

Increasing Access to Justice for Victims of Sexual Assault via Reformed Police Protocols

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INTRODUCTION

Sexual assault laws in Canada appear comprehensive and adequate. However, the number of sexual assault cases that are reported to police remains low; and, for Indigenous sexual assault survivors, justice is rarely accessed through the formal Canadian criminal justice system. This research examines the role of the police in sexual assault cases. More specifically, it looks at how Canadian cities, like Saskatoon, might improve protocols and implement programs to ensure survivors of sexual assault, particularly those who are Indigenous, have access to justice. **The Truth and Reconciliation Commission (TRC) and Missing and Murdered Indigenous Women and Girls Inquiry (MMIWG)** provide an excellent roadmap for improving the process and outcome for everyone, not just those of Indigenous heritage.

STATISTICS

- **Sexual assault is a gendered crime.** 87% of all sexual assault survivors are women.
- As a result of colonization, colonial practices, and the legacy of residential schools, there is a significant rate of violence in many Indigenous communities. **Indigenous women are particularly vulnerable** to being sexually assaulted.
- Indigenous women are **three times more likely** to be the victim of a sexual assault than their non-Indigenous counterparts.
- **1 out of 5 Indigenous women** between the ages of 15 to 24 were victims of sexual assault.



- Sexual assault **statistics in Canada are estimates** due to the personal nature of the offence and the low percentage of cases that are reported.
- **1 in 20 incidents of sexual assault are reported to the police.**
- With an estimated 155 incidents of sexual assault reported to police per 100,000 people, **Saskatoon has one of the highest rates** of reported sexual assaults in Canada.

THE ROLE OF THE POLICE

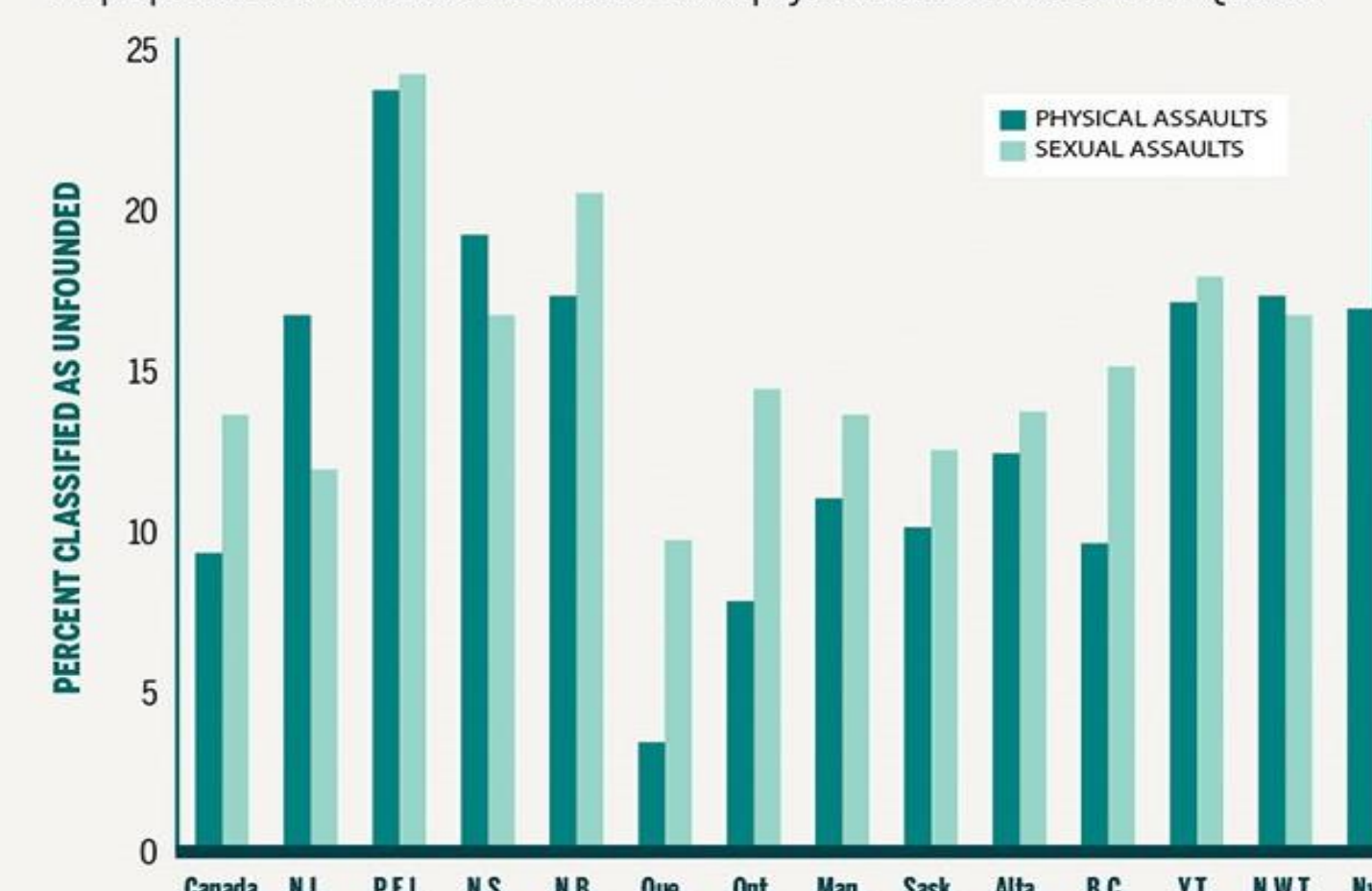
The police are the gatekeepers to the criminal justice system, and it is at their discretion to lay charges. Arguably, it is at the discretion of the police to determine who gets access to justice and who does not. It is vitally important then, that the police use their discretion wisely and fairly.

