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SEXUAL ASSAULT LEGISLATION IN CANADA

AN EVALUATION

Overview

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1.0 INTRODUCTION

1.1 Canada's Sexual Assault Legislation -- Background[1]

On August 4, 1982, Bill C-127, An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person, was passed by the House of Commons. On January 4, 1983, it became Canadian law. The sexual assault provisions of Bill C-127 made fundamental amendments to the Criminal Code with respect to the substantive, procedural, and evidentiary aspects of Canada's rape and indecent assault laws. Bill C-127 followed more than a decade of criticism and lobbying by women's groups and other interest groups advocating reform in policy and law with respect to rape in Canada. Critics in a number of common law jurisdictions, including Canada, were advancing two related analytical frameworks for the re-examination and reform of rape laws: one viewed rape as a crime of violence -- an abuse of power -- and not as a crime of uncontrollable sexual passion perpetrated by a "sick" stranger (Clark and Lewis, 1977); the other viewed the rules of law related to evidence and procedure in rape trials as practices that harassed and degraded victims and denied women the right to individual and sexual autonomy and equal rights under the law (Edwards, 1981).

Many critics argued that the rape law and societal perceptions of rape complainants influenced the behaviour of victims and criminal justice system practitioners. That is, the law itself was a factor in victims' reluctance to report: first, in the alleged tendency of police to treat complaints as fabrications; and second, in the failure of courts to prosecute and convict offenders.

We have sound empirical evidence from 1982 that the number of sexual assaults in Canada (including rapes, attempted rapes and indecent assaults) far exceeded the number reported to police. In 1982, the Ministry of the Solicitor General conducted a victimization survey in seven major Canadian urban centres, involving more than 61,000 telephone interviews. Respondents were asked to report on incidents that had occurred between January 1 and December 31, 1981. On the basis of this survey it was estimated that 17,300 sexual assault incidents had occurred, of which about 90 per cent involved female victims (sexual assault

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[1] Much of the material in Section 1 and portions of Section 2 were originally written by Patricia Begin while she was a research officer in the Department of Justice Canada. Her paper was subsequently published as "Rape Law Reform in Canada: Evaluating Impact," in Crime and Its Victims: International and Public Policy Issues (ed. Emilio Viano, New York: Hemisphere Publishing, 1989).

included rape, attempted rape, indecent assault or attempted indecent assault). Fewer than 40 per cent of sexual assault victims reported their victimization to the police (Solicitor General of Canada, 1985; pp. 2-3). Forty-four per cent of victims who failed to report their victimization were concerned about the reaction and attitudes of the police and courts towards this type of incident (Solicitor General of Canada, 1985; p. 4).

In addition to the relatively low rate of victim reporting, processing rape complaints through the criminal justice system involves progressive attrition. There is official discretion at each successive stage.

Police recorded as "founded" approximately 31 per cent of rapes "reported or known" to them in 1982. By comparison, that year, only four per cent of all assault complaints were recorded as unfounded (Statistics Canada, 1983). As with all incidents that come to the attention of police, unfounded does not necessarily mean that a crime has not occurred. Rather, unfounded reports are determined to be without foundation on the basis of evidence after a preliminary police investigation. Stanley (1985) offers a different set of explanations for case attrition in reported instances of sexual assault, focusing instead on the complainant attributes identified in research on rape in Toronto and Vancouver. These attributes can influence the filtering of rape complaints and the classification of cases as founded or unfounded.

> . . . the major factor in the judgment made to proceed with a case or to terminate investigation was . . . the character of the reporting victim. If the victim was drunk when she was first interviewed by the police, if she was a runaway teenager who did not live at home and was unemployed, if she was between the ages of thirty and forty years of age and separated, divorced, or living "idle", unemployed or on welfare, or receiving psychiatric care, generally the police would not pursue the case. Further, if the woman was not hysterical when she reported the crime, or if she waited too long to report the crime, or if she knew the offender, or if she voluntarily accompanied the offender to his residence, or accepted a ride in his car, it was likely that the police would not designate the case as 'founded' (Stanley, 1985; pp. 39-40).

Further, Stanley maintains that if police decided that a complaint of rape was founded, the likelihood of an alleged offender being charged, sent to trial and convicted was minimal.

Unfortunately, there is a dearth of contemporary information in Canada on convictions and sentencing patterns. The limited and dated information available indicates that in 1971 there were 2,107 reported rapes in Canada. Of these, 1,230 were classified as founded by the police, 119 persons were charged, and 65 of the accused were convicted of rape or a lesser charge. Thus, 54.7 per cent of those charged with rape were convicted of an offence, whereas in the same year, the overall conviction rate for criminal offences was 86 per cent (Kinnon, 1981; p. 34).

Under pre-1983 law, a convicted rapist could be sentenced to life imprisonment. Canadian sentencing data derived from six correctional jurisdictions reveal that in 1982, 69 per cent of persons convicted of rape and attempted rape and sentenced to two years or more were, in fact, sentenced to between two and five years (Hann, 1983; p. 40).

Some issues that motivated the call for reform included the definition of rape, the groups to be protected by the law, the sentencing structure, and the evidentiary and procedural rules governing rape trials. It was hoped that features of the new law designed to address these issues would influence reporting rates, founding rates, case outcome, and sentencing.

1.2 Historical Context and Legal Issues

Until January 1983, four criteria were required by statute to constitute an act of rape: (1) the act had to involve sexual intercourse -- that is, penetration; (2) the act had to be committed by a man with a woman; (3) the act had to be committed without her consent, or with her consent if the consent was extorted by threats or fear of bodily harm, was obtained by impersonating her husband, or was obtained by false and fraudulent representations as to the nature and quality of the act; and, (4) the act had to occur outside the bounds of marriage (Criminal Code, R.S.C. 1970, c. C-34, section 143). Each of the features of the rape law was criticized for the narrow definition of who can be raped, and who is culpable.

First, given the gender-specific character of rape, a sexual attack by a man against a man, a woman against a woman, or a woman against a man were not offences encompassed by the rape provisions of the Criminal Code. At the same time, many Canadians, including some working within the criminal justice system, acknowledged that rape and other sexual offences are typically committed by men against women and reflective of historically specific, socially structured, unequal power relationships between the sexes. Critics nonetheless assailed the law's focus on nonconsensual heterosexual sex to the exclusion of other forms of nonconsensual sexual acts and advocated that all persons should receive "equal

protection of and responsibility under the law, regardless of sex" (National Association of Women and the Law, 1981; pp. 2-3).

Second, and related to the above, the rape law offered protection only from nonconsensual sexual intercourse. Other forms of sexual violation involving varying degrees of violence and coercion were outside the scope of protection potentially afforded victims by the rape law. This critique generated the position that forcible sexual acts were in essence assaultive and could have equally serious consequences for victims. "Nonconsensual sexual contacts are first and foremost assaults and should be defined by the nature and degree of violence used rather than the kind of sexual contact" (Kinnon, 1981; p. 39).

Third, the rape law granted a man an absolute right to sexual access to his wife. That is, the codified law stated that husbands could not be charged with raping their wives; to state the obverse, the law did not protect wives from sexual intercourse against their will with their husbands. This feature of the rape law, which fundamentally sanctioned coercive sex between spouses, was condemned by critics as "one of the most serious deficiencies in the . . . offence of rape" (National Association of Women and the Law, 1981; p. 9). Further, it sustained the feminist argument that rape laws had historically developed to protect the property interests of men (Clark and Lewis, 1977; pp. 110-123).

Backhouse and Schoenroth (1983; p. 49) have argued that the spousal exemption in rape law derives from a statement made by Sir Matthew Hale circa 1878:

> [T]he husband cannot be guilty of rape committed by himself upon his lawful wife, for their mutual matrimonial consent and contract the wife hath given her self in this kind unto her husband which she cannot retract (Hale, 1880; p. 628) (emphasis added).

Fourth, a man convicted of having sexual intercourse with a woman who was not his wife and without her consent was legally liable to be sentenced to life imprisonment. This maximum penalty suggested that, in law, rape was indeed regarded as a very serious offence. The limited statistics reveal that in the main a life sentence was imposed only for rapes categorized as "heinous" or "sadistic", in which the victim suffered serious physical injury. The problem for reform advocates was the fact that the statute law was silent on the aggravating circumstances associated with the commission of a rape in determining a sentence. The rape law, which provided no guidelines or parameters for sentencing, generally resulted in seemingly arbitrary and light sentences. A chasm existed between legal theory and legal practice. On the other hand, juries were reluctant

to convict accused rapists where the severe maximum sentence did not reflect the severity of the alleged offence (Justice and Legal Affairs, No.78, April 27, 1982; p. 7). Some critics felt that the rape law and associated maximum penalty evolved from the concept that rape was an infringement of the sexual property of men -- a raped woman was damaged goods. Thus, the extreme sanction did not express the idea that rape was a coercive infringement of the right of women to be autonomous and self-determining in their sexual relationships. In her submission before the House of Commons Justice and Legal Affairs Committee, Clark said: "The rape law . . . had nothing whatsoever to do with giving women a right to sexual autonomy" (Justice and Legal Affairs, No. 91, June 1, 1982; p. 13).

This position was buttressed by the availability of the defence of consent in rape trials. The accused's mistaken belief about the existence of consent (e.g., the ambiguity of the complainant's behaviour resulting in the accused erring as to consent) and the debate over its availability as a defence in rape trials was subjected to strong public criticism as a result of two high court decisions. In 1980, the Supreme Court of Canada in R v. Pappajohn found that a mistake of fact about consent could be an effective reply to a charge of rape and that the accused's mistaken belief need not be reasonable, only honestly held (Boyle, 1984; pp. 76-77; Watt, 1984; p. 224). The decision did not render "reasonableness of mistake" irrelevant to the process of determining honesty of belief; however, the decision made clear that it is not required as a matter of law (McDonald, 1982a; p. 4). This Supreme Court of Canada precedent, and a British predecessor -- a 1975 judgment of the House of Lords in Morgan (Smart & Smart, 1978; p. 90) -- were condemned by critics as a "rapist's charter". Critics demanded that the belief in consent be based on reasonable grounds, and that objective tests apply if the accused claimed to have entertained an honest belief that the victim had consented (Justice and Legal Affairs, No. 98, June 17, 1982; p. 16).[2] In summary, the law of rape narrowly circumscribed what behaviour or acts constituted the offence, as well as to whom protection was extended and responsibility applied. As well, the sentences imposed were variable and deviated significantly from the maximum.

1.3 Evidentiary and Procedural Rules -- Pre-1983

The common law rules of evidence and procedure, when applied in a rape trial, often resulted in the harassment of complainants, rendering the trial process

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[2] A review of the case law following the 1983 legislative reform is available in two documents produced by the Department of Justice Canada as part of the sexual assault legislative evaluation research findings: Ruebsaat, 1985; Rowley, 1991.

an ordeal for victims and negatively prejudicing their testimony. The rules that informed the conduct of rape trials were: the doctrine of recent complaint, the corroboration rule, and the admissibility of evidence relating to the reputation and sexual history of the complainant. These rules of law were assailed as indignities that "twice victimized" rape complainants (Kasinsky, 1978; p. 158).

1.3.1 The doctrine of recent complaint

At common law, while statements made out of court may be used against a person when he or she is a witness in a judicial proceeding (either as an admission or for the purposes of cross-examination), one is generally not entitled to introduce evidence of statements made by a witness on other occasions for the purpose of confirming witness testimony. However, in rape cases a witness's out of court statements were admissible as an exception to the rule against self-serving statements. This exception, known as the doctrine of recent complaint, evolved from the early common law requirement that a victim of sexual assault was obliged to raise a "hue and cry" at the earliest opportunity and "was based on a particular fear of false accusations in rape cases and the notion that the 'truly virtuous' woman would complain of a rape at the first reasonable opportunity" (Ruebsaat, 1985; p. 50).

The doctrine of recent complaint was seen to deny legitimacy to the quality of rape victims' experiences as victims and their reluctance to complain due to humiliation, confusion, embarrassment, or fear. This led one commentator to argue that "the doctrine of recent complaint was an aberration in the criminal law, for in most criminal cases the silence of the victim was an irrelevant issue" (Stanley, 1985; p. 47).

1.3.2 The corroboration rule

Generally, at common law, the testimony of a witness to an incident was sufficient, if considered believable by a trier of fact, to establish the facts alleged. The requirement that the witness's testimony be corroborated by independent evidence where the witness was an accomplice in the crime, a child, or a complainant of rape or other sexual offences, constituted an exception to this common law rule (Watt, 1984; p. 165). The statutory rule that corroboration was mandatory in prosecutions for certain offences was enacted in 1892 and at that time did not relate to the common law crime of rape. With respect to rape, an associated rule developed through case law that required the judge to caution the jury against accepting the complainant witness's testimony in the absence of independent corroboration (Stanley, 1985; p. 52).

This requirement for corroboration of a rape complainant's testimony reflected a dual concern: that an accused not be convicted on the evidence of a single witness, and that women were untrustworthy when it came to making complaints of sexual offences (Stanley, 1985; p. 49).

This statutory rule was repealed in 1976. However, the judicial practice of cautioning the jury continued. While no longer a rule of law, a "rule of practice" developed by which the judge in a rape case was to exercise judicial discretion in order to assist the jury in determining the weight it might give to the uncorroborated evidence of a complainant (Watt, 1984; p. 168; Boyle, 1984; p. 158; McTeer, 1978; p. 141). According to McTeer, the unofficial rule was problematic because the practice of cautioning was "subject only to judicial discretion, but without any substantive guidelines for its exercise and without an explicit technical explanation of the law of corroboration" (1978; p. 142).

1.3.3 Previous sexual history of the complainant

Until 1976, common law rules governed the admissibility in rape trial proceedings of evidence of the complainant's sexual activity with persons other than the accused. The evidence was admissible if relevant to the existence or lack of consent of the complainant to sexual intercourse, the accused's belief in the existence of consent, or the complainant's credibility (Stanley, 1985; p. 75).

In cases where the complainant's consent to intercourse with the accused was at issue, the defence was permitted to cross-examine the complainant about her prior sexual activity with the accused and her general reputation for chastity. This line of questioning was premised on the assumption that, if the complainant had consented to sexual activity with the accused in the past, she likely had consented to this particular act of sexual intercourse as claimed by the accused (McTeer, 1978; p. 143). And, where defence questioning dealt with the complainant's reputation for chastity, the rationale for such questioning was that a sexually active woman would more likely consent to intercourse than a chaste woman. The complainant was compelled to answer questions related to the above issues concerning consent and her denial or refusal could be challenged or contradicted by evidence introduced by the defence (Watt, 1984; p. 188).

