Does Gender Play a Role?: Judges and Trial Outcomes in Sexual Assault Cases in Canada.

by

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Abstract

Canada undertook a major reform of the laws surrounding rape beginning in 1983. As a result of this reform, rape was re-conceptualized as 'sexual assault', and laws surrounding consent and earlier sexual history were introduced in 1992. These changes were greatly influenced by feminist groups in the hope that victims of sexual violence would be more likely to come forward. However, sexual assault continues to be underreported in Canada and there is substantial attrition from the number of reported cases to the number of charged and convicted cases. Such attrition raises questions about other areas in which sexual assault legal reforms have not lived up to their promise. Media reports and some scholarly literature suggests inappropriate actions *are* or are *likely* occurring within the Canadian Criminal Justice System (CCJS) at the hands of judges; however, the present study indicates that such behaviours are infrequent. Through a cross-sectional exploratory study design with a content analysis of judge rulings, this study explores the impact of judge and victim gender on sexual assault trial outcomes. Further, the present study explores whether popular rape myths still embed themselves within the CCJS, despite legislative efforts to eliminate such myths. Using the CanLII database, adult sexual assault cases within Canada between 2000 and 2018 with either a written verdict or sentencing decision (*N=106*) were identified and coded on a variety of variables. Results indicate that the gender of both the judge and the victim is not associated with trial outcomes, judges are not likely to use common rape myths—albeit it does occur from time to time, are likely to follow the *CCC*, and judges are more likely to use language that resembles the violent connotations of sexual assault rather than sexualizing the assault. These results may be cause for cautious optimism for policy-makers, researchers, and feminist advocates alike.

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List of Abbreviations

CCC: Canadian Criminal Code

CCJS: Canadian Criminal Justice System

GSS: General Social Survey

UCR: Uniform Crime Reporting Survey

LEAF: Women's Legal Education and Action Fund

MMP: Minimum sentencing penalties

Chapter 1

Introduction

Canada changed the laws surrounding sexual assault in 1983, and again 1992. This was done with the hope that victims would be more willing to come forward, and to increase the likelihood of a fair and just experience for victims as cases move through the criminal justice system. However, news media and some scholarly literature suggests that these legislative changes have not improved experiences with the criminal justice system for victims of sexual assault. According to these sources, some persistent problems include, but are not limited to, a decrease of cases going through the system from first report to the police to a conviction, rape myths adopted by actors within the institution, re-victimizing the victim, and not believing the victim. Gender is primary variable within this study and influences multiple dependent variables. The reason being is because both the body of literature and statistics suggest sexual assault is a gendered crime, in which women are more likely to be the victim, and men are more likely to be the offender. There are also gender norms that state that men are and should be aggressive and women are and should be passive, which leads studies to determine if these gender norms have an influence within the CCJS, regarding the victim, offender, and the judge. It is important to acknowledge the claims that are made in this body of literature lacks empirical evidence and highlight specific sexual assault cases and trial outcomes. To respond to some of the claims made by the media and various scholarly literature in an empirical manner, this study sets out to examine the role of gender on judge decision making, and if traditional rape myths persist within the trial process.

Research Questions

The present study seeks to answer several research questions related to the gender of various actors involved in criminal court proceedings and sentencing outcomes, additional predictors of sentencing outcomes, and judges' use of the *CCC* and language in written rulings:

1. Does gender influence sentencing decisions in sexual assault cases? Specifically, what, if any, is the association between sentencing outcomes and gender of the victim? What, if any, is the association between sentencing outcomes and gender of the offender? What, if any, are the associations between sentencing outcomes and verdicts, and gender of the judge presiding over the case?
2. How does the impact of various offender-related and victim-related predictors of sentencing outcomes in sexual assault cases compare to the impact of victim, offender, and presiding judge gender on sentencing outcomes? Specifically, what, if any, are the associations between sentencing outcomes and prior criminal record, substance use (offender and victim), province or territory of sentencing, and the victim-offender relationship?
3. How frequently, if at all, do presiding judges follow the *CCC* when determining sentence?
4. How frequently, if at all, do presiding judges employ language in written rulings that resemble that which might be found embedded within popular rape myths? Is the use of such language associated with sentencing outcomes and verdicts?

These questions are essential to both determine whether the gender of the judge and other actors influences sentencing decisions, and whether the judges subscribe to rape

myths within Western societies. With these two themes in mind, I will also explore other factors related to the charges placed on the offender, to determine whether additional factors are more strongly associated with verdicts and sentencing outcomes than gender.

Outline of Thesis

This thesis project consists of six chapters. I begin with a literature review, which includes a brief history of previous sexual assault laws, a description of the current sexual assault laws within Canada's Criminal Code (*CCC*), feminist critiques of the sexual assault laws, theorical framework surrounding rape myths, the role of judges within the Canadian Criminal Justice System (CCJS), gender influence within CCJS, and language use within the court system. Chapter Three described the study methods employed, followed by my results in Chapter Four. Chapter Five discusses the results, followed by a brief conclusion in Chapter Six.

Chapter 2

Literature Review and Hypotheses

To have a better understanding of sexual assault within the Canadian criminal justice system (CCJS), this review of literature demonstrates the context of adult sexual assault cases in Canada. This context includes the legal background surrounding sexual violence, as well as criticisms from feminist groups. Statistics around sexual violence, from police report to conviction, are discussed. Further, theories and evidence surrounding around rape myths and their relevance in the CCJS are presented. The literature review then focuses on language-use in sexual assault cases, followed by a discussion of gender biases within the CCJS. Finally, a summary of the literature is used to frame the research questions and hypotheses of the present study.

