁸ 80% of sexual violence organizations reported having a waitlist.³⁹
- » Women in remote areas were 3x more likely to report that there are no local sexual assault centres available.⁴⁰

In our survivor survey, we looked at overall service use and service use grouped by the time period survivors said they last experienced sexual violence.

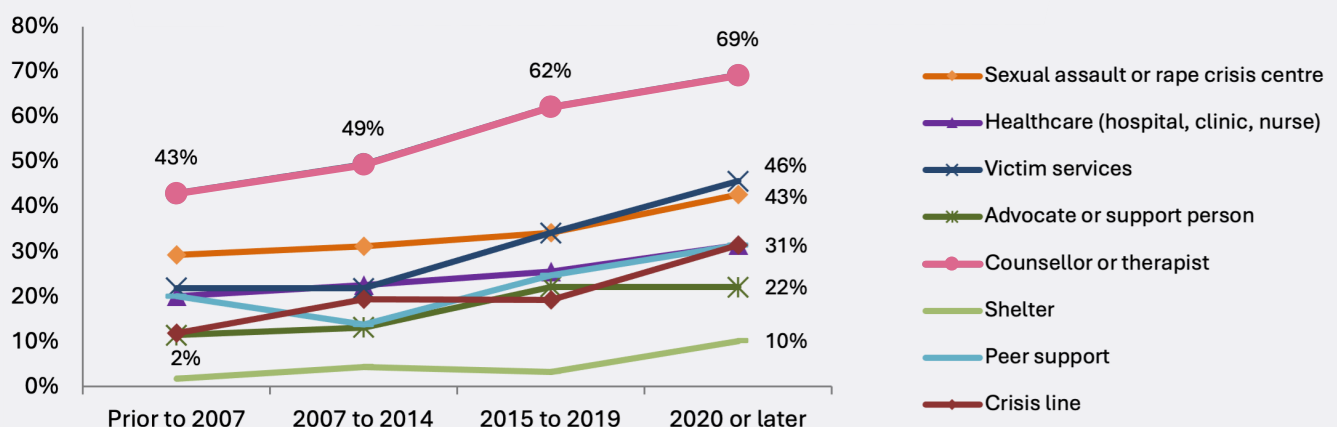
- » **Three out of four (n = 969, 75%) survivors accessed support services.**
- » The most common services accessed were counselling (58%), sexual assault centres (36%), and victim services (33%).

Demand for service has increased. The population of Canada has grown 23% from 33.7 million people in 2007 to 41.5 million in the first quarter of 2025.⁴¹ Over the same time, our survivor survey showed significant increases in the percentage of survivors who accessed services. Demand for

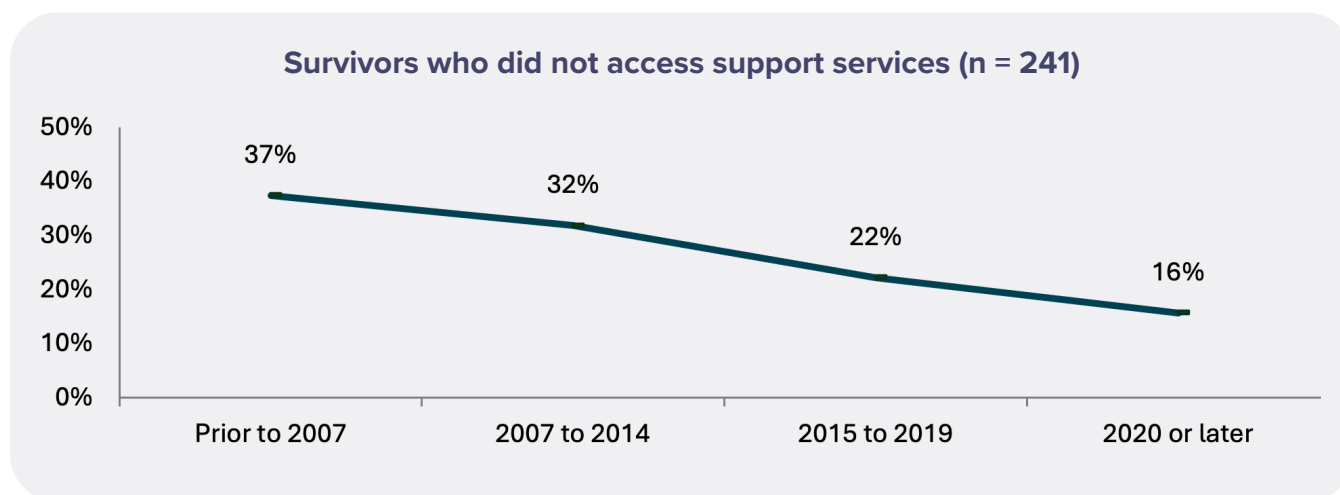
- » **Counselling services** rose from 43% to 69%.
- » **Victim services** rose from 22% to 46%.
- » **Sexual assault centres** rose from 30% to 43%.

The increased demand on sexual assault centres is compounded since they operate many other services as well. The combination of population growth and a higher proportion of survivors seeking help has placed significant demand on services and their employees.

Survivors are accessing more support services (n = 966)



We saw a corresponding decrease in the number of survivors who said they did not access any formal supports.



There are barriers to accessing services

“I was not advised of any help, neither victim services, victims’ compensation, counselling supports, or even to have someone discuss the justice process with me (I was 19 when I was raped) – I had no tools or knowledge – just shock.”⁴²

The number one barrier to services is information. Without a right to be informed about support services, too many survivors are unaware of what is available.

“Yes, the information’s on the internet, but it’s hard to find. I don’t think that people know where to start.”⁴³

*“I wish the RCMP had a list of supports to give survivors. The responsibility to orient myself and search for help after a traumatic crime has taken **so much time and energy**. I wish there were more supports for victims to teach us how to build a team and how to ask for help.”⁴⁴*

During our investigation, stakeholders and survivors of sexual violence reported these barriers:

- » People won’t access services because of fear of being **shamed and blamed**.⁴⁵
- » There are provincial and territorial **disparities in services**, and a lack of basic services being offered in some **rural areas** and **northern communities**.⁴⁶
- » Sometimes victims have to travel to reach support services, which can result in **transportation barriers**.⁴⁷
- » Some northern Indigenous communities lack **reliable cell service** and survivors may need helicopter transport to access a hospital for an exam or sexual assault evidence kit.⁴⁸
- » **Language barriers** are present for two distinct groups of survivors: newcomers who may not speak English or French, and Deaf survivors, particularly those from countries where American Sign Language (ASL) or Langue des signes québécoise (LSQ) are not used
- » There is a significant lack of **francophone services** in rural areas.⁴⁹

A systemic scoping review by Bach et al.⁵⁰ found that the **“Reasons for underutilizing services are as diverse as the survivors themselves.”** The main categories of underserved survivors are:

- » Ethnic and cultural minorities
- » People with disabilities
- » Financial vulnerability
- » Sexual and gender minorities
- » People with mental health conditions
- » People who use criminalized substances
- » Older adults

“We know, from our decades of work, the “marginalized of the marginalized” who make up our solidarity networks do not access mainstream anti-violence services”

One of the primary barriers these survivors encountered was **insufficient training and awareness among service providers about how to best support them**. The review recommended more survivor-centred, culturally appropriate, and trauma-informed services and more attention to survivors belonging in underserved groups in practice.

Stakeholders also flagged the following gaps to us:

- » **Culturally responsive supports** are needed for Indigenous, African, and immigrant communities.⁵¹
- » Greater awareness of **how male survivors are affected** by sexual violence and better understanding of the needs of men fleeing violent relationships are needed. There is also a need for masculinities-informed programming and male-identifying staff members.⁵²
- » While there has been an increase in inclusive trauma-informed **services for 2SLGBTQIA+ people**, these services are centred in urban areas.⁵³

We also heard about challenges on post-secondary campuses:

- » Some campus health, counselling, or sexual violence services would quickly refer the survivors to other services and avoid discussing what happened.⁵⁴
- » We also heard about contexts where survivors disclosed sexual assault to authorities and administrators on campus only to find that the perpetrator was better protected than the survivor.
 - » Survivors are often told that the people who harmed them paid tuition and have a right to be in their classes, even if that means the survivor, who also paid tuition and had a right to be **safely** in their classes, is unable to attend.
 - » Some schools took more proactive steps and applied their codes of conduct to ongoing harassing behaviours. There are also contexts where matters were settled with non-disclosure agreements.⁵⁵
- » One survivor who was sexually assaulted on campus by another student shared that she had excellent experiences with the university’s sexual assault services. She felt they were responsive to her safety concerns and provided helpful supports, information, and referrals.⁵⁶

Antisemitism and sexual violence on campus

In December 2024, the House of Commons Standing Committee on Justice and Human Rights released a report, *Heightened Antisemitism in Canada and How to Confront It*, highlighting the rise in antisemitism felt on university campuses. The Committee heard how sexual violence and misogyny intersect with antisemitism against women. One witness shared their experience as a queer Jew and noted how the campus’ queer club did not feel like a safe space.⁵⁷

- » These accounts suggest a need for consistent standards, stronger oversight, and more trauma-informed training across all victim services providers—especially those that serve diverse communities and institutions like universities and colleges.

The gender-based violence workforce in Canada is under-resourced

“Funding for survivor support programs is often short-term and cyclical, creating many challenges both for survivors and those who work in the sector.”⁵⁸

Support services for survivors are **struggling to keep up with the increase in demand**.