In cases where the complainant's credibility was at issue, the defence was permitted to cross-examine the complainant about her prior sexual history with persons other than the accused in an attempt to impeach her credibility. It was believed that if the moral character of the complainant was suspect, then her veracity or reliability was also suspect. In other words, a dubious link was established between the complainant's credibility and her penchant to be chaste --

a sexually autonomous woman denoted dishonesty (Stanley, 1985; pp. 77-82). Because the complainant's credibility in a rape case was a collateral issue, she could, however, refuse to answer, or the judge could exempt the victim from answering questions relating to her chastity. Further, the denial or refusal of the complainant to answer could not be contradicted (Watt, 1984; p. 188).

This rule of evidence, when applied to rape trials, was considered to prejudice the jury against the complainant and to turn the trial into a degrading and devastating ordeal for the complainant.

In an attempt to address the inequities suffered by victims and to encourage them to report rapes, Parliament introduced an amendment to the Criminal Code in 1976. It stated that no question could be asked as to the sexual conduct of the complainant with persons other than the accused unless reasonable notice had been given, with particulars of the evidence sought to be adduced and the judge, after holding an in camera hearing, had decided that to exclude the evidence would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant. However, judicial interpretation of the amendments ultimately granted the accused powers to cross-examine the complainant about her previous sexual conduct that went beyond what had previously been allowed. Watt notes two results reached by the courts that had the effect of undermining the potential positive effect of s. 142:

> . . . the phrase . . . "a just determination of an issue of fact in the proceedings, including the credibility of the complainant" elevated credibility, a collateral issue at common law, to the status of a material issue under the legislative provision. In consequence, [the complainant] could not refuse to answer questions as to her sexual history as her common law "privilege" was grounded upon the collateral nature of the issue and her denials in answer to the questions put, could be the subject of contradictory proof. Secondly, [the victim] was held to be a competent witness at the in camera hearing (Watt, 1984; p. 190).

In commenting on the judiciary's interpretation of section 142, Boyle concludes: "it seemed that an amendment touted as an improvement in the position of the complainant had the opposite effect" (1984; p. 135).

The 1976 amendment fell far short of the extensive changes to the rape law and trial process sought by most advocates of reform, who proposed a reconceptualization of sexual offences. Reformers believed that if sexual offences

were defined, processed and sanctioned as crimes of assault -- that is, as interference with another's physical person without consent -- the victim's sexual life would no longer be an issue in rape trials and, by logical extension, the focus of liability for the offence would (appropriately) shift to the behaviour of the accused. In turn, certain behaviour -- both by victims and criminal justice system personnel -- would be modified such that victims would be less reluctant to report sexual attacks, and that the criminal justice system personnel would be more responsive to victims.

The adoption by the law, and the implementation in the law, of the view that rape is a form of assault would do much to ensure greater reporting, less impact on the victim and those around her, more successful outcomes, and a more rational basis for sentencing the offender. (Clark, 1977; p. 14)

On the basis of this conception, it was advocated that a new legal framework of sexual offences be developed. To achieve these objectives, and in light of the substantial limitations that had been associated with the law, legal changes were sought in the definitions of what constitutes a sexual assault, the groups to whom legal protection extends, the sentencing structure, and the evidentiary and procedural rules that govern the legal processing of sexual assaults.

1.4 The Process of Reform

Rape law amendments or new statutes on rape have been enacted over the last decade in almost all states in the United States (Bienen, 1981) as well as in Australia (Sallman & Chappell, 1982), New Zealand (Barrington, 1984), and Canada.

In the early seventies in Canada, the rape law, the rape trial process, and rape victims began to receive greater attention by feminist and other groups. The problem of rape has achieved a significant profile as policymakers have come to see it as part of the problem of violence against women. In 1981, a Federal-Provincial Task Force on Justice for Victims of Crime was established in Canada. In the 1983 report of the task force, Justice for Victims of Crime, seven recommendations were made as to how justice, medical, and social systems should deal specifically with victims of sexual assault (Canada, 1983; pp. 162-163).

Three groups -- formal and grass roots women's organizations, academics, and government -- have provided the impetus in Canada to reform rape legislation. These groups also provided the intellectual, political, and legal

inspiration that shaped the framework of the new sexual assault laws adopted by Parliament in 1982 (Clark, 1977; Andrew, et al., 1982, Ellis, 1984).

In 1972 the first rape crisis centre opened in Vancouver, British Columbia, to provide rape victims with counselling, public legal education and support (Andrew, et al., 1982). Rape crisis centres developed in response to two not necessarily mutually exclusive phenomena. One was to fill the gap created by a dearth of community services to help rape victims cope with the particular problems they encountered as victims and as women. The second was to address the "secondary victimization" that rape victims experienced with criminal justice personnel and process (Clark, 1977; pp. 14-15). The strategic position of crisis centres as "grass roots" organizations having direct experience with rape victims provided fertile ground for workers to become organized and politicized promoting reform of the rape laws and criminal procedure in rape cases. By 1978 a National Association of Sexual Assault Centres had been formed in Canada. When the association met in that year, it reached a consensus that Canada's rape laws needed radical reform and that the sexual act's violent nature must be stressed (Andrew, et al., 1982; p. 10).

The rise of feminist and other research in North America on rape was coincident with the development and expansion of rape crisis centres in Canada (Brownmiller, 1975; Clark & Lewis, 1977a, 1977b; Chappell, Geis & Geis, 1977). Although feminists in the United States were the first to tackle the question of reforming rape laws, by 1973 Canadian research and interest about rape had emerged. Feminist research generated socio-historical accounts that documented the incidence of rape and rape laws, the processing of rape cases, and the treatment accorded to rape victims by the legal system. Clark speaks of a significant theoretical contribution by feminists to an understanding of the formulation and history of rape laws:

> The prevalent position among feminists is that rape is historically an offence not against persons but against property. In essence, it is an offence of theft and trespass, and as such, justifies punishment of the offender in accordance with the degree of damage caused in the trespass and the value of the goods stolen. On this theory, the only credible rape victims are those who are either virgins or those who are firmly ensconced within the bonds of monogamous marriage. This reflects the fact that women are socially and legally the property of particular men, their husbands or fathers, and that it is their sexual and reproductive functions which determine their property value . . . Also, women who show a wanton disregard for those properties in terms of which their property value is assessed, who have histories or reputations for "promiscuity", or "lewd" and "unchaste" behaviour, forsake their right to be protected from attacks on their sexual organs . . . rape laws are designed to protect only some women . . . . (Clark, 1977; p. 11).

This thesis was the outcome of research showing that the law would be prepared to protect women who are "true victims" -- that is, women in a relationship with a man. By extension, research exposed the law and trial procedures as: (1) a means of controlling women by disgracing those who live independently and exercise sexual autonomy, and, (2) refusing to protect women from sexual attacks against their will (Edwards, 1981; p. 70; Kasinsky, 1978).

The widespread consensus that the essence of rape in contemporary society was violence against women accompanied the position that, historically, rape in law meant a crime against a man's sexual and reproductive property. If the essence of the offence were to correspond with the law proscribing it, the law's emphasis had to shift from women's reproductive capacity to the assaultive nature of a sexual attack, an act violating a person's integrity and not limited to sexual intercourse (Ellis, 1984; p. 4). This new attitude called for reclassifying rape laws to place greater emphasis on the victim and the harm she received, whether that harm was physical or mental. Two well acknowledged Canadian researchers on the subject of rape argued that:

> So far as women are concerned, their sexual organs are no less, and no different a part of their person than their heads, eyes and limbs . . . since sexual organs are just part of the body, an attack on the sexual organs is as threatening to life and health as an unprovoked attack on any of the other bodily parts . . . (therefore) the same standards which apply to assaults against other parts of the body should also apply to attacks against the sexual organs (Clark & Lewis, 1977a; pp. 167-168).

This position, in a somewhat modified form, was advanced by national women's organizations in Canada. As early as 1975, the Canadian Advisory Council on the Status of Women incorporated into its policy agenda both the rape issue and the need for law reform in relation to sexual offences. Two years later the Council stated that one of its priority concerns would be "sexual offences in the Criminal Code and particulary rape and the plight of victims" (Canadian Advisory Council on the Status of Women, 1976; p. 1). In the same policy statement, the Council recommended that the Criminal Code be amended and rape replaced by four degrees of sexual assault (1976; p. 5). In the late 1970s and early 1980s, the National Association of Women and the Law and the National Action Committee on the Status of Women were identified as "the two groups . . . most visible . . . in lobbying for changes in rape laws" in Canada (Andrew et al., 1982; p. 10). In 1979, the National Association of Women and the Law recommended placing sexual assault offences under the heading "Offences Against the Person and Reputation" in the Criminal Code and replacing rape with a four-tiered structure of sexual assaults (National Association of Women and the Law, 1979).

In 1978, the Canadian Law Reform Commission's Working Paper on Sexual Offences (Working Paper No. 22) was released. The Commission recommended the creation of a new offence of sexual assault to replace rape, one that would not distinguish between "unwanted sexual contact and unwanted sexual penetration for the purposes of the substantive law," and would consider "aggravating circumstances of the assault" (Law Reform Commission, 1978a). The Commission's rationale behind its proposed changes to the criminal law, which would delete rape from the Code, was that

> to expunge from the Code all mention of that crime called rape, and to relegate it to a form of assault for all purposes would certainly effect a change in the characterization of the offence . . . [That] however . . . in the view of the Commission, does not affect the reprehensible nature of the act. Whether the change would be more effective in terms of

> increased protection for the dignity and inviolability of the person, or whether its greatest value would lie in alleviating the distress, humiliation and stigmatization that is associated with the present law is not clear. Hopefully both results would follow (Law Reform Commission, 1978a; p. 18) (emphasis added).

In November 1978, the Law Reform Commission's final recommendations on sexual offences were released (Report No. 10). The Commission proposed that the offence of rape be replaced with two new offences -- sexual interference and sexual aggression -- and that spousal immunity be abolished (Law Reform Commission, 1978b; p. 15).

In January 1981, the Minister of Justice introduced Bill C-53. The Bill recommended replacing the terms rape and indecent assault with the terms "sexual assault" and "aggravated sexual assault", thereby focusing on the violent nature of sexual offences. In addition, the Bill proposed substantial revisions to the laws of evidence applicable in rape trials as well reform in relation to the sexual exploitation of children, and prostitution. When the Parliamentary Committee on Bill C-53 met in 1982, briefs were submitted from the following women's groups in Canada: the National Association of Women and the Law; the Canadian Advisory Council on the Status of Women; the National Action Committee on the Status of Women; the National Council of Women; the Quebec Federation of Women; and the Saskatoon Rape Crisis Centre. All submissions insisted that in defining assaults of a sexual nature, the assaultive, violent aspect be given predominance (Justice and Legal Affairs, 1982: Issue Number 78; pp. 5-6; Issue Number 82; p. 48; Issue Number 91; pp. 12-13; Issue Number 95; pp. 4-5). In considering Bill C-53, the Justice and Legal Affairs Committee finalized its views concerning the law of rape and sexual assault, but was unable to reach a consensus over aspects of the Bill concerning prostitution and children. The outcome was Bill C-127, considered by one commentator to be "the most sweeping reform of the Criminal Code in recent time" (Price, 1984; p. 10).

1.5 The Sexual Assault Provisions of Bill C-127

When Bill C-127 came into force in January, 1983, the laws relating to the offences of rape, attempted rape and indecent assault were expunged from the Criminal Code and replaced by a trilogy of sexual assault offences: sexual assault; sexual assault with a weapon, threats to a third party or causing bodily harm; and aggravated sexual assault. The definition of a sexual assault was left for the courts to resolve. Each of the sexual assault offences carries a maximum penalty ranging from six months to life imprisonment, depending on the aggravating

factors associated with the sexual assault. Accompanying the nominal change from rape to sexual assault and the deletion from the Code of some crimes of coercive sexuality (rape, attempted rape and indecent assault), are statutorily defined factors which vitiate the defence of consent to any form of assault including sexual assault. These include the application of force to the complainant or third party, fraud, threats of force and the exercise of authority. A further change to the substantive law is the legal recognition of sexual assault in marriage whether or not the spouses are living together at the time the offence is committed. Also, the law is gender-neutral, thereby according men and women alike the same legal protection respecting sexual assaults.[3]

In an attempt to redress the injustices of the legal processes in rape trials, the Bill contains the following provisions:

- Corroboration is not required for a conviction and a judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

- The rules regarding recent complaint in sexual assault cases are repealed.

- With the exception of three specific circumstances, no evidence concerning the previous sexual history of the complainant with any person other than the accused is permitted.

- Determination of the admissibility of such evidence in one of the three specific circumstances detailed in the Code takes place at an in camera hearing at which the complainant is not a compellable witness.

- Evidence of sexual reputation is not admissible for the purposes of challenging or supporting the complainant's credibility.

- While an honest though unreasonable belief that there was consent is still a defence, the judge in a sexual assault trial is bound to instruct the jury to consider the presence or absence of reasonable grounds for that belief in determining whether or not it is honestly held.

The Bill attempted to address concerns expressed by advocacy groups. The new law changed the rules governing the kinds of evidence that could be used in a

[3] For a guide to sexual offences specified in the Criminal Code for 1982, 1983 and 1988, please refer to Appendix B.

trial. As well, it emphasized fair treatment for the victim. These shifts were aimed not only at making the justice experience more acceptable to the victim, but also at increasing the likelihood that the relevant facts would emerge in the courtroom.

Bill C-127 did not directly address child sexual abuse. Instead, it was the subject of a separate amendment to the Criminal Code. Bill C-15, An Act to Amend the Criminal Code and the Canada Evidence Act, was proclaimed on January 1, 1988, to improve the way the criminal justice system deals with child sexual abuse. The major reforms in the legislation included new Criminal Code offences pertaining specifically to the sexual abuse of children and the enactment of new evidentiary provisions to keep victims of child sexual abuse testifying in a court of criminal law. The Department of Justice Canada is currently reviewing the implementation of Bill C-15 for a parliamentary review in 1992.

1.6 Goals of the Reform Legislation

Impact studies of law are based on an assumption that legal goals are knowable. In point of fact, the goals of a law form "the basis for comparison -- the standard against which reality is measured" by an impact study (Feeley, 1976; p. 499).