LEGAL BACKGROUND

Laws before the Reform

A major reform of laws surrounding rape and sexual assault in Canada occurred in 1983. Prior to this reform, the laws date back to 1892 and were rooted in British common law (Koshan 2017:144). The definition of rape in the *Criminal Code* (later titled, *An Act Respecting the Criminal Law*, but will be referred to throughout this manuscript as *Criminal Code of Canada* [*CCC*]) before the reform included "A male person commits rape when he has sexual intercourse with a *female person who is not his wife* … without her consent" (as cited in Koshan 2017:144, emphasis and ellipsis in original). The laws only applied to vaginal penetration, meaning oral or anal penetration did not classify as rape under these laws. Further, only women were seen as victims, yet

the laws framed married women as property. Since women were seen as men's property, rape laws were placed to "facilitate the transference of property from one male 'owner' to another" (Price 1984:1). Therefore, if a woman was raped, it was a trespass of another man's property and "the penalty of compensation was determined by women's economic value to the men whose household women served" (Condon 1993:10).

Within these laws, there were also what the Canadian Department of Justice (1990) refers to as "rules of evidence" to prove the woman had either resisted or withheld consent throughout rape trials. These rules included: the doctrine of the complainant, the corroboration rule, and evidence that surrounded reputation and sexual history of the complainant (Canada Dept. of Justice. Research Section 1990:6). The doctrine of the complaint derived from the historical use of "hue and cry" meaning that legitimacy of the complaint depended on the time between the claimed assault and when a woman filed a complaint (Canada Dept. of Justice. Research Section 1990:6; Price 1984a:5). In other words, the less time in between the assault and the woman filing a complaint, the more "believable" the woman was. Secondly, the corroboration rule was that any physical injuries or witnesses were independent evidence to the case (Canada Dept. of Justice. Research Section 1990:6-7; Price 1984a:5). If there was no corroboration within the case, it was required of the judge to give warning to the jury that there was no corroboration (Canada Dept. of Justice. Research Section 1990:7; Price 1984a:5). Thus, juries may feel reluctant to give a guilty verdict or to give the offender a criminal charge (Price 1984a:5). The third and last rule of evidence is reputation and previous sexual history of the complainant. When a complainant's consent was challenged, "the defence was permitted to cross-examine the complainant about her prior sexual activity with the accused and her

general reputation for chastity" (Canada Dept. of Justice. Research Section 1990:7). The reasoning behind examining a woman's sexual history and chastity was that legal actors believed a woman's sexual history determines consent. If a woman had a sexually active lifestyle, legal actors believed there was necessarily consent whereas if a woman was not sexually active, there may not be consent (Canada Dept. of Justice. Research Section 1990:7; Price 1894a:4). To help women report more cases of rape and to address the inequalities women face regarding rape trials, there was an amendment introduced by Parliament in 1976 in which legal actors were not allowed to ask questions about sexual history of the accused (Canada Dept. of Justice. Research Section 1990:8; Price 1984a:4). These three rules of evidence hindered justice for the victims of rape. The "ideal" rape had to have occurred for the legal system to be supportive; and even then, the system was not always on the victim's side.

Rape laws placed the woman at blame for her assault, and the perception of the woman played an important role that included her marital status and character. Price (1984a:1) argues that if the woman was not married at the time of her assault, her previous sexual history would be used as evidence against her to prove her untrustworthiness as a witness. However, if the woman was married and was raped by a man not her husband, she was seen as dishonouring her husband and acting on adultery; thus, having to share the blame and shame for not being able to protect herself (Price 1984a:1).

Feminist Groups Involvement of Law Reform

There were various groups of feminist activists during the time of the law reform in Canada. While the authors do not make a distinction between the different feminist

camps in their literature, it is important to highlight that there are disagreements between these camps. In order to make things clear, as there are contradictions between each feminist camp, I will state “some feminist groups” or “these feminist groups” when discussing the critiques of the rape and sexual assault laws in Canada. The only feminist camp that is distinguished in this literature review is radical feminism, and it will be clearly distinguished when there are opinions from radical feminists.

In response to the antiquated and misogynistic law described above, various advocacy groups raised a number of concerns, as well as they fought for such laws regarding rape and sexual assault to change. Some of these groups were “grassroots women's organizations, health care professionals, and feminist scholars” as well as woman's groups such as “the National Action Committee on the Status of Women, the National Association of Women and the Law, and the Women’s Legal Education and Action Fund [LEAF], [and] rape crisis centres” (Du Mont 2003:310; Randall 2010:401). These various groups had the same goal, which was to “improve responses to sexual assault in the criminal justice system, including changes to the law, as part of a broader struggle for women’s equality” (Randall 2010:401). These groups organized to adopt lobbying as a tactic. These groups fought for women's rights and against sexual violence, leading to advocate “for the Supreme Court of Canada and lawmakers to conceptualize it as socially contingent” (Craig 2012:63). During the 1970s, feminist groups raised concerns about the rape law, which they argued was enhancing the problem with violence against women (Canada Dept. of Justice. Research Section 1990:9). Throughout their advocacy, the groups wanted to address that sexual violence is a social construct, and it

enables the patriarchy to thrive within Canadian society. Through this tactic, the Court, as Craig (2012) discusses,

> has begun to recognize instances of sexual violence that it previously had not, but it is also that conceptualizing sexual violence as socially contingent, rather than the product of a dysfunctional sex drive, has changed what does and does not constitute sexually violative behaviour under Canadian criminal law (63).

Thus, the social movements were able to shape legal practice and made legal actors realize the laws surrounding rape and sexual assault were enabling inequality and needed a change.