We spoke with more than 500 service providers through interviews, focus groups, and consultation tables. We heard of many **service limitations** related to resource constraints. These limitations create barriers for survivors:

- » Charging for services creates financial barriers.
- » Stricter eligibility criteria,⁵⁹ such as requiring survivors to report the crime or secure a criminal conviction before accessing certain services, limits access.⁶⁰
- » Institutions are often reactive and refuse services until the point of crisis.⁶¹
- » Program availability is limited – not sustained or accessible.⁶²
- » Victim assistance services can assign a caseworker to a victim in geographic one area, but they may have to start over and be accompanied to trial by another caseworker if they go to court in another area.⁶³

The scarcity of services in **rural and marginalized communities** can lead to overwhelmed service providers and compromised quality.⁶⁴

- » Many programs operate with part-time or single staff. This can lead to survivors feeling unsupported, especially early in the reporting process.⁶⁵
- » There are often long waitlists,⁶⁶ and virtual appointments are necessary.⁶⁷ Some services require victims to leave a message and

promise to return their call within 72 hours. This poses risks for women in danger or in coercive relationships.⁶⁸

- » We heard that the lack of resources makes it difficult to **hire and sustain staff** and to protect worker wellness. We heard about **increased wait times, turning survivors away**, and that some services have started **charging** for their services to offset lapses in funding.⁶⁹

Underfunding of the GBV sector also has a direct impact on the well-being of workers and their families. Research by the Ending Sexual Violation Association Canada (ESVA)⁷⁰ found that **over half of GBV workers felt emotionally exhausted** or burnt out due to their work:

- » Over **one-third** reported that their jobs **negatively impact their private lives**, and more than **1 in 3** reported negative mental health effects from **job-related trauma exposure**.
- » These statistics are disproportionately affecting **GBV workers with disabilities**.
- » Unstable funding leads to low wages and job insecurity, contributing to **occupational stress**.
- » **One in four** GBV workers and **over 1 in 3 racialized GBV workers** were worried about **becoming unemployed**.

These conditions jeopardize the **availability and quality** of services for survivors. The sector lacks stable funding, competitive wages, and longer-term succession planning – all of which are essential to protecting both workers and the people they serve.

Another study on the wellness of victim service providers in Canada highlights care providers' limitations:

“Our analysis... directly challenges underlying assumptions that women’s caring is boundless, unlimited, and can be taken for granted, that it requires few resources, and that these jobs, whether paid

or unpaid, are easy and unskilled. Instead, these workers offered important ways to improve conditions of work and care as they described how they reconcile tensions in their work and live out the contradictions inherent in caring for others in a context that fails to value caring.”⁷¹

The 2023 **Mass Casualty Commission Final Report** echoed these concerns, recommending “**epidemic-level funding**” to end GBV. It urged federal, provincial, and territorial governments to provide **stable, long-term core funding** for services that have demonstrated effectiveness.

- » The Commission emphasized prioritizing funding for **community-based, survivor-centred services**, especially in marginalized communities, and ensuring that these services are not withdrawn unless proven obsolete or replaced with better alternatives.

Child victims experience inconsistent access to services and information

At the outset, we acknowledge that access to justice for children and youth may also depend on their capacity to report, which could depend on age, ability, having trusted people to report to, or having people adhere to the duty to report.

Whether or not a child has access to justice should not depend on where they live in Canada or on their individual identity. Children are an equity-seeking group similar to other marginalized groups.⁷² We heard about several barriers for children and youth survivors of sexual violence:

Barriers in remote and northern communities

Children in rural and remote communities experience increased barriers to support services:

- » Resources are sometimes not available or children have to travel great distances
- » Circuit courts in remote communities often

happen in the local arena and become a community social event

- » Children in these communities sometimes have to walk past people they know as they prepare to testify

Intersectional identities impact children’s access to justice

- » Children in **child protection** experience additional barriers and risk factors related to victimization and criminalization
- » **Refugees** may experience pre-migratory trauma and fear of authority due to past persecution. Their ability to access services in Canada is shaped by their pre-migratory experiences

Unequal access to court supports

There is wide variation in access to testimonial aids across the country.⁷³

- » Not all courtrooms across the country are equipped with Closed Circuit Television (CCTV)⁷⁴ or with resources for other testimonial aids.
- » In some rural communities, courthouses do not have a separate room where a child can testify or meet with the Crown. We heard that children are sometimes forced to meet with Crowns or victim service workers in broom closets.⁷⁵

To reduce re-traumatization and support effective truth-seeking, courts need to ensure that survivors of child sexual violence offences are as comfortable and safe as possible when participating in the prosecution process.

Best practices: Child and Youth Advocacy Centres

In 2021–2022, 35 Child Advocacy Centres (CACs) / Child and Youth Advocacy Centres (CYACs) served 10,665 children and youth victims, including 7,436 sexual abuse victims (under 18).⁷⁶

- » **CYACs** are a vital and evidence-informed model that provide coordinated, trauma-informed support to children navigating the CJS.
- » Throughout our investigation, stakeholders from different fields have praised the CYAC model and have even recommended it be reproduced for adult sexual assault centres.⁷⁷
- » CYACs are not available in Yukon, NWT, Newfoundland and Labrador, PEI.

What CYACs offer

CYACs are safe, child-focused spaces where multidisciplinary teams collaborate to support victims throughout healing and judicial processes. They:

- » Reduce the need for children to repeat their story multiple times
- » Integrate supports from police, child protection, medical and mental health, and victim services
- » Offer child-friendly interview settings and access to trained professionals
- » Help children understand what is happening and what to expect
- » Provide emotional support to caregivers throughout the process
- » Offer wraparound services and reduce re-traumatization⁷⁸
- » Advocate for their access to testimonial aids⁷⁹

Sustainability at risk

In 2009, the OFOVC recommended that the federal government, in partnership with provinces and territories, develop a national strategy to expand the network of Child Advocacy Centre models across the country.⁸⁰

- » The following year, Budget 2010⁸¹ announced support for the creation and development of CACs.

- » While the model has proven to be successful, 15 years later, we've reached a point where **CYACs are at risk**.

Stakeholders have raised concerns that **federal funding for CYACs might come to an end**.

- » Currently, some provinces do not have the resources or infrastructure to sustain CYACs independently.
- » The **multidisciplinary nature of CYACs** creates ambiguity about which provincial or territorial ministry should be responsible for long-term funding.
- » A stakeholder in British Columbia emphasized that a **lack of clear jurisdictional responsibility can undermine sustainability**, even where strong community support exists.

Opportunity for federal leadership

Federal investment in CYACs signals national leadership in child protection, supports provinces and territories in upholding obligations under the UN Convention on the Rights of the Child and encourages equitable access to child-centred services across jurisdictions.

- » In 2017, the **Standing Senate Committee on Legal and Constitutional Affairs** recommended that the Minister of Justice work with provinces and territories to explore funding proposals to expand the CYAC model of integrated services and advocacy to serve other victims of crime, including adults.⁸²
- » Some stakeholders suggested that **shared funding models**, such as the NAP, offer a practical solution.

Survivors and stakeholders support integrated models and wraparound services

“I believe that wrap around support is necessary for survivors to navigate the system. I have seen that done successfully and have seen many times when it doesn’t occur, and the difference is outstanding.”⁸³

What we heard

Survivors and stakeholders repeatedly emphasized the importance of integrated, **wraparound** services⁸⁴ – models that coordinate health, legal, housing, and social supports in one place – because these approaches reduce the burden on survivors, who are often left to navigate complex systems while experiencing trauma.

- » Trauma-informed care for healthcare and other services would better support services, including for aftercare and the legal process.⁸⁵
- » Police-based victim services should always be connected to sexual assault centres because some survivors may not trust victim services connected to the police.⁸⁶

We heard that integrated service models could include:

- » Sexual assault nurses in hospitals or advocates in police stations
- » Adult sexual assault centres mirroring the integrated service model offered at child and youth advocacy centres,⁸⁷ while maintaining a community-based, feminist approach to service delivery
- » Drop-in centres for victims of human trafficking⁸⁸
- » Integrated services (specifically for newcomers) that include housing support⁸⁹

Salal’s New Sexual Assault Clinic in Downtown Vancouver⁹⁰

Since it opened in April 2025, Salal offers an integrated wraparound service model to survivors of sexualized violence. Services are open to women, trans, Two-Spirit, nonbinary, and gender-diverse people. They offer a 24-hour crisis and info line, hospital accompaniment, police and court accompaniment, victim services, counselling and Indigenous counselling, MMIWG2S family counselling, education, and training.⁹¹ The Centre expanded Salal’s services to also include:

- » **A police reporting room** that meets the requirements for interview rooms at a police station.⁹²
- » **A room for virtual testimony** to allow survivors to testify in court proceedings from the centre.⁹³
- » **On-site medical services**, including head-to-toe exams, assessment for drug- or alcohol-facilitated sexual violence, STEP prevention options and screening, reproductive justice options, forensic examinations, evidence collection and storage, emotional support, and referrals. Their existing hospital support program will also continue.⁹⁴

Increase funding and standards

Other **recommendations** we heard included:

- » Increase funding that is not project-based and easier to access for organizations because **these organizations are lifelines for some survivors**.⁹⁵
- » Community-based services need to be **adequately funded** whether survivors report or not.⁹⁶
- » **Federal/provincial/territorial standards** must be created to ensure victims have access to the same rights and standards regardless of where they live.⁹⁷
- » **24/7 access to victim services**⁹⁸ with reduced wait times for services – more workers, lower caseloads.⁹⁹
- » Free **counselling** for survivors.¹⁰⁰
- » Innovative options for remote areas (like access to transportation and mobile trauma-informed units).¹⁰¹
- » **Navigation support**. A multilevel Wayfinder is needed to support survivors because information on the system and support services can be hard to find.¹⁰²
- » Expansion of **culturally sensitive programs**. Services should cover as many languages and backgrounds as possible.¹⁰³

These integrated approaches not only reduce gaps in care but also restore control and dignity to survivors by meeting them where they are rather than requiring them to chase help across disconnected systems.

Survivors of sexual violence should always have access to support services that treat them with **dignity and respect** – regardless of sex, gender identity, race, culture, language preference, age, geographic location, disability, or other characteristics – consistent with the **principles of procedural justice**. When victims lack support, they may face significant trauma. A lack of support can also impact their decision to engage in the criminal justice process. Survivors may stop pursuing charges or may not testify if they do not have the support they need.¹⁰⁴ To be effective, support services must be culturally responsive, trauma-informed, and meet the survivor's language needs.

TAKEAWAY

Survivors deserve access to timely, culturally appropriate, and trauma-informed services – anywhere in Canada.

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Data and Accountability

ISSUE

Canada collects comprehensive data across the criminal justice system, but there are gaps.