The goals of the sexual assault legislation expressed by proponents of law reform before the passage of Bill C-127 included: (1) to make the law a more efficient instrument to repress sexual offences by making the criminal justice system more responsive (e.g., to assist police, juries, and judges); (2) to increase the deterrence effect of the law; (3) to establish more meaningful relativity between offences with respect to maximum sentences; and, (4) by extension to improve the experiences of victims with the criminal justice system in general and the trial process in particular (e.g., altering attitudes; alleviating the distress, humiliation and stigmatization) (Law Reform Commission, 1978a; p. 18; Kinnon, 1981; p. 79; Justice and legal Affairs, Number 91, 1982; pp. 12-13; McDonald 1982b; p. 14).

The fifth goal of the new law was to eliminate sexual discrimination in the criminal justice system, at least with respect to processing sexual offences. This goal is symbolic in essence, and therefore not amenable to the types of measures generally employed in impact assessment. In fact, Bienen (1980) notes in her review of rape reform legislation in the United States that it is not possible to measure whether rape law reform reflects a change in social attitudes toward women or whether the legislative change has produced a change in social attitudes.

However, in an impact assessment it is not important to determine causation but rather to assess the following: first, the problems and successes in implementing the new legislation; and, second, the extent to which the objectives of the new legislation have been achieved. Along the way we can hope to get a better idea of the degree to which the legislation itself had a causal effect on reaching the objectives. The final tasks of the exercise are to ensure that we learn from the experience and adapt accordingly.

The sexual assault legislation was intended to have an impact on various behaviours. They include victim reporting and experiences with the criminal justice process; criminal justice system practitioners' handling and processing of sexual assault complaints and cases; and, more generally, public attitudes towards the victims of sexual aggression. A research program set up by the Department of Justice Canada was intended to address each of these areas.

2.0 THE RESEARCH PROGRAM

2.1 Introduction

Recognizing the significance of the fundamental changes to the law, federal-provincial deputy ministers responsible for criminal justice decided at a meeting in June, 1983, that the Department of Justice Canada would evaluate the impact of the sexual assault provisions of Bill C-127.

The deputy ministers set objectives of the evaluation as follows:

- To describe how the new legislation has been implemented and how it works in the various segments of the criminal justice system.
- To determine how the legislation has effected changes in justice system practices, attitudes, and procedures.
- To determine how the legislation has affected victims' experiences with justice system practices.
- To determine unintended impacts of Bill C-127 on the experience of victims of sexual assault and criminal justice system practices.

In planning for the evaluation research, it was determined that, at a minimum, a three year hiatus from the law's proclamation to the start of the evaluation was desirable. It takes time for legal reform to be implemented and become incorporated into public knowledge and behaviour. Two commentators have noted that "attempts to assess the impact of policy innovations require the passage of sufficient time to allow one to make sense of the complex interaction of motives and behaviour that implementation encompasses" (Casper & Brereton, 1984; p. 143). Further, it was necessary for the courts to have decided and interpreted a sufficient number of cases. Case law is an important indicator of the impact of legislative change.

2.2 Research Output

The evaluation research program undertaken by the Department of Justice Canada began in 1985 (just over two years from the date of proclamation) and was completed in 1991. It is clear now that, in comparison with other evaluations of sexual assault reform, the Canadian evaluation initiative was substantial. This is due, in part, to its national scope. The research program included the

components described below. (A list of the documents resulting from the Department of Justice Canada sexual assault evaluation is contained in Appendix A.)

It should be noted that all components of the study were coordinated from within the Department of Justice Canada and all phases of the research were vetted through a national advisory committee. The advisory committee comprised representatives of the National Advisory Council on the Status of Women, Status of Women Canada, the Ministry of the Solicitor General of Canada, the Royal Canadian Mounted Police, Statistics Canada, and Health and Welfare Canada.

2.2.1 Baseline studies

In preparation for the full-scale evaluation, two baseline studies were carried out. These studies highlight research issues that informed the evaluation framework. The first study documents, on the basis of published and unpublished studies, rape victims' experiences with the Canadian criminal justice system prior to the amendment of the rape laws (Stanley, 1985). The second documents reported court decisions from the passage of the new sexual assault legislation in January 1983 to April 1985 (Ruebsaat, 1985).

2.2.2 Multi-site field research

The field research component of the evaluation is the most extensive aspect of the program of research and is a key source of data for the evaluation. It was conducted by five companies or individuals in six centres across Canada: Vancouver, British Columbia; Lethbridge, Alberta; Winnipeg, Manitoba; Hamilton-Wentworth, Ontario; Montreal, Quebec; and Fredericton-Saint John, New Brunswick. These sites were selected to reflect the country's regional character.

The field studies permitted the collection of detailed information on criminal justice system practices, on victims' experiences, and on key actors' opinions. Data sources for the field studies include: reviews of files from police, crown attorneys and sexual assault centres; interviews with key informants in the criminal justice system, and sexual assault centre workers and victims; and trial monitoring of sexual assault allegations. The file review covered the immediate pre law reform period from 1981 to 1982 and the post law reform period from 1984 to 1985.

In an attempt to ensure that definitions and measures were valid within the context of each research site, the parameters for the field research studies were set out prior to fieldwork. The issues were articulated, and an exhaustive list of data elements identified for each of the research components. Measures were taken to account for variations in local priorities, concerns and procedures in the administration of justice. This was primarily the function of local steering committees. These committees commented on the relevance of investigating particular data elements and the prudence of the chosen methodology as it applied in a site.

2.2.3 Survey of front-line agencies

A survey of front-line agency personnel was carried out to ascertain how victims were treated before and after the legal changes. Included in this analysis were respondents from police-based victim/witness assistance programs, rape or sexual assault centres, and hospital-based treatment forensic units. These data are essentially qualitative since only a small number of agencies were surveyed.

2.2.4 Second review on sexual assault case law

In this review, selected cases from May 1985 to April 1988 relating in any way to the sexual assault legislation were analyzed. The report provides insight into how judges have interpreted the new law and how lawyers can be expected to build their own legal arguments.

2.2.5 Analysis of national reporting, founding and charging data for sexual assault and other serious crimes (1977-1988)

Using national Unified Crime Reports,[4] a study was undertaken to identify trends in the number and rates of cases reported and founded, and charging patterns associated with rape and sexual assault in Canada over the 11 year period from 1977 to 1988. Similar numbers and rates of reporting, founding and charging for the three levels of assault and manslaughter are also analyzed as a basis for comparison.

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[4] Unified Crime Reports are collected from police forces across Canada by the Canadian Centre for Justice Statistics, an arm of Statistics Canada.

2.2.6 Homicide in the course of sexual assault

A tragic minority of sexual assaults end in death for the victim. This study examines the available statistical data on all homicides that have occurred during the commission of a rape or a sexual assault (since 1974). This study provides a statistical profile of the victims of rape/sexual assault homicides, the suspects, and the offence itself (including situational contingencies).

2.2.7 Analysis of sentencing patterns in cases of sexual assault

In the absence of national data on sentencing in Canada, this report draws upon secondary data sources, including the new computerized sentencing information system in British Columbia.[5] It addresses selected issues with respect to sentencing in cases of sexual assault. To the extent possible and where data permit, it deals with sentences imposed across the country both before and after the 1983 law reform, and the variation in current sentences imposed from region to region.

2.3 Some General Issues in Assessing Legislative Impact

Two methodological considerations have emerged from a review of research intended to assess legal impact. One concerns the difficulty of measuring the impact that the law itself has had on observed changes in behaviour and attitudes. The other concerns the limit of legal prescription or proscription on motivating or modifying behaviour or attitudes.

First, impact implies, inter alia, "effect" or "influence". Therefore, to refer to the impact of legal policymaking is to take an instrumental view of law -- that is, one that sees law as an instrument to influence or order individual or group behaviour to achieve particular ends or goals. In this formulation, law is regarded as an independent variable. The pivotal question in legal impact studies is: What has been the impact of the law on behaviours, practices, experiences, attitudes, etc., that the law was designed to affect or influence? An ideal impact research design would involve a control group design in which two jurisdictions, identical in every respect, would be randomly chosen. In one location the law reform would be introduced, in the other it would be withheld. The strategic issue in the impact assessment would be how to obtain estimates of the differences between legal

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[5] The Sentencing Database System produced by the Legal Information Systems and Technologies (LIST) Foundation, British Columbia.

behaviour and practices in two jurisdictions. From this determination, practices and behaviour motivated by the law reform could be distinguished from other behaviours or practices occurring independently or in spite of law reform.

In Canada, the authority to enact criminal legislation is within the mandate of the federal government while the administration of justice is a provincial responsibility. Therefore, criminal legislation in Canada is national in scope as soon as it is proclaimed in force. For research purposes, this precludes a control population for the purposes of drawing comparisons.

In addition, implementation of legislative initiatives is influenced by a number of extra legal factors including available resources, time, emphasis placed on training of the various practitioners in the field, and pressures that emanate from within and outside the criminal justice system either to maintain the status quo or to make changes. These factors can affect how evenly criminal legislation is implemented across the country and will affect our ability to generalize across sites.

The second methodological consideration concerns the limit of laws, once implemented, on motivating or modifying behaviour and attitudes. Research has not borne out the notion that once a law has been enacted and made public, it becomes part of the stock of knowledge of society, and that behaviour is automatically adjusted accordingly. Kutchinsky's (1973) review of studies related to "knowledge and opinion about law" found no empirical evidence to support this direct linkage between law and legal attitudes or behaviour. This fact led Kutchinsky to conclude that "knowledge about law is neither a necessary nor a sufficient condition for conformity to the law" (Kutchinsky, 1973; p. 104).

On the other hand, certain changes in behaviour will probably result only with an increased public awareness of a new law; if so, there may be some degree of direct linkage between legislation and public behaviour. For example, the evaluation research identified a significant increase in the rate of reporting of sexual assaults after the 1983 legislation -- a change that may (or may not) be attributable to widespread public awareness of the legislative changes.

Historical factors and self-motivation make it possible for behaviour consistent with the goals of the sexual assault legislation to have occurred in any event, irrespective of the law reform. As Lempert noted:

> Any research design purporting to deal with the impact of a particular law on the behaviour of a populace will have to make certain that the law is indeed more than an expression of the popular will of the people and that the people would be acting differently without the law (Lempert, 1966; p. 121).

As mentioned earlier (page 27, above), Bienen (1980) points out that the law itself may reflect a change in attitudes or it may have produced perceived changes.

In Canada, certain historical factors that might affect the behaviour of victims, offenders and people working in the criminal justice system, concerning sexual assault, include:

- The changing status of and advances made by women in the social, economic and political domains, and the potentially empowering effect of these developments;

- An international movement striving for gender equality in the courts, aiming to eradicate attitudes and behaviours in the legal system based on sex stereotypes, and resulting in the establishment of task forces in 23 American states by 1988. This movement has focused current media scrutiny and reporting on judicial comments made during trials and sentencing decisions, particularly in cases of sexual assault and child sexual abuse;

- The visibly heightened awareness and focus on victims of crime in general and female victims in particular, accompanied by government initiatives and services;

- The establishment of sexual offence investigation divisions in police forces where continuity and expertise have developed regarding the investigation of complaints and the gathering of evidence;

- An increased sensitivity to complainants of sexual offences evident by the appointment of female officers to sexual assault squads;

- The expansion of sexual assault support centres (originally, rape crisis centres) providing counselling and, in some centres, encouraging victims to report victimizations to police;

- The addition of specialized forensic teams to hospital intake services, ensuring the preservation of evidence and, in some cases, providing psycho-social care and follow-up;

- The women's lobby that long preceded the passage of Bill C-127; and

- The ongoing movement towards rape law reform in other countries.

The proclamation in 1983 of the sexual assault legislation coincided with a heightened community awareness of the problem of child sexual abuse. (By January 1988, Bill C-15, designed to deal with specific offences pertaining to sexual offences against children, had been proclaimed in force.) Possibly this new level of awareness led to increasing the general public's sensitivity to victims of sexual abuse, whether the victims are children or adults.

All of these factors and others serve as intervening variables that can easily interfere with one's ability to attribute perceived changes to the law reform. Thus, while research results are extremely important in helping us understand the effectiveness of the new sexual assault legislation, we must also recognize that coincidental changes in public attitudes will inevitably confound the identification of simple causal relationships between law reform and behaviour.

2.4 Data Sources Used in the Research Program

2.4.1 Criminal justice system files

The individual site researchers analyzed reported sexual offences both before and after the legislation came into force. They did this through an analysis of files from crown attorneys and the police. Because the offence categories vary before and after the legislative change, there is a limit to how much the data can be generalized. As well, data availability is not consistent among or even within sites.

The offence sample numbers in each site do not reflect total cases reported to police during the two time periods. For comprehensive statistics on a provincial basis, the reader is directed to the statistical analysis report (Roberts, 1990b -- listed in Appendix A).

2.4.2 Key informant interviews

As a component of the site research, interviews were conducted with key informants who had experience working either within the criminal justice system or in related support or service agencies both before and after the 1983 amendments where possible. Practitioners were asked about their views regarding some of the procedural changes and their practices under the new law. Victims were interviewed as well.

While the responses of the key informants are important because of their extensive knowledge of the subject, the numbers interviewed are small and the data are largely impressionistic. Interviews are valuable in substantiating other data sources, however, and are used in this way in the research. They set the context for interpreting quantitative findings, often giving explanations for unexpected results.

2.4.3 Surveys of sexual assault centres and other victims' services

Interviews were conducted with workers in 39 sexual assault centres (formerly known as rape crisis centres) and with workers in hospital-based and police-based victim service agencies. Respondents were asked about their own perceptions of any differences between the pre and post implementation periods, and were also asked to comment on their perceptions of whether their clients' views of sexual assault laws had changed since the introduction of Bill C-127. Using data from sexual assault centres, researchers also attempted to estimate the incidence of sexual assaults reported to crisis centre workers but not to the police.

2.4.4 National trends -- the Canadian Centre for Justice Statistics database

The Uniform Crime Reporting Survey, administered by the Canadian Centre for Justice Statistics at Statistics Canada, includes police statistics on all Criminal Code and other federal statute infractions brought to its attention. Published reports include number of incidents reported (actual and unfounded), clearances, and numbers of persons charged (adults or juveniles) or dealt with through informal means.