Within the advocacy of legal reform, groups within the social movement had suggestions as to how to make the laws less misogynistic. The two main issues for some feminists' groups, as Hinch (1988) discusses, had been spousal immunity and the "over concern with the sexual character of the act" (283). These feminists argued that with the spousal immunity in the law, men were able to abuse their wives sexually and not receive any prosecution, thus stripping the autonomy of the woman (Hinch 1988:283). These feminists also argued for the laws to change 'rape' within the law, and to replace it with 'sexual assault.' The reasoning behind these feminists wanting to change the name of the charge and law is because rape "placed excessive importance on the sexuality of the crime, and diverted attention from the violence involved" (Hinch 1988:283). Lawmakers were able to shape sexual violence laws in ways the groups advocated for, which became Bill C-127—albeit Schissel (1996) labelled such changes as merely "cosmetic" (134).

Bill C-127

In January of 1983 existing sexual assault laws in Canada were dramatically reformed through the enactment of Bill C-127. The goal of the reform was to allow more victims to come forward with sexual assault allegations, and to remove gatekeeping

policies that were in place under previous laws. One of the major changes can be found in the language. The term ‘rape’ was updated to ‘sexual assault’ (Hinch 1985:33); and was then divided into three tiers (this tiered framework will be discussed in detail below). The reform also included the removal of spousal immunity, meaning husbands were free to become the subjects of accusations of sexual assault by their spouses (Tang 1998:260). Further, there was no longer a gender bias, meaning anyone could be accused of sexual assault, and anyone could be a victim of sexual assault (Gunn and Linden 1997:156). This change in law meant victims of sexual assault could file complaints without fear of not fitting into the “ideal” type of rape or sexual assault victim, and they could file a complaint of sexual assault that was outside of the old laws.

As discussed in the last section, there were three “rules of evidence” that needed to be obtained from the victim: a doctrine of the recent complaint, corroboration rule, and use of previous sexual history of complainants in a trial was permitted. With the law reform, these three rules of evidence were mostly repealed—evidence of sexual history is still permitted in three circumstances (Canada Dept. of Justice. Research Section 1990:14; Price 1984b:9-10; Gunn and Linden 1997:156). These three circumstances include: “rebuttal of evidence led by the crown; relevant to the issue of identification of the accused; and whether other sexual activity took place on the same occasion as the alleged sexual assault” (Price 1984b:10). With the removal of these rules of evidence, victims of sexual assault are no longer shamed by pieces of evidence that were once used against them as they seek justice.

During the development of the sexual assault legislation, five legal goals were put in place. The first goal was to “make the law a more efficient instrument to repress sexual

offences by making the criminal justice system more responsive" (Canada Dept. of Justice. Research Section 1990:15). Second, the legislation should increase "the deterrence effect of law" (15). Third, the laws are placed to "establish more meaningful relativity between offences concerning maximum sentences" (15). Fourth, the laws strive to "improve the experiences of victims with the criminal justice system in general and the trial process in particular" (15). The last goal of this new law is to "eliminate sexual discrimination in the criminal justice system, at least concerning sexual processing offences" (15). These goals indicate that the Department of Justice in Canada aimed to reduce victimization both during trials and within the community at large, as well as to eliminate discriminatory practices based on sex and personal histories.

Bill C-127 removed rape, gross indecency, and indecent assault by replacing it with three levels or tiers of sexual assault: i) sexual assault, ii) sexual assault with a weapon, threats to a third party or causing bodily harm, and iii) aggravated sexual assault. The *CCC* does not have a clear definition of sexual assault, and the first level of sexual assault does not give any indication of what must be in place for one to be found guilty for sexual assault—only the sentence length is given. The first level of sexual assault has two different types of offences, which are "summary" and "indictable". Ellis (1988:29) defines "summary" offences as those that have a lower sentence length, and are typically less violent, such as "minor harassment, bottom-pinching" and the like. The maximum penalty for a summary offence is six-month imprisonment, a fine of $5,000.00, or both (Criminal Code R.S.C. 1985, C-46:994). The second type of offence is "indictable," which involve more serious crimes. These types of offences receive a higher penalty than do summary offences and are treated differently within the justice system. If the Crown

decides to classify an offence as indictable, the accused "is allowed to choose whether he wants to be tried in a higher court and/or with a jury" (Ellis 1988:36).

In section 272 of the *CCC* (R.S.C. 1985, C-46:334-335), "sexual assault with a weapon, threats to a third party or causing bodily harm" includes sexual assault that has any of these variables: (a) carries, uses, or threatens to use a weapon or an imitation of a weapon; (b) threatens to cause bodily harm to a person other than the complainant; (c) causes bodily harm to the complainant; or (d) is a party to the offence with any other person. (Criminal Code R.S.C. 1985, C-46:335).

Lastly, in section 273 of the *CCC* (R.S.C. 1985, C-46:335), aggravated sexual assault is defined as: while committing a sexual assault, the accused wounds, maims, disfigures or endangers the life of the complainant.

The reformed laws also discuss the *actus reus* of sexual assault, which has two elements: "touching of a sexual nature and lack of consent to that touching" (Koshan 2017:152). Further, there is also a discussion of the *mens rea* requirement, which "is intent to touch in a sexual manner, and knowledge of or recklessness or willful blindness as to the complainant's lack of consent" (Koshan 2017:152). Discussions of *actus reus* and *mens rea* allow for some clarification of what the "requirements" for sexual assault are so that legal actors know what to look for in these types of cases. Given the lack of clear definition of sexual assault in the *CCC*, these two elements allow for broader context regarding what should be classified as sexual assault in legal terms.