“Data collection is so important. Need consistency across the provinces and territories. If we don’t have data, it’s hard to identify gaps in marginalized communities.”¹

SISSA Stakeholder Interview #45

KEY IDEAS

Data is needed on decisions that affect survivors like subpoenas for therapeutic records or access to testimonial aids

Disaggregated data is essential to address systemic barriers and support marginalized communities

Data transparency and accessibility are critical for accountability, survivor trust and effective policy reforms

BOTTOM LINE

Canada needs a coordinated, outcomes-based data strategy to track sexual violence cases, close systemic gaps, and ensure accountability. Without comprehensive, disaggregated, and accessible data, Canada’s criminal justice system cannot measure progress or effective responses to sexual violence.

RECOMMENDATIONS

10.1 Establish a national data strategy: The federal government should develop and implement a coordinated, multi-jurisdictional data strategy to improve the collection, sharing, and analysis of outcomes-based data on sexual violence.

Our investigation

Specific actions

We are grateful to Statistics Canada who met with us and provided us an opportunity to peer review the Juristat article *Criminal Justice Outcomes of Sexual Assault in Canada, 2015 to 2019* ² prior to its publication in November 2024. We welcome many future collaborations.

Background

A society's ability to **identify issues, design evidence-based solutions, and measure the effectiveness of outcomes** begins with the question, "What do we know?" The answer to this often leads back to the quality of the information we collect, including both quantitative and qualitative data.

Experiences of real people and critical choices around what information to count and collect, what questions to ask, and who to ask, all **contribute to building narratives about the safety, equality, well-being, opportunity, and protections** provided to the citizens of any nation state.

- » Principle 1 of the United Nations Fundamental Principles of Official Statistics begins with:

"Official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy and the public with data about the economic, demographic, social and environmental situation." ³

Assessing the effectiveness and responsiveness of Canada's CJS to crimes of sexual violence requires detailed, ongoing open access to outcomes-based data at all levels of the CJS. It further requires a deeper understanding of who wants the data, what they need to know, the costly impacts of knowledge gaps over time, and Canada's ability to progress in ending gender-based violence (GBV).

Dr. Kim Stanton led a similar inquiry into *The British Columbia Legal System's Treatment of Intimate Partner Violence and Sexual Violence*. This report, released in June 2025, included a recommendation to create a GBV data strategy with many sectors collaborating and noted:

"The Review found that fragmented data systems across police, prosecutors, courts, and corrections prevent actors within the legal system from getting a clear picture of how GBV cases are handled across the system and over time. This contributes to the systemic barriers of silos and lack of accountability, increases system costs, and impedes effective intersectional analysis of programs and services." ⁴

What we heard

Recognizing progress in data collection, while addressing persistent gaps

"Data collection needs to be improved, and we need to collect data consistently. It is hard to identify gaps without reliable data." ⁵

Improvement of data collection over the years

In a recent issue of the Victims of Crime Research Digest, Kathy AuCoin, retired Manager of the Analysis Program at the Canadian Centre for Justice and Community Safety Statistics, reflects on advances in data over the past 25 years.⁶

Police-reported crime data has improved.

The Uniform Crime Reporting Survey⁷ (UCR) accounts for 99% of the population and shows trends in various provinces, territories, and rural communities. The survey updates when *Criminal Code* amendments occur to stay relevant.

- » **Survey changes to include victims.**

In 2018, the UCR was modified to add victims of violent crimes to be better able to indicate why some incidents are unsolved (i.e., no accused identified or not enough evidence). This ensures victim data are counted in challenging police cases or when there is difficulty obtaining evidence, such as human trafficking.

- » **Linking UCR Survey records.** Victim data has improved our ability to identify patterns of reoccurring victimization and see how previous victimization may intersect with later victimization or offences. Police have also been able to link their data to court records, which can help identify trends, gaps, and improvements.

Victimization surveys have advanced.

- » **The General Social Survey⁸ (GSS)** on Canadians' Safety (Victimization) is a prominent survey that captures self-reported experiences of victimization in the 12 months preceding the survey. It occurs approximately every 5 years and asks questions related to child maltreatment, physical and sexual violence, and key incident details such as reporting to police or use of victims' services.

- » **The Survey of Safety in Public and Private Spaces⁹ (SSPPS)** collects self-reported data on gender-based violence, including forms which do not meet the criminal threshold.
- » **Data is also becoming more accessible.** These data surveys are available to the public and Statistics Canada has Research Data Centres that anyone can use.

During our investigation, one survivor shared,

“The only way we can change what is being done behind closed doors is exposing it for others to see just how much survivors are put through when they report and go through the justice system.”¹⁰

Some significant gaps remain. **There is no comprehensive national data for all victim services across Canada**, specifically on how victims are accessing services and how their needs are being responded to by the justice system. Statistics Canada tested a pilot for Canadian Victim Services Indicators in 2015-16. While provincial and territorial results were available, the results could not be compared between the jurisdictions due to varying definitions, available information, and services provided.

Data can fuel solutions

One reviewer of this report noted that we falsely assume that **improved data will lead to better public policy, more satisfied complainants, more efficient and fair criminal law**, etc.

- » Let us be very clear, we do believe that.
- » Throughout this investigation, we met with hundreds of survivors, public policy leaders, lawmakers, Crowns, advocates, academics,

and community leaders who were keen to make the system work better for survivors.

The search for data-driven, evidence-based solutions was part of every conversation.

When the right statistics are not collected, are collected but not published, or are published but not disaggregated, enormous amounts of energy, time, resources, and dollars end up redirected into getting information.

- » Data may no longer be considered current, meaning individuals and institutions start back at the beginning to do the same data collection work over and over.
- » The often-costly processes of data access may include lengthy and often repeated access to information and privacy requests, specialized research applications, or years of front-line advocacy to persuade decision-makers to share relevant statistics.

“I spent almost 20 years trying to get statistics on outcomes of sexual assault reports from my local police service, without success. A professor at the law school volunteered to have his students file a Freedom of Information request and we eventually got five years of data. After that it was back to square one.”¹¹

Not Just Any Numbers, the RIGHT NUMBERS

Data doesn’t exist in a vacuum. Adding a metric or overemphasizing one number in isolation can lead to large fiscal and resource expenditures that may not ultimately change, or even impact, an underlying root cause.

- » For example, police use clearance categories to explain what happened to a report of sexual assault. The codes provide 21 different explanations for an officer’s final determination in case, allowing analysts to better understand what happened to the case and why.

Unfounded

Founded not cleared

- X – Still Under Investigation
- Y – Insufficient Evidence to Proceed
- Z – Victim/Complainant Declines to Proceed (no CSC identified)

Cleared by charge or charges recommended

- C – Cleared by Charge
- W – Charges recommended but all declined by Crown

Cleared otherwise

- D – Suicide of CSC
- E – Death of CSC (not suicide)
- F – Death of complainant/witness
- G – Reason beyond control of the department (policy)
- H – Diplomatic Immunity
- I – CSC under 12 years of age
- J – Committal of the CSC to a mental health facility
- K – CSC outside Canada, cannot be returned
- L – Victim/Complainant requests that no further action is taken (CSC identified)
- M – CSC involved in other incidents
- N – CSC already sentenced
- O – Departmental Discretion
- R – Diversionary Program
- S – Incident cleared by a lesser statute
- T – Incident cleared by another municipal/provincial/federal agency

- » The published information in the Uniform Crime Reporting Survey (Incident-Based Crime Statistics by Detailed Violation) reports on 4 codes: whether a sexual assault report was cleared as Unfounded, Founded Not Cleared, Cleared by Charge (or Charges Recommended), or Cleared Otherwise. The reasons why the case didn’t proceed are not proactively published on an annual basis, but they were recently published¹² and can be available, upon request.

- » The current reported data leaves out the crucial information needed to understand case attrition and allow program and policy analysts to propose evidence-based solutions – we learn WHAT happened, but the data stops short of telling us WHY it happened.

Without understanding the reasons for case attrition, stakeholders, policymakers remain unable to meaningfully address issues.

- » This lack of detail leads to the issue not being able to be measured. It becomes impossible to track progress or measure substantive change (positive, neutral, or negative). In turn, this lack of data prevents **accountability**.
- » Today's tools and technologies make data transparency easier. Investments today will result in reduced costs, more effective interventions, and, most importantly, more transparent and informed justice processes for Canadian survivors tomorrow.

“[We] need disaggregated data to showcase the at-risk populations and the need to support agencies that target these populations [Black and racialized communities/survivors].”¹³

Disaggregated data is an essential tool to understand barriers

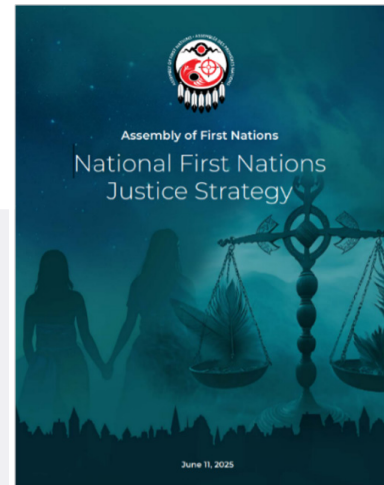
In our investigation, we heard from stakeholders that methods of data gathering and reporting, combined with a lack of disaggregated data, can lead to further invisibility and negative consequences for disproportionately impacted and marginalized groups.¹⁴

Definition: Disaggregated data, sometimes called demographic categories, is data focused on subcategories of statistics, like race, gender, religion, or educational status. This type of data may reveal inequalities and relationships between groups.¹

¹ British Columbia's Office of the Human Rights Commissioner. (2020). *Disaggregated demographic data collection in British Columbia: The grandmother perspective*.