These data provide an opportunity to monitor the legislation over the long term. In the present research program, both national and provincial data have been used to analyze reporting, founding, and charging rates (see Roberts, 1990b - listed in Appendix A).

2.4.5 Special studies of the criminal justice system

A study of sentencing in the area of sexual assault and an examination of homicides committed in the course of sexual assault were also undertaken as part of this initiative. These are described under the discussion of research output.

2.4.6 Surveys of the Canadian public

Four years after the sexual assault legislation was proclaimed, a representative sample of 1,522 Canadians were asked a series of questions about the law. The findings from this survey are described in Chapter 3.0.

2.4.7 Analyses of case law in the area of sexual assault

The Department of Justice Canada has commissioned two case law reviews in the area of sexual assault since 1983 (see the discussion of research output, above). Case law decisions offer a unique way of monitoring the administration of criminal justice. While problematic from a statistical perspective in the sense that cases are reported on a selective basis, the law of precedent is an evolving source of guidance for lawyers and judges. Since case law shapes decisionmaking in the courts, it provides another perspective from which we can trace the effects of the law.

2.5 Summary Remarks

In her review of Sexual Assault by Christine Boyle (1984), Elizabeth Sheehy comments: "A major piece of research that Boyle has declined to tackle, given the timing of her book, is whether the new sexual assault amendments have in fact changed anything other than the name of the offence of rape" (Sheehy, 1985; p. 676). The evaluation research was to determine changes since the 1983 amendments. Thus far in this paper we have highlighted some of the historical forces and issues that initiated the call for reform of Canada's rape law, and the goals and expectations associated with the law reform. As well, the paper has described the research program developed to assess the impact of this major legislative initiative and some of the methodological challenges associated with the research project.

3.0 FINDINGS

3.1 Reporting Rates -- Are More Victims Coming Forward?

3.1.1 The national picture

One of the major aims of the 1983 legislation was to encourage a greater proportion of sexual assault victims to report incidents to the police. Research in Canada prior to the change in law demonstrated that sexual assault is one of the most underreported offences. The Canadian Urban Victimization Survey (conducted in 1982), revealed that fewer than one-half of all incidents of sexual aggression were reported to the police. This survey confirmed the widely held belief that many victims did not report incidents because of their concerns about the attitudes of personnel in the criminal justice system towards victims of sexual aggression. Many victims also failed to report sexual assaults because they feared reprisals from the offender.

Bill C-127 contained a number of innovations designed to improve the treatment of victims of sexual assault, and thereby (it was hoped) to improve perceptions of the system, leading in turn to a rise in reporting rates. As well, the new legislation extended the range of possible victims by including spouses and victims of the same sex as the offender. An important question addressed in the evaluation initiative of the Department of Justice Canada was whether the legislative intervention had affected the reporting of incidents of sexual aggression in Canada.

Several information sources were examined during the research. The Canadian Centre for Justice Statistics (CCJS) provided the most comprehensive data at the national and provincial/territorial levels. These statistics (derived from the Uniform Crime Reporting system based on information provided by individual police forces) provide a portrait of national trends in the reporting of sexual assault. However, since the CCJS data do not provide information about characteristics of the complainant, other databases were also useful. These included the multi-site study that formed part of the evaluation of the 1983 legislation by the Department of Justice Canada.

There has been a dramatic increase in the number of sexual assault reports made to police since 1983. As Table 1 shows, 29,111 incidents of sexual assault (Levels I, II, and III combined) were reported to police across Canada in 1988 (the most recent year for which data are available). This represents an increase of 110 per cent over the 13,851 incidents reported in 1983. Moreover, it far

Table 1 **Number[a] of Reports of Crimes of Sexual Aggression[b], Canada and Provinces[c]**

	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
CANADA	10,285	10,687	11,557	12,077	12,376	12,848	13,851	17,323	21,300	24,114	26,443	29,111
NFLD.	204	212	188	214	220	211	262	276	345	548	688	869
P.E.I.	20	28	18	31	60	33	51	107	107	78	95	118
N.S.	273	312	331	386	348	348	360	511	528	675	837	896
N.B.	147	189	200	243	215	165	232	310	455	630	702	870
QUE.	2,161	1,982	2,520	2,313	2,248	2,130	2,090	2,495	2,807	3,267	3,476	3,778
ONT.	3,887	4,000	4,236	4,334	4,348	4,469	4,773	6,315	8,037	8,374	9,234	9,769
MAN.	513	527	599	583	651	646	836	993	1,222	1,310	1,465	1,746
SASK.	345	356	358	397	386	484	565	618	756	938	941	1,046
ALTA.	1,074	1,237	1,235	1,472	1,622	1,760	1,930	2,192	2,764	3,021	3,069	3,484
B.C.	1,553	1,726	1,753	1,967	2,146	2,473	2,544	3,296	3,970	4,936	5,558	6,140
Y.T.	17	25	25	39	31	28	51	59	75	88	106	86
N.W.T.	91	93	94	98	101	101	157	151	234	209	272	309

Notes:

[a] Reported or known to police.

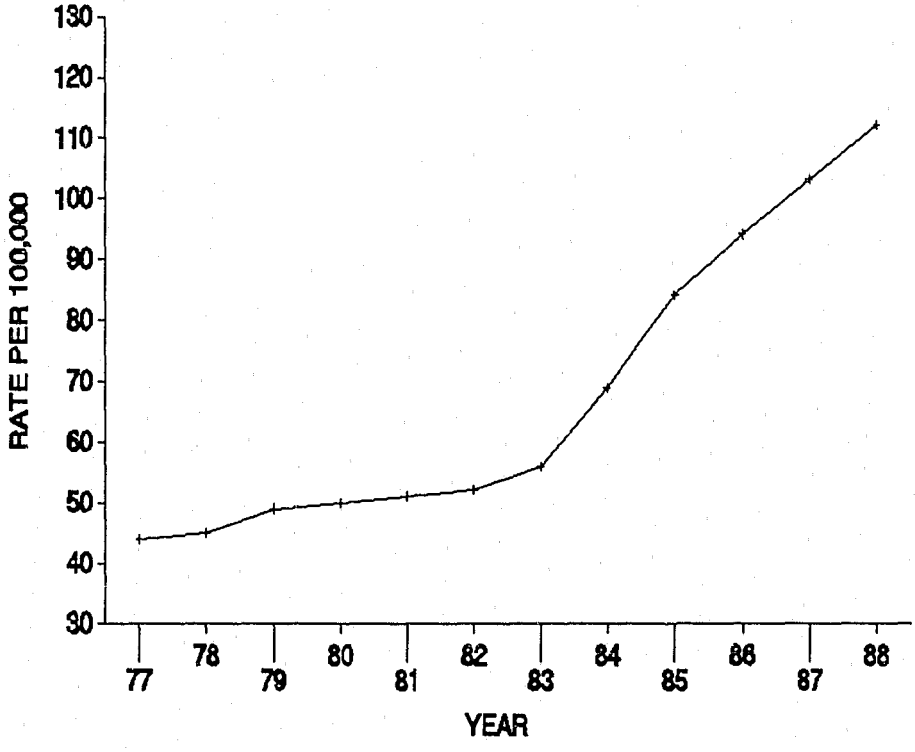
[b] Rape, attempted rape, and indecent assault prior to 1983; sexual assault after 1983.

[c] Source: Julian V. Roberts, An Analysis of National Statistics, *Sexual Assault Legislation in Canada : An Evaluation, Report No. 4,* Department of Justice Canada, Ottawa: 1990b.

exceeds the percentage increase in the reporting of nonsexual assaults made over the same time period.[6]

In 1982 the national rate of reporting was approximately 52 per 100,000 population; by 1988 the rate had risen to 112 per 100,000 population. The trend since 1977 can be seen in Figure 1, which compares the reporting rates of offences of sexual aggression over a 12 year period.

Figure 1 Sexual Assault Reporting Rates (1977-1988 Canada)[a]



[a] Source: Julian V. Roberts, An Analysis of National Statistics, *Sexual Assault Legislation in Canada : An Evaluation, Report No. 4*, Department of Justice Canada, Ottawa: 1990b.

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[6] This is not to equate the offences of sexual assault and nonsexual assault since these two types of offences differ significantly in many ways, including the possible impacts on the victim. Comparison in terms of reporting rates is used as a base against which one could assess more general changes in reporting and police recording patterns over the same period.

In 1988 the vast majority (95 per cent) of incidents reported to the police were classified at the first level of sexual assault. Sexual assault with a weapon (Level II) accounted for four per cent of reports, and aggravated sexual assault (Level III) one per cent. Furthermore, as Table 2 shows, the percentage of sexual assault incidents classified at Level I rose steadily, from 88 per cent in 1983 to 95 per cent in 1988, while Level II declined from seven per cent to four per cent and Level III decreased from five per cent to one per cent.

Looked at another way, the number of sexual assault incidents that were classified by police as "aggravated sexual assault" (Level III) declined by 39 per cent since 1983. Over the same period there was a small increase in reports classified as "sexual assault with a weapon or causing serious harm" (Level II), but virtually all of the large increase in reported incidents was accounted for by the first level of sexual assault. Reports at the first level increased by over 100 per cent since 1983. Further research is required to understand why there has been such a prolific increase in reporting at the lowest level of sexual assault, and a decrease in the absolute number of reports classified at the most serious level.

In summary, the sexual assault reporting rate has shown a steady annual increase since the sexual assault law reform occurred in 1983. As well, the rate of increase on reported cases is greater for this offence than for other violent offences.

3.1.2 Provincial and territorial variation in reporting rates

The national statistics provided by the Canadian Centre for Justice Statistics reveal a considerable degree of variation in reporting rates among the different provinces and territories. In 1988, the national rate of sexual assault reports was 112 incidents per 100,000 population. However, the rate varied from 57 per 100,000 in Quebec to almost four times that number in British Columbia in 1988 (206 per 100,000).[7] Table 3 compares the national and provincial/territorial reporting rates for the years 1977 through 1988.

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[7] While the Northwest Territories actually had the highest reporting rate per 100,000, this figure cannot be used for comparison purposes because of the relatively low population of the Northwest Territories and the low absolute number of sexual assault reports.

Table 2 **Frequency Distribution of Three Levels of Sexual Assault Reported in Canada 1983 - 1988[a]**

YEAR	SEXUAL ASSAULT I[b] No.	(%)	SEXUAL ASSAULT II[c] No.	(%)	SEXUAL ASSAULT III[d] No.	(%)
1983	12,241	(88)	925	(7)	685	(5)
1984	15,805	(91)	878	(5)	640	(4)
1985	19,756	(93)	918	(4)	590	(3)
1986	22,623	(93)	1,001	(4)	490	(3)
1987	24,949	(94)	1,034	(4)	460	(2)
1988	27,655	(95)	1,041	(4)	415	(1)

Notes:

[a] Source: Julian V. Roberts, An Analysis of National Statistics, *Sexual Assault Legislation in Canada : An Evaluation, Report No. 4*, Department of Justice Canada, Ottawa: 1990b.

[b] Criminal Code s. 246.1 from 1983 to 1985; s. 271 from 1986 to present.

[c] Criminal Code s. 246.2 from 1983 to 1985; s. 272 from 1986 to present.

[d] Criminal Code s. 246.3 from 1983 to 1985; s. 273 from 1986 to present.

Table 3 **Sexual Assault Reporting Rates[a], Canada and Provinces[b]**

	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
CANADA	44	45	49	50	51	52	56	69	84	94	103	112
NFLD.	36	38	33	38	39	37	45	48	59	101	121	153
P.E.I.	17	23	15	25	49	27	41	85	84	61	75	92
N.S.	33	37	39	46	41	41	42	59	60	76	95	102
N.B.	21	27	29	35	31	24	33	43	63	87	99	122
QUE.	34	31	40	36	35	33	32	38	43	49	53	57
ONT.	47	47	50	51	50	51	54	71	89	91	100	104
MAN.	50	51	58	57	63	62	80	94	114	121	136	161
SASK.	37	38	38	41	40	49	57	61	74	92	93	103
ALTA.	56	62	60	69	73	76	82	94	118	126	129	146
B.C.	62	68	68	74	78	89	90	115	137	170	190	206
Y.T.	77	109	114	177	135	117	232	268	326	383	424	344
N.W.T.	212	211	214	218	220	215	320	302	459	410	523	594

[a] Incidents reported or known to the police, per 100,000 population.

[b] Source: Julian V. Roberts, An Analysis of National Statistics, *Sexual Assault Legislation in Canada : An Evaluation, Report No. 4*, Department of Justice Canada, Ottawa: 1990b.

We cannot tell from these data whether the differences in reporting rates reflect actual differences in rates of assault among the jurisdictions, or whether the variation was because victims were more likely to report incidents in some jurisdictions than in others. It is possible that both explanations are responsible for the inter-jurisdictional variations. Further work is required to fully understand the phenomenon of reporting and recording of cases of sexual assault in different provinces and territories across Canada.

3.1.3 Reporting rates in the study sites

The six site studies[8] generally support the national trend higher reporting rates, but the rates in individual cities do not necessarily match those of the provinces in which they are located. In part, this is because the provincial rates are determined by aggregating the rates indicated by the various police jurisdictions throughout each province.

The figures show that in five of the six sites there was an increase in the reporting rate between the prereform and post reform periods, while the Vancouver site study suggests that the rate in that city actually decreased.[9] Table 4 gives the percentage increase or decrease in reporting rates for each site and for Canada between 1981-82 and 1984-85.

3.1.4 Discussion: Sexual assault reporting rates

The legislation appears to have had the desired effect insofar as increases in reporting rates are concerned. Reporting rates have increased significantly at both at the national and provincial/territorial levels since Bill C-127 was proclaimed in 1983. Furthermore, the rate has increased steadily since 1983. Nationally, the reporting rate in 1982 was 53 reports per 100,000 population; by 1988 it had risen to 112 per 100,000 -- an increase of 115 per cent.

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[8] The site studies were undertaken in Vancouver, Lethbridge, Winnipeg, Hamilton-Wentworth, Montreal, and Fredericton-Saint John.

[9] The Vancouver data are problematic in that there appears to be a significant discrepancy between the change in reporting rate between 1981-82 and 1984-85 in Vancouver (a decrease of 23 per cent) and the overall change in the rate for British Columbia (an increase of 57 per cent).