Criticisms of Bill C-127

Although Bill C-127 endeavoured to remove barriers to victims of sexual assault seeking justice, there are some drawbacks. Some feminist activists and scholars raised

concerns after Bill C-127 became law. Regarding the Bill itself, some feminists' groups were concerned that the Bill placed all forms of sexual assault, regardless of seriousness, into one Bill or law. The concern with putting various forms of sexual assault into one law is that it could trivialize the assault in court (Hinch 1988:283) and create something of a contradiction: as described by Hinch (1988), "less serious forms of assault may be taken more seriously. They are now to be compared with offenses previously defined as a serious crime" (283-84). However, minor crimes taken more seriously can also make major crimes appear less serious. As Hinch (1988) points out, the major offences such as forced penetration "may be taken less seriously. They are now to be compared with offences previously defined as less serious" (284). Some feminists were also concerned about the de-gendering of sexual assault laws. The concern is not to discredit other victims or to suggest that people other than women cannot be victims, but according to Statistics Canada, in 2014, "a higher risk of sexual assault was noted among those who were women, young, Aboriginal, single, and homosexual or bisexual, and those who had poorer mental health" (Minster of Industry 2017:3); thus, Elaine Craig (2012:66) argues, removing gender from the law can minimize the issue of violence against women. Kathleen Lahey noted the offense of sexual assault "was defined by patriarchal norms and that in defining sexual violence the criminal law must better accommodate the particularity and specificity of women's experience and perspectives by maintaining gendered crimes" (as cited in Craig 2012:66). Lahey's argument suggests sexual assault emerged and developed through the patriarchy and the laws surrounding sexual assault should not erase the patriarchal undertones within sexual violence. During the first few years of Bill C-127 being part of the *CCC*, Hinch (1985) notes that many victims are

women, and offenders tend to be men. Likewise, between 2004-2014 to Statistics Canada found:

> Canadian women were far more likely than men to report that they were sexually assaulted. Women reported a rate of 37 incidents of sexual assault per 1,000 population, while men reported a rate of 5 incidents per 1,000 population. Of all sexual assault incidents, the vast majority (87%) were committed against women. Women reported approximately 555,000 incidents of sexual assault in 2014, far more than the 80,000 incidents reported by men (Conroy and Cotter 2017:6).

Further, "overall, sexual assault offenders were most often men, acting alone and under the age of 35. Just over half of victims knew the person who sexually assaulted them" (Conroy and Cotter 2017:3). While it is not impossible for women to sexually assault men or other women, it is more likely for men to be the attackers due to gender norms and the system of the patriarchy.

Another concern regarding Bill C-127 is that the law is focusing on the assault rather than the sexual nature of the assault. As Hinch (1985) states, "under the new legal definition 'sexual' is the adjective describing the noun 'assault'" suggesting that the law has more of a focus on the assault aspect rather than the sexual aggression (34). Some second-wave feminist groups wanted the laws to have the sexual part of the assault to be primary. Like the previous feminist arguments, allowing the laws to focus on the physicality of the assault rather than the sexualization of the assault silences the victims' trauma, and suggests the physical part of the assault is more concerning than the sexual violation. MacDonald (2005) discusses how in the case of sexual assault, "the degree of assault is not in question… but the *nature* of the action is" (52, emphasis in original). Thus, the implication towards sexual assault is that the legal system will believe the physicality of the assault but will put the sexual component into question. Similarly, the primary focus throughout the radical feminism movement was that "oppression is to be

found in patriarchy; the fact that societies have historically been constructed by men and for men" (Comack and Brickey 1991:29). Thus, rape or sexual assault laws are designed by men for men and does not consider women within societies. Radical feminist Catherine Mackinnon critiqued rape and sexual assault laws by claiming the laws do not view rape or sexual assault as violence, but rather an act of sex. As Mackinnon (1989:173) states, "rape is a sex crime that is not regarded as a crime when it looks like sex. The law defines rape as intercourse with force or coercion and without consent." Further, Mackinnon states that since the law surrounding rape and sexual assault is contextualized in masculine terms, it "becomes the victim's problem [to distinguish] rape from sex in specific cases" (1989:177). Rape myths are embedded in the law, which leads to victim blaming and the lack of belief of women victims. As Mackinnon (1989:181) states, "men's pervasive belief that women fabricate rape charges after consenting to sex makes sense in this light. To them, the accusations are false because, to them, the facts describe sex."

Lastly, an issue some feminists' scholars have with Bill C-127 is how the discourse surrounds women's bodies within the law. MacDonald (2005) discusses the notion that "women's bodies are absent from a discourse that is focused on a male point of view. The female bodily integrity that is present in the conferring or denying consent to an act, it appears, is irrelevant" (52). The law is masculine, and the law surrounding sex, rape, and sexual assault is no different. If a man holds the belief that the action was sex and not assault, as MacDonald (2005) states, the question then surrounds the "intention of either party or interpretation" rather than what the man defines as sex (52). Not questioning the offender's definition of sex and/or sexual assault creates problems

because not only are the institutions holding men's word over women's which questions the legitimacy of the victim, but it also suggests what a man perceives as sex or sexual assault is the norm, and women's views are incorrect. Similarly, Mackinnon (1989:180) states, "rape is only an injury from women's point of view. It is only a crime from the male point of view, explicitly including that of the accused." Since it is the woman that sees it as an act of violence or assault, it is hard for men to see the difference. Ostensibly, perpetrators (men) were the ones to act, and believe they did no wrong. Radical feminists believe that the accused does not realize he acted in violence, and since the laws were made by and for men, it is more likely for the law to support the accused rather than the victim.

Further within the discourse of women's bodies, MacDonald (2005) discusses how women are treated the same within the legal process. The laws were written by and for white, cisgender, heterosexual men, thus lacking diversity from other members within Canadian societies. However, people who are not white, cisgender, heterosexual men must follow the same laws, which can create boundaries and problems with other demographic groups. Thus, the "sameness" within the legal system erases the diversity of women and silences different experiences women face which can create the notion of "othering" (MacDonald 2005:55). The "othering" of women in the legal system creates the ideology in which women are not the "norm," and their sexuality thus becomes "deviant" (MacDonald 2005:55). What this means in sexual assault cases is that since women are perceived as the same under the court of law, their stories will sound the same (MacDonald 2005:58). Rather than listening to a woman's story, according to MacDonald's perspective, legal systems will believe it is the woman's fault for putting

herself in the situation of sexual assault since the system deemed women's experiences to be "the same."