A 2020 report from the British Columbia's Office of the Human Rights Commissioner laid out benefits and risks to disaggregated data.¹⁵

Benefits	Risks
» Show patterns, uncover inequalities and differences of groups » Can inform policy, program, and legislative development to tackle systemic inequality » Disaggregated data for systemic equality supports human rights frameworks » Enables accountability for systemic discrimination and guides equitable resource allocation	» Data misuse can reinforce colonization, systemic racism, and oppression (historical surveillance of 2SLGBTQIA+ people, Japanese Canadians, COVID “hot-spot” policing) » Artificial intelligence trained on biased data can stigmatize and misdirect services. » Over-researching without follow-up drains community capacity, triggers trauma, and delays action



We recognize the call for data sovereignty

The Assembly of First Nations released a National First Nations Justice Strategy in June 2025. In this report, **Indigenous data sovereignty** is

*“The act of Indigenous people, communities, and Nations to have authority over and participate in Data that is created with, by, for, or about them.”*¹⁶

- » This strategy also urges CJS data collection to be more precise and to increase the quality of data through an intersectional lens. The Assembly of First Nations also requested standalone federal legislation aimed at accountability, oversight, and data collections.¹⁷

Other Data Sovereignty Initiatives

- » **First Nations Information Governance Centre** has a First Nations Data Governance Strategy aimed at data sovereignty and have created The Fundamentals of Ownership, Control, Access, and Possession (OCAP®),¹⁸ introducing principles of OCAP® around First Nations ownership and access to First Nations data.¹⁹ They also have a First Nations Data Centre.
- » **National Inuit Strategy on Research** was created to increase research initiatives and information for Inuit prosperity.²⁰
- » **Métis Centre at the National Aboriginal Health Organization** (NAHO) developed Principles of Ethical Métis Research.²¹

The 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) Calls for Justice also addressed intersectional data collection. Call for Justice 5.24:

*“We call upon the federal government to amend data collection and intake-screening processes to gather distinctions-based and intersectional data about Indigenous women, girls, and 2SLGBTQQIA people.”*²²

Our Expert Advisory Circle (EAC) also raised the need for better data collection and support for Indigenous communities.²³

Government actions to advance data

The National Action Plan to End Gender-Based Violence²⁴

- » Data, research, and knowledge mobilization are essential to efforts to address GBV. This national action plan highlighted the lack of intersectional data, noting the need for disaggregated data.

Statistics Canada Disaggregated Data Action Plan (DDAP)²⁵

- » Launched in 2021, Statistics Canada released this action plan to enhance collection of disaggregated data on four groups: Indigenous peoples, women, racialized populations, and persons with disabilities.
- » This improvement of disaggregated data has helped others make evidence-based decisions and strengthen the fight against systemic racism and gender gaps.
- » Statistics Canada has improved this collection of data by adding more questions to surveys and increasing sample sizes. For example, the Uniform Crime Reporting Survey has been changed to now ask for Indigenous and racialized data as part of a joint initiative with Statistics Canada and the Canadian Association of Chiefs of Police (CACP).²⁶
- » Data will be available once police services and their records management adopt the updated UCR survey (available as of February 2024).
- » The Crime and Justice Statistics Portal is now public as well, but no disaggregated UCR data is currently available in the portal.

Canada's Black Justice Strategy: Implementation Plan (February 2025)²⁷

- » The Strategy highlights the need for disaggregated data and how the Government of Canada is committed to collecting it. The 2024 Fall Economic Statement invested \$1 million in Statistics Canada over two

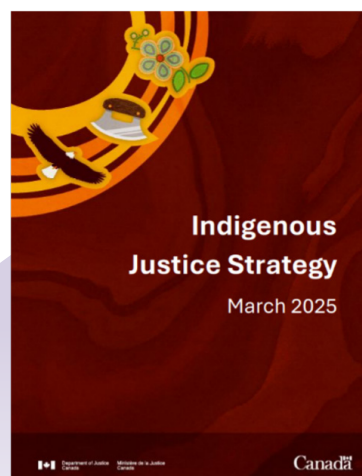


years (2025–26, 2026–27) with the aim of addressing data gaps on the experiences of Black Canadians.

- » The roadmap report released in 2024 included a recommendation to create a unit within Statistics Canada's Centre for Justice and Community Safety Statistics that would coordinate and implement a Race and Identity-Based Data program.

The Department of Justice's Indigenous Justice Strategy (March 2025)²⁸

- » This Strategy has Priority Actions aimed at various levels and sectors to consult and cooperate with First Nations, Inuit, and Métis to advance data collection, reporting, sovereignty through collaboration and disaggregated data, and accountability.



Improving data collection can save money

Jurisdictional issues. Data sharing between jurisdictions can be challenging as many incidents happen in multiple jurisdictions, but jurisdictions may not share information.²⁹

Data and information gaps generate “invisible” and exponential costs across sectors. The upfront investment required to develop improved data collection, tracking, and availability would be offset by the elimination of these “invisible” costs.

We heard that:

- » **Police databanks are needed across jurisdictions.** Human traffickers will take victims to many provinces but there is no database to say the victim was seen “here” by police. As a result, a significant amount of evidence is missed. A databank of this kind could corroborate where the person has been.³⁰
- » **The scale of government investment** needed to revamp and integrate a complex web of CJS data/information systems nationwide has likely contributed to slow progress in implementing data recommendations.

Interjurisdictional data would better inform criminal law reforms and funding programs. Dr. Stanton’s 2024 issue paper for the BC investigation noted,

“Data collection and analysis continue to be sources of frustration for many legal system actors and other stakeholders... It appears that publicly shared data collection is very limited, and therefore data analysis is even more limited.

*In the absence of government tracking or publicly available data, community-based anti-violence organizations rely upon media reports to tally the number of femicides in the province. Some data is produced only in response to Freedom of Information requests by journalists rather than as a matter of course.”*³¹

In her final report, Dr. Stanton emphasizes the costs of GBV on policing, courts, health care, child welfare, and social services.³²

- » The hidden costs of data gaps are being paid already, they are just diffused across groups and sectors in ways that make them either invisible or near impossible to quantify.

A Committee of Experts in Quebec, including the Chief Justice of Quebec, 3 provincial MLAs, the heads of leading Quebec community groups in the GBV sector, and representatives from police, CAVAC, CALAC, Crowns and academics, released a comprehensive report on support for victims of sexual assault and IPV. They recommended more detailed statistics on sexual and domestic violence, applying disaggregated and differentiated analysis, particularly:

- » the categorization of reasons for closing cases by the Director of Public Prosecutions
- » number of guilty pleas
- » number of abandoned proceedings
- » number of substitutions of a charge by a commitment to keep the peace
- » frequency of use of a peace bond
- » statistics on the use of testimonial aids
- » statistics on the imposition of restitution orders when it is requested³³

*“The work and consultations highlighted the paucity of statistics compiled on sexual assault and domestic violence. However, all agreed on the importance of collecting data to quantify the volume, determine the resources (financial or human) required and analyze the results of measures and the rate of public satisfaction. Given the sharing of jurisdiction and resources between the provincial and federal levels of government in criminal matters, such statistical data should be communicated from one government to the other. [Translation]”*¹

¹ Rapport *Rebâtir la confiance*, Gouvernement du Québec, 2024 at p 197.

Why it matters

Good data saves time and money.

The costs of finding and understanding data are both high and repetitive

- » Different sectors (journalists, academics, policy-makers) are all having multiple conversations with different people on similar topics. This is not efficient.
- » During our investigation **one survivor shared**, *“Data entry needs to be more streamlined. The public should be able to check data. Databases and technology can quickly detect patterns.”*³⁴

Here’s a common question to which there is no simple answer: what is the overall annual attrition rate in reports of sexual violations for

- » All of Canada, all police sources
- » Each province/territory
- » By sex/age of victim
- » By socioeconomic group, etc.



Case study: Unfounded sexual assaults

In 2017, the *Globe and Mail* published the results of a two-year investigation into sexual assaults being closed as “unfounded” (meaning the police concluded that no crime occurred or was attempted).³⁵ The “Unfounded” series revealed that police were dismissing a disproportionately high number of sexual assault claims compared to other serious crimes.

The series spurred an uncounted number of retroactive reviews of sexual assault investigations by municipal, provincial, federal, and military police across the country. Canadian police services largely reported that high unfounded rates were largely attributable to a clerical problem forcing police to use the unfounded category due to a lack of more accurate options.

This led to a 2018 revision of the clearance code options available to police services when reporting outcomes of investigations to the Canadian Centre for Justice and Community Safety Statistics (CCJS), who compile and release annual reports to the broader public. As new clearance codes were implemented and guidance for case classification revised, the number of sexual assault reports cleared as “unfounded” dropped across the country.

What the public didn’t know

The series wasn’t the first time the issues relating to unfounded rates were revealed.

The problem had been exponentially compounded by a 2003 Statistics Canada decision to stop collecting data on unfounded sexual assaults altogether, despite the (prescient) warnings of sexual assault advocates and researchers. At the time, not all police services were reporting information on unfounded incidents and, of those that were, not all unfounded records were being submitted to CCJS through the Uniform Crime Reporting Survey. It was suggested that variations in rates of unfounded incidents may have been attributable to inconsistent classification of calls for service that were deemed non-criminal.

Without national and regional statistics on unfounded levels for sexual assault cases, research and evaluation with respect to the high levels of unfounded sexual assaults became difficult, if not impossible. Without these statistics, there was no tracking of trends in founded and unfounded rates and no way of assessing the impact of any corrective measures that may be taken to ensure accuracy in decision-making.³⁶

Data on unfounded sexual assault complaints would not be published again for another fourteen years, when the reaction to the *Globe and Mail* series prompted Statistics Canada, Police Information and Statistics (POLIS) Committee, CACP, and the broader policing community to announce they were resuming collection in 2018.

The *Globe and Mail*'s "Unfounded" series changed public perception of sexual assault investigations and led to widespread calls for reform and increased scrutiny of police handling of sexual assault cases.

Strengthening data can strengthen accountability

Accountability in sexual violence usually means how perpetrators are, or should be, held responsible for the harm they've caused.

- » Increasingly, survivors, consultations, and academic reports are calling for accountability from the CJS itself.

If we understand accountability to mean that *"someone is responsible for things that happen and can give a satisfactory reason for them"*³⁷ the challenge for survivors comes into sharper focus.

- » The sheer size of the CJS and number of decision-making actors within it presents a formidable wall of bureaucracy that can seem impenetrable for the average citizen.

Consider these elements for an accountable system:

- » Access to information used in making decisions.
- » Transparency about the decisions made or discretion used.
- » Documentation of reasons for a decision.
- » Ability to appeal to a neutral decision-maker.
- » Independent oversight and quality assurance.

In BC, the (2025) Independent Systemic Review: The British Columbia Legal System's Treatment of Intimate Partner Violence and Sexual Violence³⁸ recommends developing a broad and collaborative gender-based violence data strategy across government agencies and legal system institutions.