In Canada, the ideal application of sexual assault laws and protocols, and their actual application can be very different. In Saskatoon, the interval between initial contact with the police and first court date can often be up to two years.

Despite reforms, some stemming from developments like the introduction of *Canadian Victim's Bill of Rights*, which state that "it is important that victims' rights be considered throughout the criminal justice system", victims of sexual assault still face obstacles to accessing justice. As such, many cases of sexual assault go unreported, and of those that are reported, many are mis-classified as unfounded.

THE PROBLEM

ACROSS THE COUNTRY, IN 2017
the proportion of unfounded sexual assaults and physical assaults was lowest in Quebec



In 2017, a 20-month investigation conducted by the *Globe and Mail* examined how sexual assault cases are handled by police. The investigation revealed that 20% of sexual assault allegations were classified as "unfounded", which means that the investigating officer did not believe a crime had occurred or could be proven. The percentage of unfounded cases in Saskatchewan is in line with the national average at 19%.

Myths and stereotypes continue to lead police to believe that some victims of sexual assault may be partially to blame for their victimization. Women who deviate from the stereotypical "ideal victim" risk being viewed as less credible by police. Marginalized women with **low socioeconomic status** were at the most risk of being perceived as less credible.

Violence against Indigenous women is deep rooted in Canada as a result of systematic patterns of racism, marginalization, discrimination and misogyny, and is perpetuated by institutions like the police and the justice system. Given these systemic patterns of thinking, Indigenous women are far less likely than others to be perceived as "ideal victims", are deemed less credible, and are therefore further disadvantaged in their access to justice.

RECENT DEVELOPMENTS

In 2017 the Ottawa Rape Crisis Centre and the Ottawa Coalition to End Violence Against Women launched the "*Violence Against Women Advocate Case Review System*" (VAWACRS). The VAWACRS utilizes the expertise of a third party to review sexual assault case files that were labeled unfounded or where no charges were laid. In Regina, case files are reviewed by the **Sexual Assault Response Team (SART)**. The SART is comprised of members from the Regina Sexual Assault Centre (RSAC) and senior members of the Regina Police Service.

TOWARDS RECONCILIATION

A lot of work has already been done as to how Indigenous people can be honored, and laws implemented into the existing legal framework so that Canada can work towards creating a more just future for all. In 2015, the *Truth and Reconciliation Commission of Canada (TRC)* released its final report that outlines 94 calls to action that provide a path towards creating a joint vision of reconciliation between governments, organizations, and Indigenous communities. In 2019, the final report of the *National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG)* was released. As a result, the report outlines 231 calls for justice directed at governments, institutions, social service providers, industries and all Canadians.

RELEVANT TRC CALLS TO ACTION

- **40** - We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.
- **50** - In keeping with the United Nations Declaration on the Rights of Indigenous Peoples, we call upon the federal government, in collaboration with Aboriginal organizations, to fund the establishment of Indigenous law institutes for the development, use, and understanding of Indigenous laws and access to justice in accordance with the unique cultures of Aboriginal peoples in Canada.

RELEVANT MMIWG CALLS TO JUSTICE

- **5.7** - Includes calls for police oversight bodies to include Indigenous people, women and 2SLGBTQQIA people, with the power to oversee investigations in relation to police negligence or misconduct, including but not limited to rape and other sexual offences.
- **9.2** - Includes calls for police services to build respectful working relationships with Indigenous people by knowing, understanding, and respecting the people they are serving, including culturally appropriate services and protocols, and including Indigenous women, girls, and 2SLGBTQQIA people, on police services boards and oversight authorities.

PROPOSED SYSTEM IMPROVEMENTS

Implementation of programs such as **the Clan Mothers Healing Village** in Manitoba. The goal is to provide healing for the victims, increase victims' trust in the police, and reduce the number of cases that go unreported. This proposal honour the spirit of the *TRC* call to action 40, the *MMIWG* calls to justice 9.1, 9.2, 9.3, and others.

Review systems such as the **VAWACRS** should be implemented to ensure that cases are not inappropriately classified as unfounded, especially for Indigenous victims. The review panels should incorporate representatives from the Indigenous community (and other marginalized groups) to evaluate unfounded cases from the perspective of traditional Indigenous ways and laws. Incorporation of Indigenous law into the **VAWACRS** model will help strengthen relationships between all members of society. In addition, a more diverse review panel will be able to better recognize that one person's experience will be different than another's. This will ensure that all marginalized members of society are treated equally and fairly. This honours *TRC* call to action 50 and *MMIWG* calls to justice 5.7, 9.2, 9.3, 9.6, and others.

SOURCES

- Melanie Randall, "Sexual Assault Law, Credibility, and "Ideal Victims": Consent, Resistance, and Victim Blaming"
- Cristine Rotenberg, "Police-reported sexual assaults in Canada, 2009 to 2014: A statistical profile", online: (2017) Statistics Canada
- Canada, Truth and Reconciliation Commission of Canada, *Truth and Reconciliation Calls to Action*, Final Report
- Canada, The National Inquiry into Missing and Murdered Indigenous Women and Girls, *The Final Report of The National Inquiry into Missing and Murdered Indigenous Women and Girls*
- Ottawa Rape Crisis Center, "The Violence Against Women Advocate Case Review Project"
- *R. v. Beare* [1988] 2 SCR 387 at 410
- Clan Mothers Healing Village
- Saskatoon Police Service, "Sex Crimes/Child Abuse Section"
- Robyn Doolittle, "Unfounded How do you Fix a Broken System"
- Bar Chart - Statistics Canada