Bill C-49

Given the various criticisms of Bill C-127, Women's Legal Education and Action Fund (LEAF) and feminist lawyers "played a major role in advising the women's coalition and the government on an approach to sexual assault reforms which would ensure that women's constitutional rights to equality and security of the person were recognized" (Condon 1993:51). Through their mobilization, Bill C-49 was introduced in order to fill gaps left by the 1983 law reform.

Bill C-49—also known as the "rape shield laws"—was passed in 1992. Before the implementation of Bill C-49, there was no clear definition of consent within the *CCC* and in legal contexts. The definition of consent that is in Bill C-49 is as follows: "the voluntary agreement of the complainant to engage in the sexual activity in question" (as cited in Codon 1993:54). Under this bill, consent can only come from the complainant, whether it is through words or conduct (Condon 1993:54). The notion of "no means no" was brought forth through this change, as the subject needs to say 'yes' for activities to be considered consensual.

Bill C-49 also prevents the defense from bringing up the previous sexual history of the complainant—whether it is with the accused or with another person(s)—which is why C-49 is often known as "rape shield laws." The *CCC* states in section 276, "evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant (a) is more likely to have consented to the sexual activity

that forms the subject-matter of the charge; or (b) is less worthy of belief" (Criminal Code R.S.C. 1985, C-46: 339). There are two other relevant pieces to section 276: idem and factors the judge must consider. Idem relates to how evidence of sexual history outside the assault at hand can be brought into trial. Instances in which sexual activity outside the assault can be brought into trial and used as evidence include: (a) specific instances of sexual activity; (b) those cases where it is relevant to an issue at trial; and (c) those cases where such information has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice (Criminal Code R.S.C. 1985, C-46: 339). Factors the judge must consider include the judge's perspective of whether evidence of previous sexual history should be admissible in the case at hand.

SEXUAL ASSAULT IN THE CRIMINAL JUSTICE SYSTEM AND STATISTICS

Sexual assault in the CCJS is unique because unlike other serious crimes, it is a private affair, meaning there are typically few or no witnesses, and the offender will not report it; it is up to the victims themselves to report the assault. The process to get the assaulter to court and receive a possible sentence is a long process, since it must go through various gatekeepers. As an overview, the process begins with the choice of the victim to report the assault and be prepared for any of the possible outcomes. The victim must report it to the police, which creates the responsibility for the police to determine whether there is reason to press charges against the assaulter. If the police believe the victim's story is "believable," the police will only then press charges. When the charges are laid, the Crown begins the process of finding a lawyer to represent the state and the

victim. If a lawyer believes the case can result in a "guilty" verdict and/or a sentencing, it will be brought to court. Although the present study focuses on trial by judge, it is important to address the different types of criminal trials. There are two types of trials: trial by jury and trial by judge. Trial by jury in criminal cases occur when "a person [is] charged with a criminal offence for which there can be a prison sentence less than five years" (Department of Justice:2017). Jury members are part of the trial, and once the trial is ready for a decision or verdict, they "meet outside the courtroom to decide whether the prosecutor has proven beyond a reasonable doubt that the accused is guilty" (Department of Justice:2017). The jury must agree on a verdict and must be a unanimous decision. If the jury cannot make a unanimous decision, "the judge may discharge the jury and direct a new jury to be chosen for a new trial" (Department of Justice:2017). Trial by judge does not include a jury, and the judge must decide on whether the prosecutor has proven beyond a reasonable doubt that the accused is guilty. Therefore, throughout all these steps, the victim has no control over the matter, and it is up to those who were not there for the crime to determine whether there is a workable case and if it is worth going to trial over.

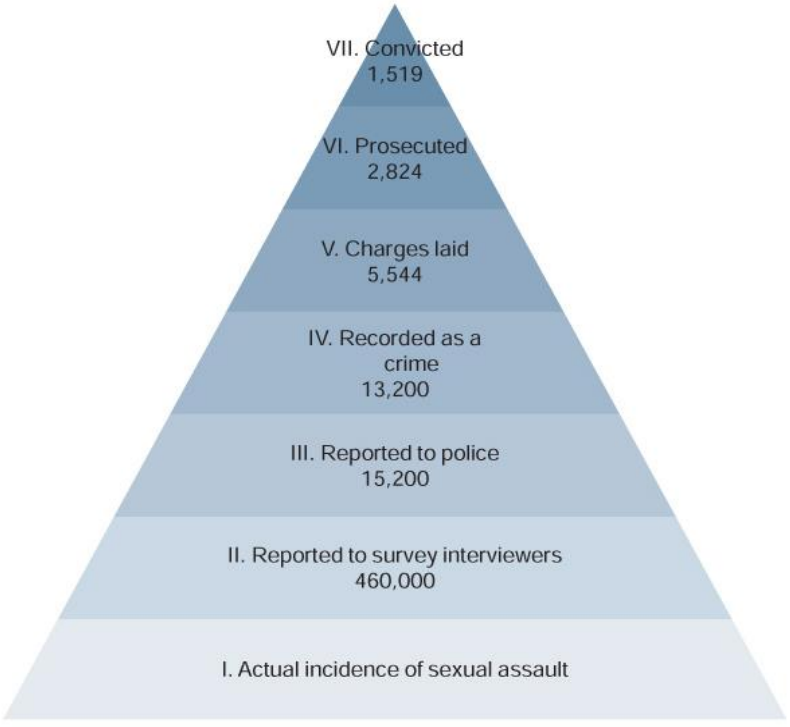
Trends in Sexual Assault Reports

There are three different types of official data sources for counting sexual assault in Canada: The General Social Survey (GSS), the Uniform Crime Reporting Survey (UCR), and the incident-based Uniform Crime Reporting (UCR2)**.** Although the present study does not specifically look at how police handle sexual assault cases, it is important to know how many cases go from a police report, to the Crown, to a trial, and to a conviction.