- » The National Action Plan to End Gender-based Violence specifically notes that **enhanced data collection has a role in addressing gender-based violence.**

Evaluations can drive improvements

- » Programs, services and activities to respond to sexual violence in the criminal justice system are often interconnected. Cross-cutting case studies, surveys, research can help to bridge the gap between programs, services and activities. Monitoring and evaluation provide evidence-based insights into the **effectiveness, efficiency, and relevance** of activities and services.

"Evaluations typically use social science methods such as document reviews, interviews, surveys, case studies, focus groups, statistics and randomized control trials. They can look at a wide variety of sources to gather information, ranging from program beneficiaries to social media to predictive analytics based on big data."

They can be conducted before a program is implemented, to inform its design; during a program, to help it adjust course; or after a program is complete or has been running for some time, to assess its impact.”³⁹

Establishment of a Gender-Based Violence Commissioner

There have been discussions about creating a GBV Commissioner in Canada to be able to improve collaboration and transparency.

- » The 2023 Mass Casualty Commission’s (MCC) final report calls for a GBV Commissioner.⁴⁰

- » LEAF’s (2024) report,⁴¹ *What It Takes: Establishing a Gender-Based Violence Accountability Mechanism in Canada* states that a GBV Commissioner would help to facilitate data collection and analysis in an area which engages numerous sectors and jurisdictions.

- » **Our Office supports the creation of a GBV Commissioner position in collaboration with improved resources and legislation for the OFOVC.**⁴²



Figure. LEAF’s infographic on what an independent GBV Commissioner could achieve⁴³

Some gaps are known

Our investigation identified a clear need for these data points (this is not an exhaustive list):

- » the annual attrition rate in reports of sexual violations for
 - » all of Canada, all police sources
 - » each province/territory
 - » by sex/age of victim
 - » by socioeconomic group, rural/urban, etc.
- » the categorization of reasons for closing cases by the Crown
- » number of guilty pleas for sexual violence and changes over time in these numbers
- » numbers of withdrawal of charges for a commitment to keep the peace
- » frequency of use of peace bonds
- » what are the changes over time in the numbers of contested applications for testimonial aids
- » statistics on the imposition of restitution orders when it is requested by a complainant
- » how many applications for sexual history or private records occur, how long they take, what their results are
- » the disposition of sexual history and record applications with and without funded ILR for complainants
- » change over time for the numbers of contested applications for testimonial aids
- » numbers of federal offenders serving a custodial sentence for sexual offences
- » how often RJ is used, how many times it was denied due to a policy of not being able to refer sexual assault cases
- » disaggregated data on who accesses support services, who does not and why

TAKEAWAY

**Survivors deserve a justice system that sees what is hidden
and acts on what is known.**

What we count reflects what we choose to value.

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Concluding thoughts

“This is not a new issue — but it remains one that we say is unsolvable, which I do not think that is the case. This is something we can change: not overnight, and not easily maybe. But it is not “the way things have to be” forever.”

SISSA Survivor Survey, Response #94

Throughout this investigation, survivor after survivor recounted experiences of trauma - not only from sexual violence, but from systemic betrayal of their interactions with the criminal justice system. Across Canada, their stories are far too familiar: reports disbelieved, cases abandoned, and the persistent failure to respect their CVBR and *Charter* rights. Throughout every stage, survivors face systemic barriers that silence their voices, place their safety at risk, and decrease their confidence in the justice system. The Supreme Court of Canada’s decision in *R. v Jordan* has compounded these harms, leading to the dismissal of serious cases and wasting significant personal, community, and public resources.

Despite these realities, survivors and stakeholders continue to participate in inquiries, consultations, studies, and calls for change. They shared with us their lived experiences and professional expertise, all with the hope of change.

We can do better.

We heard of significant progress, promising practices, and incredibly beneficial programs across the country. We heard from and about,

caring, thoughtful, hard-working people in all areas of the criminal justice system and across community agencies.

We also spoke with many people about the need for improvements. We discussed *Charter* and CVBR rights of victims and procedural fairness. We learned about disparities in access to services, depending on where people live. We heard about good experiences with police and about poor experiences. We learned about basic data gaps, especially in disaggregated data, and the need for research on the experiences of Indigenous peoples, Black people, people with disabilities, racialized communities, newcomers, and 2SLGBTQIA+ people. We learned about humiliating and retraumatizing cross-examinations and the importance of trauma-informed approaches. We heard about unequal access to testimonial aids. We heard about the benefits and challenges of restorative justice.

We learned that myths and stereotypes still persist, from the point of reporting throughout the process. We learned about devastating effects of private information being exposed, unbearable delays, and charges suddenly being stayed. We heard that victim impact statements are overly redacted and that survivors aren’t provided information about trial outcomes. We were told there is a need for more training and education. We learned a lot about best practices and superb programs. We heard about advocates, sexual assault centres and victim-centred organizations being lifelines for survivors and about the necessity for access to independent legal advice. We learned about how essential specialized care is for child and youth survivors. We learned about the benefits of wrap-around services and holistic approaches.

Many improvements have been made over the years to the criminal laws related to sexual assault. Lawmakers are careful in their consideration of equity, justice, and human rights when amending and creating laws and policies. We heard from inspiring people who want to make the system better.

We also know that even with good laws and policies, there are often unintended impacts that are invisible and even unimaginable to lawmakers. We know that depending on where a person lives in Canada, laws and policies are applied differently. We know that depending on a person's identity or status, laws and policies are applied differently. We know that there is work to do to address the MMIWG Calls for Justice.

The recent trial of five hockey players who were acquitted of sexual assault charges has led to nationwide conversations about consent, culture, and sexual violence. These are important conversations. We need to talk to everyone, all ages, and all walks of life, about these issues. Sexual activity needs to be talked about in age-appropriate ways and in safe spaces. We need to teach our young people about consent, respect, and healthy relationships. Everyone can benefit from those conversations.

Sexual violence has no place in our society.

Sustainable funding is desperately needed for adequate supports and alternative options. It will save our nation a lot of trauma – for survivors, accused, and their families and friends – and will also save taxpayers' money.

When sexual violence does happen, the criminal justice system plays a pivotal role. We need to know we can depend on it to work fairly: fairly for the accused and fairly for the survivors. It has to take into account the impact of trauma on survivors. It cannot be based on discrimination, myths and stereotypes. People need to be able to count on the system to work.

While this report documents the present crisis that is sexual violence, it also points to the future.

We can do better.

Canada can choose a different path:

- » A path where survivors' rights are fundamental, fully respected, and consistently enforced under the CVBR and *Charter*
- » A future where systemic delays are eliminated, cases proceed efficiently, and survivors' access to timely justice is guaranteed
- » A justice system where survivors are given a fair chance at cross-examinations, and testimonial aids are widely available and tailored to survivors' diverse needs
- » A commitment to trauma-informed policing and investigative practices, where survivors feel believed, safe, and supported if they choose to report
- » A greater effort to collect helpful data, to understand the status quo in order to improve it
- » A path with healing options and proactive information to survivors, and a chance to consider restorative justice, if they want it

We know that this report does not address the enormity of issues that survivors face. We hope our discussion and recommendations will have a meaningful impact on people who have the power to make improvements. We hope that the survivors and stakeholders who shared their expertise with us will know that their voices matter.

We have been humbled by their courage. We hope that those people and organizations who have written reports before us and who support survivors will know that their tireless work and expertise are making a difference.

We can do better.

Gratitude

This report would not have been possible without the invaluable contributions of the 107 survivors who generously shared their experiences through interviews, and the 1,000 individuals who did the same by responding to our survey. YOUR voices have shaped a detailed and powerful account of the realities survivors face when navigating the justice system. We are deeply grateful for your courage, openness, and trust.

“I would like to acknowledge the tremendous work you are doing in synthesizing all this information. Congratulations! I would also like to thank you for giving me the opportunity to be among the first readers of this draft.” [Translation]

CAVAC Outaouais Coordinator

“I want to commend the OFOVC. I knew that this was a substantial undertaking, but the length and depth of this report is significant, and it was so validating to read through so many of the experiences and recommendations that we at the Journey Project have been having or advocating for years. I also hope that everyone who has worked on this report was able to take some time for self and collective care. Bearing witness to ongoing pain and systemic cruelty is a unique experience that requires its own healing and community connection.”

Janet Lee, Provincial Director
The Journey Project

Thank you

Ontario Association for Family Mediation
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Ladysmith Resources Centre Association
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Correctional Service Canada
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Our appreciation to our federal partners

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DND – Sexual Misconduct Support and Resource Centre
Immigration, Refugees and Citizenship Canada
Indigenous Services Canada
Public Health Agency of Canada
Royal Canadian Mounted Police
Women and Gender Equality Canada 2SLGBTQI+ Secretariat

Your support meant everything

Thank you to survivors across Canada who trusted us to listen. Your voices are strong and you are worthy of dignity and respect.

Thank you to our Expert Advisory Circle for sharing your diverse perspectives, lived experiences, and deep subject matter knowledge. The feedback you provided was so helpful and I'm in awe of the collective work you have done to champion stronger rights and services for survivors.

Sunny Marriner, Chair of our Expert Advisory Circle, thank you for your tenacity, wisdom, joy and advice. Your approach to supporting our team throughout the investigation helped us feel safe and grounded. I have learned so much from you.

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Your work makes a difference

Thank you to our incredible team at the **Office of the Federal Ombudsperson for Victims of Crime (OFOVC)**. I honour the time, listening, humility and love which you have given so generously. Your collective energy and innovation helped turn our vision into reality.

Thank you for being the best team.

Benjamin Roebuck
Federal Ombudsperson for Victims of Crime

Annex A – Recommendations

Our Big 10 Recommendations

1. Fully investigate sexual violence
2. Minimize harm from *R v. Jordan*
3. Better protect therapeutic records
4. Humanize cross-examination
5. Offer testimonial aids automatically
6. Provide effective rights and representation
7. Stop redacting victim impact statements
8. Prioritize access to services
9. Allow restorative justice options
10. Collect (better) data for accountability

Detailed Recommendations

1 Reporting and Investigations

- 1.1 **Implement the Calls for Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls** to improve policing and investigative practices:
 - a. **Ensure equitable access** to trauma-informed practice and investigative tools such as sexual assault evidence kits in all communities, including rural, remote and northern regions, in line with Call for Justice 5.5.
 - b. **Embed Indigenous-led oversight and accountability** in policing responses to sexual violence, ensuring culturally safe practices that respect Indigenous legal traditions and self-determination, in line with Calls for Justice 9.1 and 9.2.