Table 4 Percentage Change in Reporting Rates from 1981-1982 to 1984-1985[a]

Research Site	% change
Vancouver	- 23
Lethbridge	+ 134
Winnipeg	+ 38
Hamilton/Wentworth	+ 39
Montreal	+ 16
Fredericton/Saint John	+ 142
Canada	+ 53[b]

[a] The site figures are based on police data collected during individual site studies.

[b] This figure is based on data from the Canadian Centre for Justice Statistics.

Police classified the vast majority of reported sexual assault offences in 1988 (95 per cent) as Level I. Level II accounted for only four per cent of cases, while Level III assaults amounted to just one per cent of all reported incidents. The trend since 1983 has been towards more Level I classifications and fewer Level II and Level III classifications. The reason for this trend is unclear at this time and will require further research work with police.

The immediate questions are: on a yearly basis are there, as the figures suggest, increasingly more Level I offences relative to Level II and Level III offences? If not, are police redefining their approach to classifying offences, and is this action resulting in an unwarranted number of Level I classifications relative to Level II and III incidents? Does the legislation need to be more explicit in its definition of the three levels of sexual assault? These questions are raised later in section 3.3.1, "Attrition in Cases of Sexual Assault."

3.2 The Offence and the Individuals Involved

3.2.1 Types of sexual offences

Researchers in each of the site studies collected information comparing the repealed offences (rape, indecent assault male and female) to the three levels of sexual assault. Table 5 indicates the frequency of cases recorded in various offence categories.

Table 5 reveals a striking difference in police classification of occurrence reports. In the prereform period indecent assault against a female person and rape and attempted rape (which was the more serious infraction in the prereform period) had generally similar levels of police occurrence reports -- that is, between 45 per cent and 55 per cent (with the exception of Hamilton-Wentworth).

The situation is much different in the post reform period, with sexual assault Level I (the least serious level of sexual assault) accounting for the largest number of cases -- that is, between 55 per cent and 85 per cent of all police occurrence reports of sexual offences in the study sites.

Table 5 Type of Offences Sampled by Time Periods and Study Sites - Police Records

	PREREFORM			POST REFORM		
	R/AR[a]	IAF[b]	OTHER[c]	LEVEL 1	LEVEL 2	LEVEL 3
VANCOUVER	88 (45%)	100 (51%)	9 (4%)	144 (67%)	61 (28%)	13 (6%)
LETHBRIDGE	21 (44%)	21 (44%)	6 (12%)	109 (85%)	2 (1%)	1 (1%)
WINNIPEG	152 (45%)	155 (46%)	29 (9%)	403 (63%)	8 (1%)	2 (0.5%)
HAMILTON	48 (24%)	138 (68%)	16 (8%)	193 (79%)	42 (17%)	10 (4%)
MONTREAL	242 (54%)	170 (38%)	40 (9%)	157 (55%)	71 (25%)	38 (13%)
FREDERICTON	23 (44%)	24 (46%)	--	109 (85%)	3 (2%)	3 (2%)

[a] Rape and attempted rape.
[b] Indecent assault against a female person.
[c] Other sexual offences, including indecent assault against a male person, bestiality, buggery, seduction, etc.

3.2.2 Severity of the offences

Tables 6 and 7 describe the nature of the sexual contact between offender and victim as recorded in files kept by police and sexual assault centres.

These tables show that there is no consistent pattern indicating that more or less infractions involving penetration have been committed in the post reform period than in the prereform period. With two exceptions (Lethbridge in the

prereform period and Fredericton-Saint John in the post reform period), in each study site and in both time periods the incidents of sexual touching recorded in police files is greater than the incidents of penetration. Furthermore, there is no remarkable change over the two time periods.[10]

Table 8 provides information on the use of force by offenders and on physical injuries sustained by victims as recorded by police. Table 9 addresses the same question using data from files kept by sexual assault centres.

As with findings for the type of sexual contact, there is no indication that offences are becoming more serious in terms of either force exerted on victims or injuries to victims. Vancouver is the only exception showing increases in both indicators between prereform and post reform periods according to police data.

Table 6 Type of Sexual Contact by Study Sites and Time Periods -- Police Records

	PREREFORM		POST REFORM	
	PENETRATION	TOUCHING	PENETRATION	TOUCHING
VANCOUVER	88 (45%)	109 (55%)	97 (44%)	121 (55%)
LETHBRIDGE	17 (34%)	14 (28%)	24 (21%)	45 (39%)
WINNIPEG	105 (34%)	130 (42%)	155 (31%)	195 (39%)
HAMILTON	72 (36%)	127 (64%)	101 (42%)	139 (58%)
MONTREAL	326 (27%)	630 (53%)	521 (29%)	1083 (61%)
FREDERICTON	16 (33%)	25 (52%)	41 (35%)	36 (31%)

[10] Files maintained by sexual assault centres consistently record more incidents involving penetration than do police files. Whether this is a characteristic of the incidents reported to sexual assault centres as compared to police, (a possibility supporting the hypothesis that cases reported to centres differ from cases reported to police), or whether this results from different recording practices, remains unknown on the basis of this information alone. Based on other quantitative and qualitative information contained in the site reports, it is probably fair to state that this divergence can be explained by a combination of the two factors. Nevertheless, there remains an absence of significant change between the two time periods in terms of the frequency of offences involving intercourse for the sexual assault centres, as well as for the police.

Table 7 **Type of Sexual Incident by Study Sites and Time Periods -- Files from Sexual Sexual Assault Centres**

	PREREFORM		POST REFORM	
	INTERCOURSE	OTHER	INTERCOURSE	OTHER
VANCOUVER	--	--	72 (61%)	9 (8%)
LETHBRIDGE	17 (34%)	33 (66%)	24 (21%)	90 (79%)
WINNIPEG	31 (81%)	7 (18%)	48 (8%)	7 (12%)
HAMILTON[a]	--	--	--	--
MONTREAL	--	--	100 (86%)	16 (13%)
FREDERICTON	27 (87%)	4 (12%)	74 (91%)	7 (9%)

[a] Data not available for Hamilton.

Table 8 **Use of Force and Physical Injuries by Time Periods and Study Sites -- Police Records**

	PREREFORM		POST REFORM	
	FORCE	INJURIES	FORCE	INJURIES
VANCOUVER	92 (47%)	33 (17%)	136 (62%)	83 (38%)
LETHBRIDGE	30 (86%)	12 (24%)	62 (63%)	13 (11%)
WINNIPEG	180 (61%)	75 (24%)	248 (53%)	104 (20%)
HAMILTON	33 (16%)	18 (9%)	47 (19%)	14 (6%)
MONTREAL	231 (54%)	109 (34%)	138 (50%)	83 (40%)
FREDERICTON[a]	--	--	--	--

[a] Data not available for Fredericton-Saint John.

Table 9 **Use of Force and Physical Injuries by Time Periods and Study Sites -- Files of Sexual Assault Centres**

	PREREFORM		POST REFORM	
	FORCE	**INJURIES**	**FORCE**	**INJURIES**
VANCOUVER	--	--	--	42 (36%)
LETHBRIDGE	14 (93%)	12 (71%)	9 (75%)	2 (12%)
WINNIPEG[a]	--	--	--	--
HAMILTON	--	71 (71%)	--	46 (47%)
MONTREAL	--	--	37 (55%)	13 (13%)
FREDERICTON	13 (85%)	9 (56%)	27 (82%)	26 (65%)

[a] Data not available for Winnipeg.

To summarize, it appears that over time the offences reported to police remained generally comparable in terms of their seriousness. At the same time, staff at sexual assault centres recorded more incidents involving injuries and force than did police.

Although most respondents to the front-line agency survey (CS/RESORS Consulting, 1988 -- see Appendix A) perceived little change in incident characteristics over time, it is important to note that eight respondents from the 33 sexual assault centres had observed an increase in the level of violence associated with sexual assault incidents coming to their attention, as did two out of 25 respondents from police-based victim/witness programs.

3.2.3 Other offence characteristics

To conclude this section on the incidents themselves, Tables 10 and 11 provide information on the location of the assaults and on the consumption of intoxicants by victims or offenders prior to the sexual assault.

With respect to the location of the offence, no significant pattern emerges either within or between time periods. Insofar as the use of intoxicants is

concerned, generally fewer than 30 per cent of either offenders or victims had been consuming intoxicants before the offence was committed. The role played by intoxicants or by the location of the offence is unclear in explaining either the seriousness of the offence, or its classification by police.

3.2.4 Complainant characteristics

Who are the victims of sexual assault? Obviously, the vast majority are women. But what are their ages? Have the modifications to the sexual assault legislation tended to increase or reduce the average age of sexual assault victims? If one agrees that an objective of the new legislation was to encourage nonstereotypical victims to report (e.g., women who are sexually abused by their partners; prostitutes; younger victims; or even men, for that matter), how has the situation changed between the two time periods measured? What is the relationship between victims and offenders? Are more cases of spousal sexual aggression reported to police or sexual assault centres? These are some of the questions addressed below.

Table 10 Location of Assault by Time Periods and Study Sites -- Police Records

	PREREFORM			
	Vict's Home	Off's Home[a]	Outside[b]	Other[c]
VANCOUVER	25 (13%)	59 (30%)	77 (40%)	34 (17%)
LETHBRIDGE	10 (21%)	8 (17%)	9 (19%)	21 (44%)
WINNIPEG	55 (18%)	37 (12%)	83 (27%)	131 (43%)
HAMILTON	41 (21%)	29 (15%)	71 (36%)	55 (28%)
MONTREAL	111 (25%)	72 (16%)	164 (37%)	102 (22%)
FREDERICTON[d]	--	--	--	--

	POST REFORM			
	Vict's Home	Off's Home	Outside	Other
VANCOUVER	39 (18%)	70 (33%)	42 (20%)	34 (17%)
LETHBRIDGE	23 (20%)	29 (26%)	43 (38%)	21 (44%)
WINNIPEG	67 (13%)	97 (19%)	251 (49%)	131 (43%)
HAMILTON	56 (26%)	38 (17%)	79 (36%)	55 (28%)
MONTREAL	52 (18%)	56 (20%)	72 (25%)	102 (22%)
FREDERICTON[d]	49 (24%)	25 (12%)	80 (39%)	--

[a] Includes offender's car in the case of Vancouver only.
[b] Includes "other public place" in Montreal.
[c] Other locations include a common residence, the offender's car, or other public places such as buses, hotels, etc.
[d] Data for Fredericton-Saint John are not recorded by time period.

Table 11 Consumption of Intoxicants -- Victims and Offenders by Time Periods and Study Sites -- Police Records

	PREREFORM		POST REFORM	
	COMPLAINANT	OFFENDER	COMPLAINANT	OFFENDER
VANCOUVER	57 (29%)	41 (21%)	76 (36%)	65 (30%)
LETHBRIDGE	14 (16%)	9 (36%)	3 (7%)	16 (39%)
WINNIPEG	17 (12%)	32 (22%)	13 (4%)	69 (21%)
HAMILTON	--	--	--	--
MONTREAL	--	--	--	--
FREDERICTON[a]	--	--	57 (56%)	71 (71%)

[a] Data for Fredericton-Saint John covers both periods.

Table 12 provides a breakdown of the age and gender of sexual assault victims by study sites and time periods.

Police data from Lethbridge, Winnipeg, Hamilton-Wentworth, and Montreal show an increase in the proportion of victims who were 18 years of age or younger, whereas the reverse trend occurred in Fredericton-Saint John. (Data relating to victims under 18 years of age were not collected in the Vancouver site study.)

Table 12 **Age and Gender of Victims by Time Periods and Study Sites -- Police Records**

	PREREFORM				
	AGE			GENDER	
	<18	18-30	>30	M	F
VANCOUVER	--	133 (76%)	43 (24%)	7 (4%)	184 (96%)
LETHBRIDGE	25 (50%)	14 (28%)	11 (22%)	3 (6%)	47 (94%)
WINNIPEG	135 (43%)	132 (42%)	47 (15%)	22 (7%)	295 (93%)
HAMILTON	95 (51%)	68 (36%)	24 (13%)	19 (10%)	180 (90%)
MONTREAL	167 (37%)	210 (46%)	77 (17%)	39 (9%)	414 (91%)
FREDERICTON	25 (56%)	16 (36%)	4 (9%)	--	--

	POST REFORM				
	AGE			GENDER	
	<18	18-30	>30	M	F
VANCOUVER	--	148 (71%)	60 (29%)	11 (5%)	205 (95%)
LETHBRIDGE	82 (68%)	15 (13%)	23 (19%)	20 (17%)	100 (83%)
WINNIPEG	347 (67%)	140 (27%)	31 (6%)	26 (5%)	502 (95%)
HAMILTON	145 (65%)	64 (29%)	13 (6%)	36 (15%)	204 (85%)
MONTREAL	123 (43%)	113 (40%)	49 (18%)	19 (7%)	266 (93%)
FREDERICTON	45 (42%)	39 (36%)	23 (22%)	12 (9%)	116 (91%)

Conversely, there were proportionately fewer reports of adult sexual assaults after the new law. In Lethbridge, the decline in victims' ages seems to be confirmed by data from the sexual assault centres, the proportion of victims aged 14 and younger rising from 44 per cent to 60 per cent (Department of Justice Canada, 1988b; p. 49). In Winnipeg, according to data from sexual assault centres, the proportion of victims 18 years old and older declined dramatically from 32 per cent to five per cent between the prereform and post reform periods. The authors of the Winnipeg site report explain this decline by the fact that child victims of sexual abuse are now referred to child welfare agencies and that a

protocol now exists whereby child sexual abuse cases must be reported to police (Department of Justice Canada, 1988b; p. 78).

The Hamilton-Wentworth, Montreal and Winnipeg site reports provide information on victims' ages from sexual assault centre files only for the post reform period. In these cases, it is apparent that the sexual assault centres' services are geared to an adult population, with generally fewer than 35 per cent of their clientele being juveniles (17 per cent under age 18 in Montreal, 33 per cent under age 16 in Hamilton-Wentworth, and five per cent under age 14 in Winnipeg).

On the basis of other Department of Justice Canada studies currently underway, there is strong evidence that an increasing proportion of child sexual abuse cases are being reported to police. This is likely because of increased awareness of child sexual abuse as a problem in Canadian society, particularly since the publication in 1984 of the report of the Committee on Sexual Offences Against Children and Youth (Canada, 1984). This was followed in 1988 by a series of profound modifications of the Criminal Code and Canada Evidence Act that were intended to deal with perpetrators of child sexual abuse and to facilitate processing these cases in the criminal justice system. The Committee's findings and conclusions, as well as the extensive media coverage the report received, may partly explain why more cases of child sexual abuse have been reported to and recorded by the police since 1984.