Starting with the statistics from the 2004 GSS and UCR data from 2007, Holly Johnston (2012:631) adapted an attrition pyramid which includes seven tiers: actual incidence of sexual assault (number unknown); reported to survey interviewers (460,000); reported to the police (15,200); recorded as a crime (13,200); charges laid (5,544); prosecuted (2,824); and convicted (1,519). Refer to figure 1 below.

Figure 1

The Attrition Pyramid



Source: Johnson 2012:631

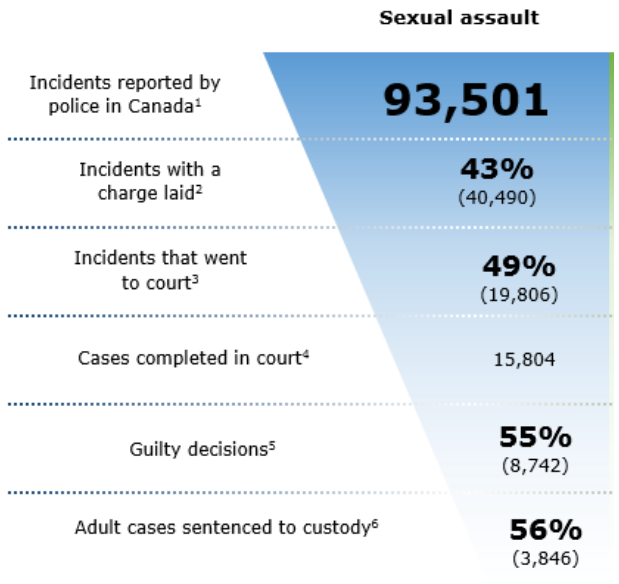
Interestingly, the disparity between the self-report victimization survey and conviction is substantial, which can suggest that victims do not report to the police or take any legal action. As Johnston discusses,

> the result is that 0.3 percent of perpetrators of sexual assault were held accountable and 99.7 percent were not. It would take dramatic changes in women's willingness to report these assaults to the police, or a concerted effort to alter current police and prosecutor policies, to improve this dismal rate of attrition and address what amounts to impunity for sexually violent men in Canada (2012:632).

Using 2009-2014 UCR data, the government of Canada released an attrition model for every 1,000 cases in 2009-2014. Out of every 1,000 from 93,501 cases, 561 cases go to the police but result in no charges, 221 result in charges but do not go to court, 95 went to court but did not result in a conviction, 52 result in conviction but no sentencing to custody, and lastly, 65 result in conviction and sentencing to custody. Essentially, out of 1,000 cases, only 65 of those accused of sexual assault receive a conviction and sentenced to custody (Rotenberg 2017:7). See figure 2 below.

Figure 2

Retention of Criminal Incidents in the Criminal Justice System, Sexual Assault, Canada, 2009 to 2014



Source: Rotenberg 2017:10

In examining both Johnston's analysis of GSS in 2004 and the UCR data from 2009-2014, the trends have not changed dramatically, and there is still a significant difference in the number of sexual assault cases that go from the police to a conviction. Given the gap between filing a report to the police and securing a conviction, it leads one to questions why this occurs and how.

THEORIES AROUND RAPE MYTHS

While rape myths were arguably perpetuated through the CCJS prior to the law reform of 1983 (see Burt 1980), contemporary feminist scholars such as Sampert argue these myths persist today and are now firmly embedded within a current *rape culture*. While there are a number of specific myths around rape, rape myths generally insinuate that the victim (such myths focus on women as victims) cannot be trusted, and they should be shamed for what has happened to them. Despite law reforms aiming to help victims come forward and avoid second-hand victimization or trauma, actors within these systems are argued by a number of scholars to subtly play with rape myths in a contemporary setting (Sampert 2010; Edwards et al. 2011; Comack and Balfour 2004).

What does "Rape Myth" mean?

Rape myth and rape culture both arose from the second wave feminist movement in the 1970s. The definition of rape myths from Burt (1980:217) includes "prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists." Further, although rape myths and rape cultures vary throughout different societies and cultures, there is an overarching theme throughout all of them. Grubb and Turner (2012:445), define the pattern in which rape myths "*blame the victim for their rape, express a disbelief in claims*

of rape, exonerate the perpetrator, and *allude that only certain types of women are raped*" (emphasis in original). The rape myths hold a belief in which there is an "ideal" rape victim and rape scenario within rape culture, which is also known as a "rape script." If the rape does not fall under the "ideal," it is not seen as "real." Within the "rape script," it is typically a young woman alone in the dark, and it is a stranger that rapes her (Deming et al. 2013:466). Rape myths come into play when a rape or sexual assault does not follow this script. Common rape myths that have an impact within the criminal justice system include:

> women provoke their own sexual assault by the types of clothing they wear, their demeanor, by being alone, drinking, and being out at night. Additional rape myths include "she asked for it," "it wasn't really rape," "he didn't mean to do it," "she wanted it," or "she lied" (Deming et al. 2013:467).

Further, "rape is miscommunicated romantic signals or that rape is the result of uncontrolled lust. Other myths suggest that victims are responsible through their actions for their own victimization or that men with good reputations do not rape women" (Sampert 2010:304).