- c. **Invest in Indigenous-led, community-based victim services** to support survivors through reporting and investigation processes, in line with Calls for Justice 5.6, 16.29, and 17.28.

- 1.2 **Evaluate trauma-informed protocols for police investigations.** External monitoring promotes accountability and accessibility for equity-seeking groups.
- 1.3 **Provide ongoing training to criminal justice actors on the unique needs of survivors** based on sex, gender, sexual orientation, race, culture, religion, age, ability, mental health, immigration status, income and access to housing, with attention to intersecting identities.
- 1.4 **Stop using KGB cautions with survivors of sexual violence.** These warnings treat survivors like suspects based on the myth that survivors of sexual violence are more likely to lie.
- 1.5 **Address the invisibility of Black survivors in research on the criminal justice system.** The federal government should invest in Black-led, community-based research on the experiences of Black women, girls, and gender-diverse people affected by gender-based violence, including sexual violence.

2 *R v. Jordan*

The federal government should amend the *Criminal Code* to

- 2.1 **Guide judicial discretion in *Jordan* motions:** Set out the following criteria to be considered by the Court in a *Jordan* motion (a motion to stay the charges for a lack of timely prosecution):

- a. Nature and gravity of the alleged charges
- b. Length of the delay
- c. Complexity of the case
- d. Vulnerability of the victims
- e. Actions of defence
- f. Actions of prosecution
- g. Society's interest in encouraging the reporting of offences and the participation of victims and witnesses
- h. Prejudice to the victims' *Charter* rights
- i. Exceptional circumstances
- j. Other factors, including local conditions

2.2 Set consequences for defence delay:

Provide that Crown can show that multiple contested procedural applications will count as defence delay if the applications have been found to be brought without adequate notice, frivolous, without basis or unnecessary argumentation, or show a failure to prepare.

2.3 Remedy excessive prosecution delay:

Where the Court finds there has been excessive delay in the prosecution of a case, these charges could receive a sentencing credit for days past the *Jordan* timelines, preserving judicial discretion to grant stays of charges for egregious or exceptional cases.

2.4 Ensure victims are informed of *Jordan* applications: When a *Jordan* application is filed under s. 11(b) of the *Charter*, the victim must be notified.

2.5 Protect victim safety in remedy decisions:

Where a Court finds that there has been excessive delay and orders a stay, and where the charge relates to a violent offence, the Court must consider the victim's safety concerns when releasing the accused.

3 Therapeutic Records

3.1 Invest in independent legal advice (ILA) and independent legal representation (ILR):

The federal government should immediately invest in independent legal advice (ILA) and independent legal representation (ILR) programs for any proceeding where a survivor's CVBR or Charter rights are engaged. This includes for sexual history, record production and record admissibility applications.

The federal government should immediately amend the *Criminal Code* to:

3.2 Protect therapeutic records: Recognize that psychiatric, therapeutic and counselling records as enumerated in s. 278.1 are distinct from other private records and should be the subject of a higher threshold to be accessed by the defence. Apply the "innocence at stake" threshold or "class protection" to Stage One of both private records regimes, given the highly prejudicial impact on the health, equality and safety of survivors during a time of predictable distress.

3.3 Add context disclaimers: Provide that, when used as evidence, any disclosure of a therapeutic record shall include a disclaimer that the contents are based on the therapist's impressions, have not met the privacy requirements of allowing the complainant to review and correct inaccuracies, and may contain factual errors.

3.4 Expand the definition of 'record': Amend the definition of a record in s. 278.1 of the *Criminal Code* to:

- (a) Include electronic data found on a phone device or internet-based account for the purposes of the private records regimes
- (b) Include the contents and results of a sexual assault examination kit (SAEK).

(c) Provide participation rights and standing for complainants where a motion for direction on the definition of a record engages the privacy interests of complainants.

3.5 Clarify the express waiver provision: Amend the express waiver provision for third party records (s. 278.2) to create an exception, where the Crown intends to adduce private records and cannot obtain the complainant's express waiver, records can be disclosed to the defence without an express waiver.

3.6 Simplify applications of sexual non-activity: Create a simplified statutory regime for the complainant's evidence of sexual nonactivity and sexual activity when presented by the Crown.

3.7 Expand regime coverage: Include sex trafficking and voyeurism in all the records regimes.

4 Cross-Examination

Preliminary Inquiries

4.1 Eliminate preliminary inquiries: The federal government should amend the *Criminal Code* to remove preliminary inquiries for all sexual offences, protecting children and vulnerable complainants from the harm of multiple cross-examinations.

Cross-Examinations

4.2 Review trial procedures to enhance trauma-informed and culturally safe practice: The federal government should review and amend the *Criminal Code* to increase trauma-informed practice for all trials. Trauma-informed practice should include accessibility for people with disabilities and culturally safe, Indigenous-specific supports, such as dedicated Indigenous survivor advocates.

4.3 Develop a national justice strategy to protect children and youth: The federal government should consider a coordinated national strategy to uphold the dignity and safety of all children and youth who have experienced sexual violence. This strategy could include national standardization of forensic interview protocols, mandatory training for interviewers, national training standards, and universal access to child and youth advocacy centres.

5 Testimonial Aids

The federal government should amend the *Criminal Code* to increase access to testimonial aids:

Option 1: Administrative approach

5.1 Treat testimonial aids for sexual offences as an administrative matter that does not require a hearing to be awarded, based on the presumptions that sexual offence proceedings create a high likelihood of retraumatization. Testimonial accommodations for victims support the truth-seeking function of the court.

Option 2: Rebuttable Presumption

5.2 (a) Create a rebuttable presumption for testimonial aids for adult victims of sexual offences.

(b) Require the Court to inquire if a victim has been offered or requested testimonial aids.

(c) Provide that, where a judge decides that a defence's objection to testimonial aids was frivolous or made in bad faith, the time used to contest the application for a testimonial aid will be attributed as defence delay for the purposes of a *Jordan* application.

(d) Provide that, where the judge decides not to order testimonial aids, they must provide written reasons.

Additional provisions

- 5.3** Clarify that victims and witnesses may access multiple testimonial aids at the same time.
- 5.4** Add support dogs as a testimonial aid.
- 5.5** Clarify that the use of video testimony (s 486.2) outside the courtroom also means outside the courthouse.
- 5.6** [If preliminary hearings are not eliminated] provide that any testimonial aids used at a preliminary inquiry are automatically granted for a trial.

Amendment to the CVBR

- 5.7** The federal government should amend the CVBR to set out that victims have a right to testimonial aids (currently it is a right to *request* testimonial aids).

6 Victim Impact Statements, Sentencing, and Corrections

Victim Impact Statements

- 6.1 Prevent early disclosure:** The federal government should amend the *Criminal Code* to provide that a victim impact statement (VIS) is not given to the Crown or the defence until there is a finding of guilt, so it is not subject to disclosure and cross-examination prior to sentencing.

Federal Corrections and Parole

- 6.2 Allow partial summaries of victims statements:** The federal government should amend the *Corrections and Conditional Release Act* (CCRA) to allow victims to request that offenders in federal custody receive a partial summary of their victim statement, limiting details of emotional or psychological harm, while still providing full details on any conditions requested when a statement is used by the Correction Service

of Canada (CSC) or Parole Board of Canada (PBC) for decision-making. The victim should be provided with the summary and with the ability to remove any personal or other information that affects their safety.

- 6.3 Properly investigate complaints:** The federal government should amend the *Corrections and Conditional Release Act* (CCRA) to provide that the Federal Ombudsperson for Victims of Crime (OFOVC) shall receive, upon request, any document, recording, paper, or information relevant to a complaint made by a victim.

7 Restorative and Transformative Justice

- 7.1 Review restrictive policies:** The federal government should, in collaboration with provincial and territorial governments, review policies that prohibit the use of restorative justice models for sexual violence and exchange knowledge on promising practices already used in parts of Canada.
- 7.2 Expand and stabilize funding for restorative and transformative justice:** The federal government should explore joint funding models with provinces and territories to provide adequate and sustained funding to support restorative justice programs and other alternatives to the criminal justice system, such as transformative justice.
- 7.3 Proactively inform survivors:** The federal government should amend the *Canadian Victims Bill of Rights* to require that victims are automatically informed of available restorative justice programs.

8 Legal Representation and Enforceable Rights

- 8.1 Fund legal representation when victims' rights are at stake:** The federal government should continue to fund Independent Legal Advice (ILA) and Independent Legal Representation (ILR) programs whenever a victims' *Charter* or CVBR rights are engaged within the criminal justice system. This includes for testimonial aids applications, records applications, preparation of victim impact statements, and parole hearings.
- 8.2 Provide information proactively:** The federal government should immediately amend the *Canadian Victims Bill of Rights* (CVBR) to remove "on request" from victims' rights to information.
- 8.3 Create meaningful enforcement powers:** The federal government should immediately amend the *Canadian Victims Bill of Rights* (CVBR) to allow victims to challenge violations to their rights by creating standing, appeal rights and a remedy from federal agencies in order to allow victims to challenge violations of their rights.
- 8.4 Show CVBR consistency in proposed legislation:** The federal government should immediately amend the *Department of Justice Act* to require that the Minister examine every Bill to ascertain whether any of the provisions are inconsistent with the purposes and provisions of the *Canadian Victims Bill of Rights* and report any inconsistency to the House of Commons at the first convenient opportunity.
- 8.5 Show CVBR implementation in proposed legislation:** The federal government should immediately amend the *Department of Justice Act* to require that the Minister of Justice shall table, for every Bill introduced in or presented

to either House of Parliament by a minister or other representative of the Crown, a statement that sets out potential effects of the Bill on the rights that are guaranteed by the *Canadian Victims Bill of Rights*.

- 8.6 Clarify analysis of *Charter* rights of victims of crime:** The federal government should amend the *Department of Justice Act* to require that Charter Statements include analysis of how legislation may affect the rights of victims of crime under the *Canadian Charter of Rights and Freedoms*.