3.2.5 Victims' relationships to offenders

It is apparent from Table 13 that the proportion of reported sexual assaults committed by strangers diminished significantly between the two time periods. A greater proportion of reported infractions involved persons known to the victim, particularly parents and other members of the family and friends who make up a significant proportion of the "other" category in police reports. Thus, in Lethbridge, the proportion of parents, surrogates and other relatives increased between 1981-82 and 1984-85 from 10 per cent (n=5) to 19 per cent (n=22); from seven per cent (n=22) to 23 per cent (n=114) in Winnipeg; and from eight per cent (n=16) to 22 per cent (n=50) in Hamilton-Wentworth.

Table 13 also reveals a modest increase in the proportion of sexual assaults involving spouses or partners. Unfortunately, this information was not separated out from the "other" offender category in three of the six sites. Finally, data from Vancouver reveal that a significant number of sexual assault complainants were prostitutes in both time periods: 24 per cent and 31 per cent, respectively. No

other site reports contain information on this issue, and we suspect that this situation may be peculiar to Vancouver.

Table 13 Relationship Between Victim and Offender -- Police Records

	PREREFORM			POST REFORM		
	Stranger	Spouse/Partner	Other[a]	Stranger	Spouse/Partner	Other
VANCOUVER	156 (81%)	4 (2%)	34 (17%)	138 (67%)	15 (7%)	52 (26%)
LETHBRIDGE	24 (48%)	--	26 (52%)	29 (25%)	--	88 (75%)
WINNIPEG[b]	195 (63%)	--	114 (37%)	237 (46%)	--	279 (54%)
HAMILTON	126 (64%)	6 (3%)	63 (32%)	94 (42%)	12 (5%)	117 (52%)
MONTREAL	362 (81%)	11 (2%)	64 (14%)	196 (71%)	12 (4%)	61 (22%)
FREDERICTON	31 (62%)	--	19 (38%)	50 (42%)	--	70 (59%)

[a] "Other" includes relative, friend, associate, other family member.
[b] In Winnipeg, data were collapsed into two categories: stranger and unknown.

3.2.6 Characteristics of the accused

Three types of reliable information are generally available on accused persons: age, gender, and past criminal records. Data on offenders are not usually available unless charges are laid against an accused. This means that the data provided in Tables 14 and 15 must be interpreted cautiously since there are no guarantees that unknown offenders would have comparable characteristics.

Predictably, these studies confirm that the vast majority of cases of sexual assault were perpetrated by males in the prereform and post reform periods. What is perhaps curious is the consistency across sites and across time that 99 per cent of the suspects were male and one per cent female.

As for victims' ages, a pattern of decreasing age was established. Conversely, offenders' ages appear to have increased between the two time periods as revealed in Table 14.

Table 14 **Age and Gender of Accused by Time Periods and Study Sites - Police Records**

	PREREFORM				
	AGE			GENDER	
	< 18	18 - 30	> 30	M	F
VANCOUVER	2 (6%)	16 (47%)	16 (47%)	46 (98%)	1 (2%)
LETHBRIDGE	2 (4%)	28 (56%)	20 (40%)	195 (99%)	2 (1%)
WINNIPEG	29 (18%)	68 (43%)	64 (40%)	304 (99%)	3 (1%)
HAMILTON[a]	24 (25%)	70 (75%)	--	196 (99%)	1 (1%)
MONTREAL	32 (7%)	270 (62%)	130 (30%)	449 (99%)	5 (1%)
FREDERICTON[b]	2 (8%)	12 (46%)	12 (46%)	--	--

	POST REFORM				
	AGE			GENDER	
	< 18	18 - 30	> 30	M	F
VANCOUVER	4 (5%)	30 (36%)	49 (59%)	99 (99%)	1 (1%)
LETHBRIDGE	2 (3%)	37 (51%)	34 (46%)	216 (99%)	2 (1%)
WINNIPEG	61 (18%)	119 (35%)	160 (47%)	464 (99%)	4 (1%)
HAMILTON[a]	27 (18%)	120 (86%)	--	228 (99%)	3 (1%)
MONTREAL	29 (10%)	152 (55%)	94 (34%)	272 (99%)	3 (1%)
FREDERICTON[b]	6 (10%)	18 (30%)	37 (61%)	--	--

[a] Age of offender is classified as <18 and >18 only.
[b] Categories are 16-19, 20-29 and >30. Gender is not provided although we may legitimately suspect that 99 per cent are males.

The proportion of accused persons less than 18 years old remained fairly constant between the two time periods. However, the proportion of accused between ages 18 and 30 diminished in all sites,[11] while the proportion of offenders who were older than 30 years of age increased.

Finally, many sexual assault offenders known to police were repeat offenders, although not necessarily for sex crimes. Table 15 shows that in four out of six study sites (Vancouver, Lethbridge, Winnipeg and Fredericton-Saint John) well over 60 per cent of offenders had criminal records. In the cases of Montreal and Hamilton, the proportion was over 40 per cent. No pattern appears identifiable over time.

Table 15 Past Criminal Records of Offenders by Time Periods and Study Sites -- Police Records

	PREREFORM		POST REFORM	
	YES	NO	YES	NO
VANCOUVER	19 (69%)	8 (30%)	39 (72%)	15 (28%)
LETHBRIDGE	12 (60%)	8 (40%)	25 (78%)	7 (22%)
WINNIPEG	121 (82%)	26 (18%)	184 (61%)	117 (39%)
HAMILTON	38 (36%)	66 (64%)	73 (42%)	101 (58%)
MONTREAL[a]	--	--	--	--
FREDERICTON[b]	--	--	--	--

[a] Only available information is that 46 per cent of offenders for which the information in known (n=127) have a past criminal record.

[b] Only available information is that 71 per cent of offenders apprehended by police (n=101) have a past criminal record.

[11] With the possible exception of Hamilton-Wentworth which provides only two age categories, placing all offenders over age 18 in one category.

3.2.7 Discussion

This section of the overview report has dealt with the most significant information on the characteristics of offences, complainants and offenders. While changes identified in the nature of the offences between the two time periods are small, they nevertheless appear to point in the direction of some form of achievement of the law's objectives. The relative decrease in the severity of the offences as recorded by police might be seen as an indicator that the amendments have successfully moved the emphasis away from the requirement for proof of penetration in the previous offence of rape, toward assault of a sexual nature more generally. This is particularly true since the data from the site studies revealed no pattern of change in objective characteristics of the seriousness of the offence (such as penetration or physical force). The fact that the majority of police occurrence reports are classified as Sexual Assault Level I may testify to the success of the amendment whereby victims need no longer prove that penetration occurred. On the basis of the finding that offences recorded by police were no more nor less serious in the post reform period, it would appear that victims' credibility does not rest on the degree of physical trauma suffered as a result of the assault. (This affirmation, however, must be placed in the context of data regarding rates of founding and unfounding of complaints of sexual assaults as discussed elsewhere in this report.)

Indicators such as an increased volume of reports of spousal sexual assault point to the fulfilment of the legal objective of affording redress to more women. However, the general trend noted in all site studies for victims known to police in the post reform period tended to be younger, coupled with a relative decline in reporting by adult victims, and an increased proportion of victims who are related to the offender. All tend to indicate that social awareness of child sexual abuse might have been as significant in promoting reform as the sexual assault legislation itself. The relative decline in the number of reports by adult women noted in the site studies appears inconsistent with statistical information presented elsewhere in this report and in the analysis of national statistics prepared as part of the evaluation (Roberts, 1990b). More research may be required to clarify this issue.

3.3 The Response of the Criminal Justice System

3.3.1 Attrition in cases of sexual assault

Research prior to the legislative reforms in 1983 indicated that most incidents of rape were not reported to the police. Of those cases reported to the

police, not all resulted in laying a charge against a suspect, and only a small percentage of reported sexual assault incidents result in a conviction. Case attrition is not unique to sexual assault (the number of cases of any criminal offence declines at each stage of the criminal justice process), but earlier research had suggested that the attrition rate is higher for sexual assault than for other crimes against the person. Several reasons were advanced to explain this difference in attrition rates, including the nature of the earlier legislation, as well as the negative attitudes of criminal justice personnel victims of sexual assault. More recent research suggests that the attrition rate for sexual assault does not differ greatly from the attrition rate for other crimes. The latest data from the Canadian Centre for Justice Statistics and from the site studies commissioned by the Department of Justice Canada provide valuable insights into the treatment of sexual assault cases.

(a) Cases designated as unfounded

Of the 29,111 reports of sexual assault made to the police in 1988 (the most recent year for which data are available), 15 per cent were declared "unfounded". A report is classified as unfounded when, after a preliminary investigation, police officers determine that a report is without foundation because of insufficient evidence. The unfounded rate for sexual assault has not changed appreciably since 1983, when it was 14 per cent. The legislation has therefore not resulted in an increase in the proportion of reported sexual offences being designated as founded cases.

(b) Cases cleared by charge

The cases that remain once unfounded reports have been screened out are termed "actual offences". Cases in which a charge is laid against a suspect are designated as "cleared by charge". The clearance rate is a critical statistic in the treatment of sexual assault cases. The clearance rate as a percentage of founded cases for sexual assault was 48 per cent in 1988. The overall clearance rate for all crimes of violence was 46 per cent. Thus, the clearance rate for sexual assault is comparable to the clearance rate for other crimes involving violence. As with the statistics on founding rates, the 1983 legislation does not appear to have had any significant impact on the likelihood that a charge will be laid in cases of sexual assault.

Finally, there is considerable variation in the clearance rate for sexual assault from one province to another. Data from 1988 show that in New Brunswick, 38 per cent of offences were cleared by charge; in the Northwest

Territories, the rate was 72 per cent.[12] In order to know why clearance rates vary across the country, it will be necessary to undertake more detailed research into charging practices of police officers and crown attorneys.[13]

(c) Conviction

The evidentiary difficulties in prosecuting sexual crimes were well known prior to the introduction of Bill C-127. It was no surprise, therefore, that the rate of attrition was high for these offences. The 1983 legislation aimed to address this concern in various ways. If successful, the legislation might produce an increase in the conviction rate, as well as an increase in the reporting rate.

Table 16 shows pre and post 1983 conviction rates expressed as a percentage of cases committed for trial in each of the study sites.[14]

Data from the site studies suggest that conviction rates have not increased significantly since the introduction of the new legislation, except in Fredericton-Saint John. In some sites the conviction rate decreased. This variation might be explained by the number of convictions recorded at the study sites. In most cases, they were small enough that a fluctuation of two or three convictions or acquittals could make a significant difference in the overall rates. At this point it is difficult, therefore, to say with any certainty that conviction rates are changing and, if they are, in which direction. The problem could be addressed, in part, by establishing a national database that could be used for this purpose.

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[12] Because of the relatively low population of the Northwest Territories, as well as its low absolute numbers of sexual assault cases, percentage figures must be treated cautiously.

[13] In most jurisdictions the police are responsible for laying charges; in others, such as New Brunswick, cases are referred by the police to crown attorneys, who then decide whether or not to lay charges. In some jurisdictions police are responsible for laying charges but must first consult with crown attorneys as to the grounds for laying a charge and the type of charge to be laid.

[14] This analysis of conviction relies solely on data arising from the site studies, since there is no national database on conviction.

Table 16 **Pre and Post Reform Conviction Rates (as a per cent of cases committed for trial)**

	PREREFORM		POST REFORM	
	(%)	No.	(%)	No.
VANCOUVER	53	(17)	56	(36)
HAMILTON	80	(30)	75	(57)
WINNIPEG	64	(25)	47	(66)
FREDERICTON	64	(14)	79	(24)
LETHBRIDGE	40	(5)	46.7	(15)
MONTREAL	74	(nk)	57	(nk)

nk Indicates "not known".

Qualitative information collected as part of the site studies provided generally similar views regarding conviction rates. Most of the defence counsel interviewed in Vancouver responded that sexual assault cases have become more difficult to defend with the new legislation. On the other hand, half the crown attorneys interviewed said that the chances of winning sexual assault cases have remained the same since the legislative change; the other half suggested the chances of winning have improved.

In Hamilton-Wentworth, while legal practitioners indicated that the 1983 amendments have enhanced the chances of successful prosecution, few have actually seen this belief translate into a higher rate of conviction.

Lawyers in Winnipeg responded that the likelihood of conviction has increased simply because the crown attorney now has to meet a less stringent standard of proof. As well, most defence counsel interviewed said the new evidentiary provisions have made it more difficult to defend the accused. Again, however, the conviction rate does not appear to bear this out, at least on the basis of the data collected in Winnipeg as part of the evaluation.

Crown attorneys in Lethbridge viewed the new legislation as improving the chances of conviction but not necessarily as facilitating their jobs since they perceived that more difficult cases are now being pursued.

In summary, the perceptions of practitioners in the sites were similar. In all sites where qualitative data were available, the perceived improvement in the crown attorney's position was generally thought to relate to the abrogation of the recent complaint rules, the admissibility of evidence pertaining to prior sexual history of the complainant, and the relaxation of the corroboration requirement. Police officers in the individual sites noted that issues of credibility constitute the major obstacle in obtaining convictions in cases of sexual assault. Included in these issues are such factors as the conduct of the complainant immediately following the assault, and the existence of corroborative evidence. Future research will have to determine whether these views can be corroborated by the actual conviction rates.

3.3.2 Case facts and plea bargaining

Perhaps nowhere else in the criminal justice system is the exercise of discretion subject to so little scrutiny as in the area of plea bargaining. Information is disclosed that may not be admissible in a court hearing and commitments may be made regarding sentence submissions that have little bearing on the final outcome. The potential impact on the victim, particularly in a case of sexual assault, can be substantial. She may be angered that she was deprived of the chance to tell her story in court, or she may be relieved that a plea was entered without having to endure testifying in court. For these kinds of reasons, and because plea bargaining does not take place in open court, it invites a strong degree of public criticism.

Descriptive information about plea bargaining was collected from key informants in each of the site studies. The aim was to gain some understanding as to whether the plea bargaining process has changed with the new sexual assault legislation.

Vancouver: Crown attorneys in Vancouver varied considerably in their perceptions of change in the incidence of plea bargaining under the new law. Three respondents said that it had decreased, two indicated it had increased and one said no change had occurred. Those perceiving an increase suggested it resulted from the greater flexibility engendered by the new law. Prior to the amendments, the crown attorneys had few options for reducing charges; since then, lesser charges are possible so that a weak case on a more serious charge can receive a reduced charge in order to ensure a guilty plea.