The purpose behind rape myths is to undermine the victims of sexual assault and to hold the belief that sexual assault does not exist outside the "stranger in the dark" script. As Sampert (2010:304) discusses, rape myths "underlie and fuel violence against women and inform the negative societal reactions to those who have been sexually assaulted… [and] serve to trivialize, justify, and deny sexual assault." As these myths have been embedded throughout the laws, media, and everyday discourse, those who have been sexually assaulted get victim blamed.

Theories on why People Victim Blame

Grubb and Turner (2012:444) discuss two theories as to why people victim blame those who endured sexual assault: "defensive attribution hypothesis," and "just world theory." Defensive attribution hypothesis suggests that people will either increase or reduce victim blaming depending on how much they can relate to the victim, and how likely they could fall into the same situation as them (Grubb and Turner 2012:444). Further, "defensive attributions predict negative victim perception to decrease as the similarity of the observer to the victim increases, this being a defense mechanism to protect the observer from being blamed themselves if a similar fate should befall him or her in the future" (Grubb and Turner 2012:444). Thus, if the victim of sexual assault is not someone who the general public can relate to, it is more likely the victim will be blamed for their actions leading up to the assault because they believe it will not happen to them in that fashion or at all.

Just world theory explains how people perceive actions and consequences. People believe that what you do in the world is what you will get in return, and people deserve what is coming for them. In the context of rape or sexual assault, people who abide by the "just world" theory will hold the belief that those who were raped or sexually assaulted deserved it because their life path had led them to this form of violence. Further, Hockett et al (2016:144) discuss how other women who abide by this theory view sexual assault victims: it is cognitively "self-preservational for women to view themselves as good and to blame other women who have been raped as having 'asked for it.'" The theory does not give room for sympathy for the victim, thus continuing the rape myths involving victim blaming.

Rape Myth Acceptance

Within rape myths there is a form of acceptance in which people believe rape myths are either real or can apply to cases of rape and sexual assault. With gender norms in mind, rape myths can exist as well as to be accepted within societies and play a predominant role in how people perceive rape/sexual assault. Burt states "Rape is the logical and psychological extension of a dominant-submissive, competitive, sex role stereotyped culture" (1980:229). Since there are already gender role stereotypes of men as dominant and women as submissive in other aspects of society, society would not treat sexual assault and rape differently; men are sexually aggressive, and women need to submit to sexual aggression.

Rape myth acceptance creates issues within societies because it leads to inconsistences in institutions and creates a stigma around being a victim of rape/sexual assault. The first issue is that when people believe the myth "she lied," the result is "an inaccurate portrayal and perception of the number of false rape allegations that are made by women." (Grubb and Turner 2012:445). Thus, the myth that the majority of allegations are false could lead to victims' reluctance to report their allegations because they do not want to be viewed as a liar, or have people believe their assault is not real. Secondly, there is an association between rape myth acceptance in men and perpetrating sexual assault. Studies done by both Field (1978), and Koralewski & Conger (1992) demonstrate that self-confessed and convicted rapists have "higher levels of rape myth acceptance than control participants" (as cited in Grubb and Turner 2012:445). The reasoning as to why this is the case relates to what is called "psychological neutralizers," which "allow men to turn off social prohibitions against hurting others when they want to use force in sexual interactions" thus can be "utilized as a dangerous weapon for potential

rapists to justify they violent tendencies" (Grubb and Turner 2012:445). This ideology suggests the discourse that men can "get away" with sexual assault. If people are seeing perpetrators of sexual assault go unpunished because of the embedded rape myths, it will enhance the rape myths further and possibly enable men to adopt these practices, leading to more sexual assault.

Lastly, according to Grubb and Turner (2012), rape myth acceptance encourages victim blaming. Rape myths are predominantly blaming the victim for putting themselves in a situation where this could occur, which leads to justifying the rapist's actions (Grubb and Turner 2012:445). Rape myth acceptance and victim blaming have also played a role within the criminal justice system. According to Frohmann (1991:213), there are many sexual assault cases that do not get past the prosecutor's decision to move forward for adjudication by the courts, as they typically discredit "the victim's rape allegation with the techniques of finding discrepancies in the victim's story and assuming ulterior motives for reporting the assault." Although the laws surrounding previous history changed in 1992, the Crown still must consider that they want cases to lead to conviction, which can lead to them victim blaming indirectly.

Rape Myths in the Criminal Justice System

Before the law reform in 1983 and the rape shield laws in 1992, the Canadian rape/sexual assault laws had rape myths embedded in them, which resulted in barriers to what classifies as rape/sexual assault and blaming the victim or trying to justify the offender. For example, the explicit need for corroboration prior to 1983 perpetuates the myth that complainants are likely to lie about their alleged victimization. In a contemporary setting, Comack and Balfour (2004:111) argue that it is believed that

"women frequently fabricate rape allegations, or they initially consent to sex but change their mind afterwards." This is a popular myth, as it enables the idea that the victim who "did not have a good time" makes an allegation about rape/sexual assault. Further, the media mainly shows cases in which there was an acquittal, or it was a false claim. As Edwards et al. (2011:766-7) discuss, although instances of false allegations of sexual assault are rare (Government of Canada (2018) reports that only 2-4% of alleged sexual assault cases are false), if the media is only portraying false allegations, people will believe it is more likely that women are lying about their sexual violence. The extent to which court actors or the general public hold views consistent with this popular rape myth is unknown; as is the extent to which this rape myth impacts the outcomes of criminal cases (past or present).

The rape myth that the woman asked to be victimized is a victim-blaming myth in which women should be held accountable for their actions leading up to their rape/sexual assault. Some of these actions include what they were wearing, if they were drinking and how much, and if they were flirting or being suggestive to their attacker. Women are expected to acquire

> habits which are inculcated at a young age and then constantly re-defined and maintained, the woman learns to accept her body as dangerous, willful, fragile, and hostile. … The production of such a body, of course, reflects and supports a status quo which assumes that the victim is morally responsible for the behavior of the assailant, at least until she can be proven sexually prudent or innocent (Cahill 2000:56).