9 Access to Services

- 9.1 Guarantee a right to assistance:** The federal government should amend the *Canadian Victims Bill of Rights* (CVBR) to add a "right to assistance."
- 9.2 Provide independent survivor advocate:** The federal government should provide sustained operating funding to sexual assault centres to support access to independent, community-based survivor advocates. It should also fund Indigenous-led survivor advocate programs that reflect the needs of Indigenous communities.
- 9.3 Sustain Child and Youth Advocacy Centres:** The federal government should establish funding partnerships with the provincial and territorial governments to ensure that Child and Youth Advocacy Centres (CYACs) are available in every region in Canada.

10 Data and Accountability

- 10.1 Establish a national data strategy:** The federal government should develop and implement a coordinated, multi-jurisdictional data strategy to improve the collection, sharing, and analysis of outcomes-based data on sexual violence.

Annex B – Myths and Stereotypes in Sexual Assault Case Law

Finding	Citation
Sexual assault is often gender-based violence “Sexual assault is in the vast majority of cases gender based. It is an assault upon human dignity and constitutes a denial of any concept of equality for women.”	<i>R v. Osolin</i>, 1993 CanLII 54 (SCC), at para 165.
Sexual assault is an act of power and control “It must be remembered that sexual assault is an act of power, aggression and control, and that a threat to invade the bodily or sexual integrity of another person or to otherwise apply force is itself a hostile act”	<i>R v. Edgar</i>, 2016 ONCA 120 (CanLII).
Psychological trauma from sexual assault is real “The psychological trauma suffered by rape victims has been well documented. It involves symptoms of depression, sleeplessness, a sense of defilement, the loss of sexual desire, fear and distrust of others, strong feelings of guilt, shame and loss of self-esteem. It is a crime committed against women which has a dramatic, traumatic impact. ... To ignore the fact that rape frequently results in serious psychological harm to the victim would be a retrograde step, contrary to any concept of sensitivity in the application of the law.”	<i>R v. McCraw</i>, 1991 CanLII 29 (SCC).

Rape myths negatively impact the search for truth

“The woman who comes to the attention of the authorities has her victimization measured against the current rape mythologies, i.e. who she should be recognized as having been, in the eyes of the law, raped; who her attacker must be in order to be recognized, in the eyes of the law, as a potential rapist; and how injured she must be in order to be believed. If her victimization does not fit the myths, it is unlikely that an arrest will be made or a conviction obtained.”

» Supreme Court of Canada, *Seaboyer*

“Speculative myths, stereotypes, and generalized assumptions about sexual assault victims and classes of records have too often in the past hindered the search for truth and imposed harsh and irrelevant burdens on complainants in prosecutions of sexual offences.”

» Supreme Court of Canada, *Mills*

“While in most instances the adversarial process allows wide latitude to cross-examiners to resort to unproven assumptions and innuendo in an effort to crack the untruthful witness, sexual assault cases pose particular dangers. *Seaboyer*, *Osolin* and *Mills* all make the point that these cases should be decided without resort to folk tales about how abuse victims are expected by people who have never suffered abuse to react to the trauma”

» Supreme Court of Canada, *Shearing*

“Traditional myths and stereotypes have long tainted the assessment of the conduct and veracity of complainants in sexual assault cases – the belief that women of “unchaste” character are more likely to have consented or are less worthy of belief; that passivity or even resistance may in fact constitute consent; and that some women invite sexual assault by reason of their dress or behaviour, to name only a few. Based on overwhelming evidence from relevant social science literature, this Court has been willing to accept the prevailing existence of such myths and stereotypes:”

» Supreme Court of Canada, *Find*

R v. Seaboyer;
R v. Gayme, 1991 CanLII 76 (SCC), at para 140.

R v. Mills,
1999 CanLII 637 (SCC),
at para 119.

R v. Shearing,
2002 SCC 58 (CanLII),
at para 121-122.

R v. Find,
2001 SCC 32 (CanLII),
at para 101.

Myths and stereotypes are errors in law “First, the proposed rule against ungrounded common-sense assumptions is not a logical extension of the prohibition against myths and stereotypes about sexual assault complainants. It reflects a misunderstanding of the distinct body of law associated with myths and stereotypes in sexual assault cases, which has a unique history and a specific remedial purpose: to remove discriminatory legal rules that contributed to the view that women, as a group, were less worthy of belief and did not deserve legal protection against sexual violence. Several myths and stereotypes have been jurisprudentially condemned as errors of law and significant legislative changes were made with a view to protecting the rights of women and children given their particular vulnerability to sexual violence. This history puts into perspective the distinct reasons why relying on myths and stereotypes to discredit sexual assault complainants amounts to an error of law, as opposed to being an ordinary factual finding reviewable for palpable and overriding error. Conversely, the proposed rule does not relate to specific, identified, erroneous generalizations about a specific category of witness, nor does it protect elements of an offence from taking on a distorted meaning. It instead lumps together the sorts of pernicious, discriminatory stereotypes that both the courts and Parliament have worked to condemn and correct with more benign generalizations that, while they may be factually wrong, have nothing to do with inequality of treatment.”	<i>R v. Kruk</i>, 2024 SCC 7 (CanLII).
Myths and stereotypes haunt the justice system “The criminal trial process can be invasive, humiliating, and degrading for victims of sexual offences, in part because myths and stereotypes continue to haunt the criminal justice system. Historically, trials provided few if any protections for complainants. More often than not, they could expect to have the minutiae of their lives and character unjustifiably scrutinized in an attempt to intimidate and embarrass them, and call their credibility into question — all of which jeopardized the truth-seeking function of the trial. It also undermined the dignity, equality, and privacy of those who had the courage to lay a complaint and undergo the rigours of a public trial. Over the past decades, Parliament has made a number of changes to trial procedure, attempting to balance the accused’s right to a fair trial; the complainant’s dignity, equality, and privacy; and the public’s interest in the search for truth. This effort is ongoing, but statistics and well-documented complainant accounts continue to paint a bleak picture. Most victims of sexual offences do not report such crimes; and for those that do, only a fraction of reported offences result in a completed prosecution. More needs to be done.”	<i>R v. J.J.</i>, 2022 SCC 28 (CanLII), at para 1-2.

Basing credibility on stereotypes is an error of law “We would dismiss, substantially for the reasons of the majority of the Court of Appeal. In considering the lack of evidence of the complainant’s avoidance of the appellant, the trial judge committed the very error he had earlier in his reasons instructed himself against: he judged the complainant’s credibility based solely on the correspondence between her behaviour and the expected behaviour of the stereotypical victim of sexual assault. This constituted an error of law.”	<i>R v. A.R.J.D.</i>, <u>2018 SCC 6</u> (CanLII), at para 85.
Evidence, not stereotypes, are used in a fair trial “What constitutes a fair trial takes into account not only the perspective of the accused, but the practical limits of the system of justice and the lawful interests of others involved in the process, like complainants...”	<i>R v. O’Connor</i>, <u>1995 CanLII 51</u> (SCC), at para 193-4.
Myths and stereotypes have no place in law “Myths and stereotypes have no place in a rational and just system of law, as they jeopardize the courts’ truth-finding function.”	<i>R v. A.G.</i>, <u>2000 SCC 17</u> (CanLII), at para 2.
Myths and stereotypes distort truth-finding function “When assessing the evidence of a complainant in relation to an allegation of sexual assault, the court must not resort to the use of myths and stereotypes. Myths and stereotypes have no place in our law and distort the truth-finding function of the court.” “People react differently to events. There is no correct or standard way for a complainant to react to a sexual assault.”	<i>R v. McLeod, et al.</i>, <u>2025 ONSC 4319</u> (CanLII).
Complainant should not be “whacked” by the accused through cross-examination “The provisions of ss. 15 and 28 of the <i>Charter</i> guaranteeing equality to men and women, although not determinative should be taken into account in determining the reasonable limitations that should be placed upon the cross-examination of a complainant... . A complainant should not be unduly harassed and pilloried to the extent of becoming a victim of an insensitive judicial system... . The reasons in <i>Seaboyer</i> make it clear that eliciting evidence from a complainant for the purpose of encouraging inferences pertaining to consent or the credibility of rape victims which are based on groundless myths and fantasized stereotypes is improper. The accused is not permitted to “whack the complainant” through the use of stereotypes regarding victims of sexual assault.”	<i>R v. Osolin</i>, <u>1993 CanLII 54</u> (SCC), at para 669-70.

Improper defence tactics are harassment “Over the years, Parliament and the courts have recognized the disadvantaged position of a complainant in a sexual assault prosecution and have taken steps to address the often irrelevant and unfair attacks on the character, privacy, and security of the complainant. The efforts have focused on many injustices including the harassment of the complainant by the improper defence tactics engaged.” » Supreme Court of Canada, <i>Roland</i> “There was recognition that the tactics, even when unsuccessful, were often unsettling, if not harmful, to the complainant and constituted harassment resulting in humiliation, intimidation, and injury to the complainant. In some cases, the objective of the tactics was no more than to cause upset and throw the complainant off balance. The prosecution of a sexual assault allegation is “not an occasion for putting the complainant’s lifestyle and reputation on trial,” and a “complainant should not be unduly harassed or pilloried to the extent of becoming a victim of an insensitive justice system”.” » Supreme Court of Canada, <i>Osolin</i>	<i>R v. Roland</i>, <u>2020 BCPC 130</u> (CanLII), at para 27-28. <i>R v. Osolin</i>, <u>1993 CanLII 54 (SCC)</u>, at para 672, 669.
Cross-examination cannot be abusive “...cross-examination techniques in sexual assault cases that seek to put the complainant on trial rather than the accused are abusive and distort rather than enhance the search for the truth.”	<i>R v. Shearing</i>, <u>2002 SCC 58</u> (CanLII), at para 76.
Rejecting the view that sexual assault cases are more likely to be fabricated “...has rejected the notion that complainants in sexual assault cases have a higher tendency than other complainants to fabricate stories based on “ulterior motives” and are therefore less worthy of belief. Neither the law, nor judicial experience, nor social science research supports this generalization.”	<i>R v. A.G.</i>, <u>2000 SCC 17</u> (CanLII), at para 3.
Trauma informed practices enhance public respect for justice *This is a civil case but includes often-cited information on trauma-informed process “First, it is important to describe what I mean by a trauma-informed process. It is not one that aims to heal the trauma that participants in the process have experienced. It is not about manners or kindness. It is about adapting our processes in a way that seeks to minimize the trauma that the legal process itself can create, and it is about understanding how a person’s trauma might inform or affect their interactions with the legal system. A trauma-informed process can thus operate to remove barriers to just outcomes, and enhance public respect for, and the legitimacy of, the administration of justice.” [Emphasis added]	<i>S. v. Ukraine International Airlines</i> <i>JSC</i>, <u>2024 ONSC 3303</u> (CanLII), at para 100.