Defence counsel in Vancouver responded in a varied manner, as well. When asked to compare the incidence of plea bargaining for sexual assault with other serious crimes, the majority of crown attorneys and one-half of the defence counsel interviewed indicated that they felt it was lower for sexual assault. Others responded that the incidence of plea bargaining for equally serious offences was virtually the same across the board.

Lethbridge: In Lethbridge, there was some agreement among the defence counsel interviewed that the amendments have facilitated informal negotiations, primarily around the number of counts that would be prosecuted and the length of sentence that the crown attorney would request. On the other hand, one of the two most experienced crown attorneys in Lethbridge, at the time of the 1986 research thought that sexual assault cases were generally nonnegotiable. Thus, opinion in Lethbridge was divided.

Winnipeg: When key informants in Winnipeg were asked to comment on any perceived changes in the plea bargaining process, it was generally agreed that the change in the substantive offence categories provided more flexibility for negotiation. This opinion was held by slightly less than one-half of the defence lawyers interviewed, almost all crown attorneys and one judge. As well, it was observed that the crown attorneys are under considerable pressure from complainants and interest groups not to plea bargain in cases of sexual assault, especially the most serious cases.

The Winnipeg interviews showed that accused persons may have reasons to be reluctant to enter a guilty plea (other than the fact that they may be not guilty). For example, if the crown attorney thinks a jail term is appropriate, a probability in the more serious cases,[15] the accused has no incentive to plead guilty. Furthermore, many sexual assaults involve questions of credibility, thus making it difficult for the crown attorney to establish proof that an offence took place beyond a reasonable doubt. Several crown attorneys said that the accused may be more willing to plead guilty in some cases given the broader definition of sexual assault, as compared to the stigma previously attached to the label "rape".

Hamilton-Wentworth: The perceptions of crown attorneys and defence counsel in Hamilton differed on the issue of whether the incidence of plea bargaining had increased. The majority of crown attorneys said there had been no change since the amendments, while defence lawyers suggested plea bargaining

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[15] See Roberts, 1990a regarding sentencing patterns in sexual assault cases in Canada (prepared as part of the Department of Justice evaluation of the 1983 sexual assault legislation).

is slightly more prevalent. Significantly, the amendments were not the only reason cited for changes. When compared to other crimes against the person, most crown attorneys and one-half of the defence counsel expressed the view that sexual assault cases are more difficult to negotiate.

Fredericton-Saint John: Findings from Fredericton-Saint John indicate a perception among key informants that there is more room for a reduction of charges by virtue of the three levels of sexual assault, resulting from the amendments. In actual practice, however, most accused are initially charged with Sexual Assault Level I. In view of the fact that the practice of plea bargaining is virtually prohibited in criminal cases in New Brunswick, it is difficult to ascertain whether or not the amendments have made it easier to negotiate. On the whole, defence counsel indicated that there is less flexibility than under the earlier law. This is largely because crown attorneys are perceived as refraining from bargaining in cases of sexual assault. Two defence lawyers noted an exception: that is, where the stresses of a trial would be too great an emotional strain on the victim. In such circumstances, the crown attorney might, in return for a guilty plea, proceed by way of summary conviction or refrain from trying to obtain a severe sentence. Similarly, the crown attorney might take this approach when the complainant is too young or too emotionally upset to go through a trial. Key informants in Fredericton generally agreed that the ability to proceed either by summary conviction or indictment (Sexual Assault Level I) has introduced a degree of flexibility previously absent.

3.3.3 Sentencing

Sentencing was not a major focus of Bill C-127; accordingly, neither was it a major focus of the legislative evaluation research. In this respect, the individual site reports are of limited use in any discussion of sentencing in cases of sexual assault. The limited role of sentencing in the site studies was due, in large part, to the difficulty in obtaining relevant data from police and crown attorney files, and to the time lag between the time of reporting and sentencing.

Roberts's (1990a) report on sentencing, commissioned as part of the overall evaluation of the legislation, is not drawn from a nation-wide survey of sentencing patterns since truly national data are not presently available. Instead, it drew on a computerized sentencing information system in British Columbia,[16] other earlier sources of data, and the limited data on sentencing contained in the site

[16] The sentencing database system in British Columbia was designed by the Legal Information Systems and Technologies (LIST) Foundation.

reports. These data sets covered different time periods encompassed within the years 1985 to 1988.

It is relevant to a discussion of sentencing that almost all sexual assaults (95 per cent) reported to the police are classified at the first (lowest) level of seriousness. For the databases included in Roberts's study, most convictions for Sexual Assault Level I (between 60 per cent and 80 per cent) resulted in imprisonment. Incarceration was imposed in over 90 per cent of convictions for sexual assault with a weapon (Level II). For convictions for aggravated sexual assault (Level III), almost every offender convicted was incarcerated.

Roberts's use of the computerized sentencing database in British Columbia covered the period from 1986 to 1988. He compared the sentences imposed for various personal injury offences. Using the percentage of offenders incarcerated as the index of comparison, Roberts concluded that Sexual Assault Levels II and III were punished more severely than other personal injury offences. A more sophisticated comparison, such as one based on actual length of incarceration, is not possible at this time in the absence of adequate national sentencing databases. Roberts also found that sexual assault (particularly Level I) appears to be an offence that generates considerable sentencing variation across jurisdictions in Canada. Furthermore, he concluded that there is no evidence to suggest that sentences in cases of sexual violence have become more lenient since 1983.

There is a great deal of concern, both public and professional, about the sentencing of offenders convicted of sexual assault. Paradoxically, sentencing is one of the areas in which statistical information is most lacking since, as noted earlier, sentencing statistics are not compiled and distributed on a routine basis at the national level. Clearly, this is an area in which further research is needed.

3.3.4 Discussion

Implementation of the 1983 sexual assault legislation has been accompanied by a significant increase in the reporting of sexual assaults -- a major aim of Bill C-127. In other areas, however, it is apparent that the situation has not changed since the introduction of the new legislation. In particular, unfounded rates, rates of cases cleared by charge, and conviction rates have remained more or less constant. With respect to unfounding and clearance by charge, the rates are comparable to other crimes of violence. Finally, on the basis of the site studies, clearance rates and conviction rates appear to vary somewhat across the country, although it should be remembered that this finding is based on relatively low numbers of completed cases in any one site.

In the absence of a national database, it is impossible to categorically identify trends in certain aspects of the justice process such as conviction rates. Similarly, in-depth research into police and crown attorney charging practices is required to gain a complete picture of clearance rates over time. Such work will facilitate a more comprehensive understanding of the operations and effects of the sexual assault legislation.

3.4 Victims and Victims' Services

3.4.1 Treatment of victims -- practitioners' views

One goal of the sexual assault legislation was to reduce what has been referred to by women's groups and others as the "secondary victimization" of complainants as they approach and move through the criminal justice system. The site researchers dealt with this issue, some more comprehensively than others. Most described in some amount of detail the victims's current treatment by both criminal justice practitioners and support services (medical and sexual assault centres), noting whether there were special police units to deal with sexual assault; whether female officers were assigned to this duty; and whether the crown attorney offices now have personnel specialized in prosecuting sexual offences. The front-line agency study focused primarily on the treatment of the complainant and whether there has been any improvement over time.

Vancouver: Data from all study sites on this issue are largely qualitative. In Vancouver, all police who were interviewed responded that the victim's experience with the criminal justice system has become "less harrowing", but that this improvement began, not with the introduction of legislative change, but several years before. However, one of the major reasons cited for recent improvement is the restriction on introducing evidence relating to past sexual history of the complainant.

Almost all crown attorneys interviewed indicated that the victim's experience with the criminal justice system has become less traumatic since the law reform. Reasons for this were associated with the restriction of questioning in court on the past sexual history of the complainant; removal of the corroboration requirement; better preparation of the complainant by the crown attorney for court; and increased agency support for victims of sexual assault. There are no data on defence perspectives in Vancouver. A number of judges interviewed thought that the amendments have reduced a complainant's humiliation and trauma.

Lethbridge: It was not possible to gather police information regarding the treatment of victims in the Lethbridge site study. In general, the crown prosecutors responded that the experience of the rape victim with the criminal justice system has become less traumatic over the past five years, beginning before the legislative changes. Defence counsel in Lethbridge noted that the "stigma of rape" has been removed. This was seen as reducing problems for both the complainant and the practitioners in the system. No judges were interviewed in the Lethbridge study.

Winnipeg: It was not possible to gather police information regarding the treatment of victims in the Winnipeg site study. Most of the crown attorneys interviewed in Winnipeg suggested that the victim's experience with the criminal justice system has become less traumatic since the introduction of the 1983 legislation. In particular, the disallowance of evidence concerning past sexual history was mentioned as being instrumental in decreasing the trauma, while the elimination of evidence concerning corroboration and recent complaint did not have the same effect.

Fourteen judges were interviewed in Winnipeg. Three stated that the changes in the law had reduced the stigma of the offence, which may make victims more willing to report. Five judges responded that the law helped to make cross-examination less traumatical though three said that the description of the assault remained as taxing.

Hamilton-Wentworth: In Hamilton-Wentworth, the police response indicated the belief that restrictions on presenting a complainant's past sexual history reduced the stress of the court appearance. The decreased difficulty in proving an offence further reduces stress, since there is no longer a need for corroboration or proof of penetration.

Part of the police response to the new legislation was to institute training to help them become more aware of the needs of assault survivors and of problems survivors might face as they interact with people working in the criminal justice system. There was additional training for officers assigned to sexual assault investigations.

The majority of crown attorneys thought the victim's treatment was less traumatic under the new law, but they attributed this to improved sensitivity on the part of the police and the fact that the crown attorney prepared the complainant better for the courtroom experience. Judges and defence counsel were not interviewed during the Hamilton-Wentworth site study.

Montreal: The qualitative material from the Montreal study was by far the most detailed. The police interview sample was drawn from constables who are front-line respondents to sexual assault complaints, and detective sergeants who carry out subsequent investigations. Police respondents were unanimous in their view that the judicial process remains a traumatic one for the victim of a sexual assault. This is the case partially because of the complainant's lack of information about the proceedings. One of the respondents said that the complainant was a victim not once, but three or four times over, as she is questioned about her experience at every stage: reporting, medical examination, police investigation, and court appearance. At the same time, the general response from police was that the amended legislation contributes to a more humane climate in the treatment of the complainant by the criminal justice system, although this may not be particularly evident in court. The changes in police training and procedures were seen as improving their treatment of the complainant, but the police could not attribute these particular changes to the law reform itself.

Crown attorneys in Montreal indicated that the legislative change has made the experience of the complainant less difficult, but that the new law largely serves to reinforce awareness of the impact of the assault and improved procedures in relation to the complainant. In particular, they noted that the new classification of offences and modification of rules of proof has eased the negative impacts of participating in the judicial process. Data from defence counsel interviews were not available in Montreal. A number of judges interviewed in Montreal, generally approved of the legislative changes; however, little data reinforced the relationship between the amendments and the victim's treatment..

Fredericton-Saint John: In Fredericton-Saint John, one-third of the police officers interviewed were women. Police noted that most of the changes that resulted in improved sensitivity to the complainant were instituted prior to 1983, or were about to be established when the new law was proclaimed. All crown attorneys interviewed suggested that victims had a far easier and less traumatic experience in the course of judicial proceedings than they did before the legislative changes came into effect. One aspect of this improvement is the restriction on admission of the complainant's past sexual history. Not only is the complainant exposed to less taxing questioning in this area, but the respondents said that they could "bring her to court with less negative attitudes about what is in store for her".

On the other hand, most judges interviewed in Fredericton-Saint John said that the amendments had not resulted in decreasing the traumatic effect of court appearances for the victims of sexual assault. Defence counsel data were not available in Fredericton-Saint John.

3.4.2 Awareness and perceptions of the law

(a) Public views and knowledge of the law

A nation-wide opinion poll taken in 1987 indicated that 80 per cent of Canadian adults did not know that rape is now known legally as sexual assault; Three per cent knew it was no longer rape but thought it was another term. However, 84 per cent knew that sexual assault may be charged even if there is no lasting physical injury or use of weapon; and 83 per cent knew that sexual assault may be committed by a man or woman against his or her spouse (Department of Justice Canada, 1988: 65).

It is clear from the site report findings that many justice system workers believed that eliminating questioning on the victim's past sexual history had greatly eased the trauma of the court experience, and one could presume that this factor contributed victim willingness to report. However, the survey cited above also indicated that one-half of the public still believed (incorrectly) that it is acceptable to question victims about past sexual behaviour in court. Changes in the way sexual assault victims are treated are so recent that it will take time for adjustments requiring knowledge of the law to take effect.

(b) Victims' views

To what extent were victims themselves aware of the 1983 sexual assault legislation?

Vancouver: In Vancouver, a "hotline" was set up by the Vancouver site research team and advertised in local city and neighbourhood newspapers, in an effort to contact sexual assault victims for interviews. The Sexual Assault Centre also assisted in contacting respondents. Sixteen interviews were conducted; only six of those had been aware of the 1983 amendments at the time of the assault. One of these six said it was the new legislation that had encouraged her to report to the police.

Lethbridge: Only one of five victims in Lethbridge was aware of the amendments and she indicated it did not influence her decision to proceed through the courts with the case.

Winnipeg: There were 16 completed interviews with female sexual assault victims in Winnipeg. Only one of these was aware of the new legislation at the time of the assault. This did not affect her decision to report to police and follow through with the case.

Hamilton-Wentworth: Although 12 questionnaires were filled out by victim respondents in Hamilton-Wentworth, no data are available on the relationship between the legislation and victim experience with the criminal justice system.

Montreal: In Montreal, after a three month search for respondents, aided by the police, sexual assault centres, and other networks, 11 interviews were conducted with victims. It was learned that none of the victim respondents were familiar with the changes in legislation.

Fredericton-Saint John: There were 17 victim respondents in Fredericton-Saint John. They were contacted through a variety of means, including tracing them through police files, advertising in the media, poster advertising, and informal word-of-mouth contacts with the researchers. No data were collected on the victim's perceptions of the impact of the new legislation on their experience with the criminal justice system.

From these limited data, it would seem that among victims of sexual assault, familiarity with the law at the time of the assault was no greater than that of the general public. The few references to the legislation simply confirm that it was not taken into account in the victims' actions or later evaluation of their experiences.[17]

(c) Front-line agency study findings

A number of changes in the treatment of the sexual assault victims preceded the legislative amendments. Among these, the emergence of sexual assault centres and police-based victim/witness assistance programs were accompanied by hospital forensic units and a careful concern with the introduction of material evidence into court.

These three types of service-providing agencies were included in the front-line agency study. In this study questionnaires were administered in person, by telephone, and by mail, yielding usable responses from 39 sexual assault centres, 27 victim/witness assistance programs and seven hospital forensic units. However, response rates to the individual questions were quite low, thus making the sample size for each response very small. An additional caveat is that few of the agencies existed prior to 1983, making a pre and post reform comparison difficult.

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[17] The reader might wish to refer to: Department of Justice Canada, 1988. An Analysis of Attitudes Toward Justice Related Issues 1986-87. Research Section Working Paper.

The front-line agency study not only provided an account of the agencies' assessment of changes in the victim's treatment by the criminal justice system, but also examined the agencies' accounts of how their own treatment of the victim intermeshes with the personnel, policies and procedures of the criminal justice system.

The overall improvements noted by the sexual assault centres and the police-based victim/witness assistance programs were manifest in terms of practitioners' attitudes and procedures now being followed. Most, but not all, of these agencies attributed improvements to the legislative amendments.

When asked what improvements could be made in victim's treatment by police, crown attorneys and defence counsel, agency personnel suggested increased education for each about the nature and impact of sexual assault and training for police and crown attorneys about how to deal with victims. The agencies also suggested that there should be procedures for ensuring more accountability by police, crown attorneys and even defence counsel. There is no indication as to what these procedures might be.

The degree of inter-agency cooperation occurring under the new law is separate from, but related to, the question of improved victim treatment by persons in the criminal justice system. The overall view of the agencies about relationships among themselves and between the agencies and the criminal justice system is cautiously positive. Eighty-five per cent of sexual assault centres and all of the police-based victim/witness programs found their relationships with police and crown attorneys to be neutral or better.

The sexual assault centres and the victim/witness assistance programs rated their relationships with hospitals and each other similarly positively. Again, suggestions for improvement included more education and training in dealing with victims of sexual assault and more police and crown attorneys specialized in the area, with a larger complement of women in both fields.

3.5 Summary of the Findings

There has been an increase in numbers of reports of sexual assault across the country. While the site studies indicate that there are contrasts between cities of comparable size, national data confirm that there has been a general trend to higher rates of reporting sexual crimes since the introduction of Bill C-127.

In the key respondent interviews, there is some consensus that sexual assault remains underreported and that the reasons for not reporting include fear

of the assailant, shame, dread of going through the criminal justice system and a sense that the incident does not warrant reporting to the criminal justice system. The reader is asked to bear in mind, however, that these interviews were undertaken prior to 1988; perceptions regarding reporting rates and reasons for underreporting may have changed since that time.

All of the site studies indicated little aggregate change in the types of complainants and assailants. There was a slight lowering of the average age of the complainant. There were very few spouses and few males reporting and virtually no female assailants. Thus, the spousal exemption and the gender neutralization of the offence have made only a small contribution to the increasing numbers of reports made to police.

Founding rates have not changed appreciably over the last 10 years or more. This would suggest that the changes in requirements of proof and in the offence classifications have had no effect on this aspect of police work. Furthermore, the founding rates across the provinces continue to vary dramatically. We might speculate that if the legislation were having a significant effect in terms of founding rates, it would be reflected in increasing consistency in rates across the provinces. Evidently this is not the case.

Data on charging show that the clearance rate for sexual assault is similar to that for other crimes involving violence. It is also evident that there has been little change in the aggregate charging rate since the 1983 legislation. Thus, it does not appear that the legislation has had an effect on the likelihood that a charge will be laid in a case of sexual assault.

Although there is not a great deal of data on the types of charges laid, it appeared to the key respondents, at least, that a wider range of assaultive behaviour (grabbing, fondling, etc.) was likely to be included in the charging process in the post legislative period. Corroborating evidence did not play a consistent role across the study sites in relation to charging, but there was some sense that corroboration is still an important consideration in the charging decision.

The broadening of the offence classifications do not appear to have had an effect on the charging rate; however, this is a factor that should be examined in future analysis of statistics relating to sexual assault. An increase in charging is possible in view of the fact that assaults that could once have been charged only under common assault are now being charged under the sexual assault law. There is also a possible relationship here between the increasing youth of complainants and the fact that a greater proportion of assaults against children do not involve penetration. Hence, there is some suggestion from key respondents that the

sexual assault law gave police and crown attorneys an alternate tool with which to counter abuse of children (prior to the passage of the 1988 child sexual abuse legislation, Bill C-15). Further work is needed on this question.

Most of the studies addressed three aspects of the criminal justice system: plea bargaining, conviction and sentencing. The investigation into plea bargaining dealt with how changes in offence classification might affect the day-to-day work of the crown attorney and defence counsel in court. The question was whether the three-tiered offence structure leads to a reduction in the seriousness of charges laid by the crown attorney (possibly increasing the likelihood of conviction). However, in practice the vast majority of cases are charged initially under the simplest category of sexual assault. In any case, crown attorneys and defence counsel held considerably different opinions as to whether plea bargaining increased under the new law. Some felt the new legislation made negotiation easier, but there was no indication that negotiation is more prevalent under the new law. It would appear that crown attorneys approach plea bargaining with extreme caution in cases of sexual assault.

The examination of conviction rate and sentencing was concerned with how comprehensively the 1983 law was applied. Findings across study sites for convictions are quite contradictory. The conviction rate went up in three sites, down in two, and remained approximately the same in two. Crown attorneys and defence counsel had mixed opinions as to the importance to a conviction of such matters as introducing the complainant's past sexual history into evidence; the presence of corroborating evidence; and the recency with which the complaint was reported. These factors, each the subject of the legislative change, cannot be consistently related to either the quantitative or qualitative data on conviction rate. There was, however, evidence that people surveyed think it may now be easier for the crown attorney to prove a case successfully under the new legislation.

There were limited data on sentencing in the site studies, but the respondents from sexual assault centres indicated a continuing belief that sentences in the area of sexual assault do not reflect a clear recognition of the trauma generally experienced by the victim. Roberts's study of sentencing using three discrete databases concludes that, while there is variation across the country, sentences have not become more lenient since 1983. Given the absence of evidence of any clear changes, or any agreement as to emerging trends, the impact of the legislative changes in this area is unknown.

Lastly, we turn to the site data to determine whether the legislation played a role in improving the victim's treatment by those in the criminal justice system. The existence of services in a number of Canadian cities to help sexual assault

victims cope with the trauma of the assault provides a general network of support that decreases the victim's dependence on practitioners in the criminal justice system. However, police responded that a victim of sexual assault can expect more compassionate treatment than in the past. There was general agreement that victims are exposed to less harsh conditions in court, largely because of the limitation on the introduction of evidence pertaining to past sexual history.

It is significant that very few victims of sexual assault were aware that the law has been amended (according to information gathered in 1987). They therefore may have been making decisions as to whether to proceed on the basis of other factors. The court experience continues to be unpleasant, a feeling that undoubtedly prevails in all criminal cases but more so in cases of sexual assault.

The front-line agency study revealed that the clients seen by service agencies are not very different from those who report to police; and the characteristics of victims and offenders seem to have changed very little over time. There is a suspicion that assaults are more violent in character and that younger people are increasingly victimized, but data routinely collected by the service agencies are not geared to substantiating these trends. Furthermore, there is a general feeling that on occasion the victim of sexual assault meets with more sensitive treatment by police than in the past, but this seems to be the exception rather than the rule. Better treatment by the crown attorney is seen as resulting from greater continuity in personnel, better pretrial briefing, and generally more awareness of the victim's situation. Treatment of the victim by defence counsel is thought not to have changed, even with the legislative limitations on pursuing the victim's previous sexual history in court. However, this qualitative study provides solid evidence that there is a marked improvement in the quality of relations between service providers and criminal justice practitioners. Finally, it was not possible for any of the respondents to link perceived changes to legislative change. Rather, they felt they were seeing an expression of a social trend toward recognizing the trauma of the sexual assault victim. Again, this must be tempered by the realization that interviews were held in 1987-88 and that the benefit of longer hindsight might now lead respondents to change their earlier impressions.

3.6 Conclusion

The Department of Justice Canada took on an ambitious task in its evaluation of the 1983 sexual assault legislation. A survey of the literature conducted by the Department of Justice revealed that while sexual assault laws had been studied elsewhere, no evaluation had approached the scope and level of detail planned for the evaluation of Bill C-127. In particular, the coordination of national level analyses and focused site studies is new to legislative evaluation. The comparison of prelegislation and post legislation conditions also contributed to the comprehensive nature of the research. In all, the project was unique in its approach and goals.

Measuring the effects of introducing new legislation poses special challenges in evaluation research. As discussed earlier in this report, it is difficult to say with certainty that changes in the perceptions and actions of either the public or the criminal justice system are attributable solely to the introduction of new legislation. Other factors that often can only be guessed at are always at play. Measurement of the extent to which these other factors, such as changing attitudes towards women in our society, will have an impact on the way in which sexual assault is perceived and handled, are beyond the scope of affordable research.

The evaluation of Bill C-127 has provided us with needed information on a number of topics ranging from the experiences and needs of sexual assault victims to the factors that influence the handing of sexual assault cases by the criminal justice system and the limits and possibilities of criminal law reforms to prevent or mitigate personal offences. The research has also raised new and important questions about how to deal with sexual assault and ideas about directions in which the criminal justice system might look for improvements.

We can see from the evaluation research that the 1983 sexual assault legislation achieved some of its objectives and fell short on others. With this knowledge we can continue to work to improve the law and its supporting institutions with regard to sexual assault.

APPENDIX A

RESEARCH REPORTS FROM THE SEXUAL ASSAULT EVALUATION PROGRAM

RESEARCH REPORTS
FROM THE SEXUAL ASSAULT EVALUATION PROGRAM

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APPENDIX B

ACTS OF SEXUAL AGGRESSION

ACTS OF SEXUAL AGGRESSION

The following table is a listing of sexual offences as they existed during each of three years; 1982, 1983, and 1988. This is not an attempt to accurately trace the history of proclamation, amendments, and repeal dates. Changes in offence categories between 1982 and 1983 accompanied the introduction of Bill C-127; however, not all offences that disappeared by column 3 were repealed by the 1988 proclamation of Bill C-15.

Section numbers were revised in 1985 (R.S.C. 1985, c. C-46), sometimes with a change in the wording of the offence, but not always. This is evident in the accompanying alphabetical listing of section numbers before and after 1985 for each offence category.

This table is useful for assessing national statistics and other data related to acts of sexual aggression. The second category of offences offers an interpretation of the data category "other sexual offences" defined by Statistics Canada. Over the ten year period leading up to 1988, at no time did the category "other sexual offences" exceed nine per cent of total sexual offences reported to police. In addition, reporting rates in this category demonstrate an increase comparable to reporting rates for rape/attempted rape/indecent assault; and the three levels of sexual assault.

Lastly, the table offers an opportunity to quickly assess charging alternatives for acts of sexual aggression and related offences during these three years.

SUBSTANTIVE SEXUAL OFFENCES

1982	1983	1988
Rape/Attempted rape		
Indecent assault female		
Indecent assault male		
	Sexual assault I	Sexual assault I (amended)
	Sexual assault II	Sexual assault II
	Sexual assault III	Sexual assault III
Buggery/Bestiality	Buggery/Bestiality	Bestiality
Acts of gross indecency	Acts of gross indecency	Anal intercourse
Incest	Incest	Incest
		Sexual interference under 14 years
		Invitation to sexual touching under 14 years
		Sexual Exploitation
Sexual intercourse with a female under 14 years; Sexual intercourse with a female btw. 14 and 16 years	Sexual intercourse with a female under 14 years; Sexual intercourse with a female btw. 14 and 16 years	
Sexual intercourse with feeble-minded		

1982	1983	1988
Seduction of a female btw. 16 and 18 years	Seduction of a female btw. 16 and 18 years	
Seduction under promise of marriage	Seduction under promise of marriage	
Sexual intercourse with stepdaughter or female employee	Sexual intercourse with stepdaughter or female employee	
Seduction of female passengers on vessels	Seduction of female passengers on vessels	
Parent or guardian procuring defilement	Parent or guardian procuring defilement	Parent or guardian procuring sexual activity
Householder permitting defilement	Householder permitting defilement	Householder permitting sexual activity
Abduction of female		
Abduction of female under 16 years	Abduction of person under 16 years	Abduction of person under 16 years
Abduction of child under 14 years	Abduction of person under 14 years	Abduction of person under 14 years
		Exposure to person under 14 years
Offences in relation to juvenile prostitution	Offences in relation to juvenile prostitution	Offences in relation to juvenile prostitution (amended)

SECTION NUMBERS

Abduction of female -- s. 248

Abduction of female under 16/Abduction of person under 16 -- s. 249/s. 280

Abduction of child under 14/Abduction of person under 14 -- s. 250/s. 281

Acts of gross indecency -- s. 157/s. 161

Anal intercourse -- s. 159

Attempted rape -- s. 145

Buggery and bestiality/Bestiality -- s. 155/s. 160

Householder permitting defilement/Householder permitting sexual activity -- s. 167/s. 171

Incest -- s. 150/s. 155

Indecent assault female -- s. 156

Indecent assault male -- s. 156

Invitation to sexual touching under 14 -- s. 141/s. 152

Offences in relation to juvenile prostitution -- s. 195/s. 212

Parent or guardian procuring defilement/Parent or guardian procuring sexual activity -- s. 166/s.170

Rape -- s. 143

Seduction of a female btw. 16 and 18 -- s. 151/s. 156

Seduction of female passengers on vessels -- s. 154/s. 159

Seduction under promise of marriage -- s. 152/s. 157

Sexual assault I -- s. 246.1/s. 271

Sexual assault II -- s. 246.2/s. 272

Sexual assault III -- s. 246.3/s. 273

Sexual exploitation -- s. 146/s. 153

Sexual intercourse with feeble-minded -- s. 148

Sexual intercourse with a female under 14 years; Sexual intercourse with a female btw. 14 and 16 -- s. 146/s. 153

Sexual intercourse with stepdaughter or female employee -- s. 153/s. 158

Sexual interference under 14 -- s. 140/s. 151

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