Annex C – Our Actions on the Calls for Justice from the National Inquiry into Missing and Murdered Indigenous Women and Girls

Indigenous people, specifically Indigenous women, girls, and 2SLGBTQIA+ people, are overrepresented as victims of crimes – violent crimes,¹ sexual crimes,² and gender-based crimes.³ Our investigation sought to incorporate this understanding into every aspect of our work. In undertaking our investigation, we considered the 2019 National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG).⁴ We summarize below the areas and chapters where our work intersected with these Calls for Justice.

We thank the OFOVC First Nation, Métis, Inuit Advisory Circle (FNMIAC) and colleagues at Indigenous Services Canada (ISC) for their collaboration in completing this investigation. We are especially grateful to the First Nation, Métis, and Inuit who wrote, called, or spoke with us about their experiences. We are grateful for your courage and hope we have honoured your truth.

Description of the MMIWG Calls for Justice	Actions Taken	Discussed in Chapter
Human and Indigenous Rights and Governmental Obligations		
1.5 Prevent, investigate, punish, and compensate for violence We call upon all governments to immediately take all necessary measures to prevent, investigate, punish, and compensate for violence against Indigenous women, girls, and 2SLGBTQ people.	» Indigenous populations experience disproportionate rates of sexual violence. Our systemic investigation highlighted these disparities across the report. We also emphasized the need for enhanced supports for Indigenous survivors.	All

1.6 Eliminate jurisdictional gaps that disrupt service delivery We call upon all governments to eliminate jurisdictional gaps and neglect that result in the denial of services, or improperly regulated and delivered services, that address the social, economic, political, and cultural marginalization of, and violence against, Indigenous women, girls, and 2SLGBTQ people.	» Across multiple chapters, we emphasized the need to reduce jurisdictional barriers that impede Indigenous survivors' access to services, including victim services and sexual assault evidence kits, in remote and northern communities.	Access to Services
1.9 Challenge the acceptance and normalization of violence We call upon all governments to develop laws, policies, and public education campaigns to challenge the acceptance and normalization of violence.	» We focused on dispelling rape myths and stereotypes that contribute to the normalization of sexual violence by addressing false narratives and bias about sexual assault, the “perfect victim,” and gender norms are present in our society and weave their way into public perceptions.	Myths and stereotypes

Calls for Justice for All Governments: Human Security

4.7 Sustainable funding of services for survivors of violence

We call upon all governments to support the establishment and long-term sustainable funding of Indigenous-led low-barrier shelters, safe spaces, transition homes, second-stage housing, and services for Indigenous women, girls, and 2SLGBTQ people who are homeless, near homeless, dealing with food insecurity, or in poverty, and who are fleeing violence or have been subjected to sexualized violence and exploitation. All governments must ensure that shelters, transitional housing, second-stage housing, and services are appropriate to cultural needs, and available wherever Indigenous women, girls, and 2SLGBTQ people reside.

» Our investigation emphasized the need for stable, long-term funding for front-line organization that support survivors, including those serving Indigenous communities. We echo calls for Indigenous-led, low-barrier, and culturally safe services that are available wherever survivors reside.

Funding recommendations include:

- » Investment in independent legal representation and advice for survivors.
- » Dedicated funding for sexual assault centres to provide independent survivor advocates.
- » Re-allocation of federal funding from the Indigenous Justice Strategy to Indigenous-led survivor advocate programs.
- » Funding for testimonial aids in northern courts.

Access to Services

Calls for Justice for All Governments: Justice

5.3 Law reform on sexualized violence and intimate partner violence

We call upon the federal government to review and reform the law about sexualized violence and intimate partner violence, utilizing the perspectives of feminist and Indigenous women, girls, and 2SLGBTQQIA people.

Our report calls for comprehensive legislative reform to address sexual violence, many of which can impact Indigenous survivors. Across multiple chapters, we outline concrete proposals to strengthen protections and reduce retraumatization.

Recommendations include:

- » Amendments to *Criminal Code* provisions
- » Amendments to the *Canadian Victims Bill of Rights*

See our detailed legislative proposals in Annex A.

All

5.5 (iii) Capacity development for investigation of sexualized violence We call upon all governments to fund the provision of policing services within Indigenous communities in northern and remote areas in a manner that ensures that those services meet the safety and justice needs of the communities and that the quality of policing services is equitable to that provided to non-Indigenous Canadians. This must include but is not limited to the following measures: iii Capacity must be developed in investigative tools and techniques for the investigation of sexualized violence, including but not limited to tools for the collection of physical evidence, such as sexual assault kits, and specialized and trauma-informed questioning techniques.	Our investigation highlights gaps in the availability and accessibility of sexual assault evidence kits (SAEKs) in northern and remote communities, where Indigenous survivors often face significant barriers to forensic and medical care. We document promising practices to address these gaps, including a model in which Sexual Assault Examiner Nurses (SANEs) provide real-time virtual support to frontline nurses in remote communities. This approach offers a scalable solution to address resource constraints and build local capacity through trauma-informed skill-sharing.	Reporting and Investigations
5.11 Accessibility of restorative justice and Indigenous Peoples' courts We call upon all governments to increase accessibility to meaningful and culturally appropriate justice practices by expanding restorative justice programs and Indigenous Peoples' courts.	Our investigation explores Indigenous perspectives on restorative justice (RJ) and alternative justice processes. We document how some Indigenous communities maintain strong ties to RJ programs and culturally grounded approaches to harm and accountability. At the same time, we acknowledge that these alternatives are not universally accepted and resistance to RJ, transformative justice, Indigenous Peoples' courts, and the application of Gladue principles exists.	Restorative and Transformative Justice

5.13 Access to legal aid and meaningful participation in the justice system We call upon all provincial and territorial governments to expand and adequately resource legal aid programs in order to ensure that Indigenous women, girls, and 2SLGBTQ people have access to justice and meaningful participation in the justice system. Indigenous women, girls, and 2SLGBTQ people must have guaranteed access to legal services in order to defend and assert their human rights and Indigenous rights.	Our investigation underscores the important role of independent legal advice and independent legal representation for survivors of crime. We highlight how access to legal support empowers survivors to assert their rights, navigate complex legal process, and protect their privacy throughout proceedings. We emphasize the need for adequately resourced, culturally safe, and trauma-informed legal services that are accessible regardless of income or geographic location. Such access is foundational to advancing equality and access to justice.	Enforceable Rights
5.24 Distinctions-based, intersectional data collection We call upon the federal government to amend data collection and intake-screening processes to gather distinctions-based and intersectional data about Indigenous women, girls, and 2SLGBTQ people.	Our investigation addresses the need for intersectional data to identify systemic patterns affecting specific groups, such as Indigenous women, girls and 2SLGBTQIA+ people. In our survivor survey, we attempted to capture identity-based demographic information, including distinction-based data, gender identity, and sexual orientation, to highlight disparities and inform our recommendations.	Methodology Data and Accountability

Calls for Police Services		
9.1 Justice system acknowledgement of colonialism and discrimination and need for respect and Indigenous leadership in justice responses We call upon all police services and justice system actors to acknowledge that the historical and current relationship between Indigenous women, girls, and 2SLGBTQ people and the justice system has been largely defined by colonialism, racism, bias, discrimination, and fundamental cultural and societal differences. We further call upon all police services and justice system actors to acknowledge that, going forward, this relationship must be based on respect and understanding, and must be led by, and in partnerships with, Indigenous women, girls, and 2SLGBTQIA+ people.	We recognize the profound effects of colonialism and systemic discrimination on Indigenous survivors' interactions with the justice system. In our reporting and investigations chapters, we examine how colonization and historical harms shape present-day barriers to reporting, particularly for Indigenous women, girls and 2SLGBTQIA+ people. These barriers, fear and mistrust, must be understood as a result of longstanding state and institutional violence.	Reporting and Investigations
Calls for Correctional Service Canada		
14.6 Needs-based mental health, additions, and trauma services We call upon Correctional Service Canada and provincial and territorial services to provide intensive and comprehensive mental health, addictions, and trauma services for incarcerated Indigenous women, girls, and 2SLGBTQ people, ensuring that the term of care is needs-based and not tied to the duration of incarceration. These plans and services must follow the individuals as they reintegrate into the community.	In collaboration with the Office of the Correctional Investigator, our lead investigator visited two federal women's corrections institutions to hear directly from criminalized women and gender diverse people about their experiences and access to supports. » A special thematic release specific to the experiences of criminalized survivors will be published, including recommendations to address access to supports.	Criminalized Survivors

14.8 Culturally safe, distinctions-based, trauma-informed model of care We call upon Correctional Service Canada to ensure its correctional facilities and programs recognize the distinct needs of Indigenous offenders when designing and implementing programming for First Nations, Inuit, and Métis women. Correctional Service Canada must use culturally safe, distinctions-based, and trauma-informed models of care, adapted to the needs of Indigenous women, girls, and 2SLGBTQ people.	Our special thematic release will highlight concerns that security classification tools and correctional planning processes may penalize incarcerated women, especially Indigenous women with complex trauma histories.	Criminalized Survivors
14.13 Eliminate strip searches We call upon Correctional Service Canada to eliminate the practice of strip-searches.	Our special thematic release will address the retraumatizing effects of strip searches on survivors of sexual violence.	Criminalized Survivors

Endnotes

- 1 Government of Canada, Statistics Canada. (2022, July 19). *Victimization of First Nations people, Métis and Inuit in Canada*.
- 2 The Assembly of First Nations (AFN). (2025, May 22). *Murdered & Missing Indigenous Women & Girls – Assembly of First Nations*. Assembly of First Nations.
- 3 Government of Canada, Statistics Canada. (2022a, April 26). *Violent victimization and perceptions of safety: Experiences of First Nations, Métis and Inuit women in Canada*.
- 4 National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*.