This myth is embedded in the law pre-1983 by way of the rule of evidence regarding reputation and previous sexual history of the complainant. It remained embedded post-1983 in that sexual history is still permitted into evidence for the purpose of determining whether other sexual activity took place on the same occasion as the alleged sexual

assault. Even if this information is presented for the purpose of incriminating a perpetrator, it may still have the uninteded consqueces of biasing judges and juries. Further, it embeds the idea that one does not need to say "yes" for it to be considered consent, and that the body holds more value than verbal cues. Again, the actual extent to which court actors or the general public hold views consistent with this rape myth is unknown; as is the extent to which this rape myth impacts the outcomes of criminal cases.

The rape myth in which men cannot control themselves and were acting out of passion and lust rather than violence embeds the idea that men's sexual needs must be met, and it is the women's duty to fulfil those needs. This myth is embedded in pre-1992 legislation vis-à-vis Bill C-127's focus on the assault rather than the sexual nature of the assault as the sexual element may be defined by the perpetrator as romantic, which subsequently eliminates the need to frame the even as an assault. Sampert (2010:305) quotes Benedict *surpa* note 7 to note this rape myth "ignores the fact that rape is a physical attack." Sampert (2010:305) believes this myth continues to be embedded in the CCJS when legal actors use terms such as "sex attack" or "sex assault" since it implies there were "romantic overtones or there was simply a sexual misunderstanding." This myth is more subtle than the others since it has a focus on language use. However, it has an overarching message that "boys will be boys" and it is natural for a man to feel sexually aroused, and he should be able to fulfil his desires and it not be considered sexual assault/rape. The extent to which court actors or the general public hold views consistent with this myth is unknown; as is the extent to which this rape myth impacts the outcomes of criminal cases.

The fourth rape myth, “rape is impossible”, is another myth to belittle the victim’s trauma and embed the idea that one *always* has the power to say no to sex and be taken seriously. As Comack and Balfour (2004:111) states, “anatomically, women cannot be forced into sex like ‘you cannot thread a moving needle.’” The myth suggests that a woman does not want to have sex, she has the power to stop it, thus when she does not stop it, she wants it. This myth further enhances that idea that women cannot be trusted, and they would never put themselves in a situation they did not want to be in unless there was some part of them that wanted it. Again, the extent to which court actors or the general public hold views consistent with this myth is unknown.

Lastly, the myth that sexually promiscuous women cannot be raped essentially implies that if a woman has had sexual relations she has consented to before, she is always willing to consent. As Comack and Balfour (2004:111) states, “unless women were virgins, married, or celibate before they were raped, they consented to sex.” As the old laws suggested, women who were married could not be raped by their husbands, and it was only considered rape if another man raped her. Thus, if an unmarried woman has had multiple sexual partners in her past, and were to be sexually assaulted/raped, then people would not believe her because she consented before. Further, the laws surrounding sexual assault prior to 1983 had rape myths embedded within them known as the “twin myths.” The “twin myths” include the notion that unchaste women are not to be trusted, and women who have previous sexual history are more likely to consent than those who do not (Craig 2018:121). Although these myths have been removed from the laws and the Crown objects to these myths being used, the defense finds ways to subtly bring them into the cross-examination. However, the extent to which the defense engages in this

conduct is unknown. There is little empirical evidence describing the extent to which court actors or the general public hold views consistent with this myth and the extent to which this rape myth impacts the outcomes of criminal cases is not known. Employment of the twin myths during cross-examination is discussed in more detail in the following section on courtroom dynamics.

COURTROOM DYNAMICS

When a sexual assault case goes to trial, there are legal actors that are part of the conviction decision. These include the defense lawyer, the Crown prosecutor, the judge, and in some trials, the jury. The defense lawyer defends the accused or accused, ensures the accused is given a fair trial and that the right to due process is respected. The Crown represents the system by trying to be fair in prosecuting the accused as well as defending the complainant or victim. The jury and judge are the actors that make the decision of what verdict the accused receives—whether that is in a form of a guilty conviction or a not-guilty conviction. As this study focuses on the role of judges, only a thorough discussion of the judge's role is provided in the following sub-section.

Judging the Judge: How Judges act in the Courtroom

The role of the judge is "to adjudicate fairly by applying the law to disputes between private parties and (when the need arises) to disputes between individuals and the state" (Gearty 2002:246). The judge must listen to both the defense and the prosecutor and determine whether the crown's case is proven beyond reasonable doubt. The judge has a role to play to ensure the trial is fair to both the complainant and the accused; however, judges may not fulfill the role effectively.

As McCormick and Greene (1990:78) state, the courts work best "when judges can apply a relatively well-developed set of rules (the law) to factual situations." Trial judges must ensure the trial is fair for everyone, and to ensure the cross-examinations are conducted according to proper procedure. For example, the judge should ensure there are no unnecessary or repeated questions, no insulting questions or statements, and no unlawful questions or statements (Craig 2018:167). However, according to Craig (2018), not all trial judges will do that, which can result in further trauma and victimization of the complainant. As Craig (2018:145) notes, not all trial judges will "intervene when defense counsel attempt to introduce evidence that should be scrutinized and potentially excluded under section 276" (Craig 2018:145). While there are no statistics of how often the lack of objection from judges occurs, lack of intervention enables the suggestion that the application for 276 is not relevant, and the defense can get away with breaking section 276 of the *CCC*. In contrast, there is also no empirical evidence to describe the extent to which improper conduct occurs on the part of judges.

Judges can also acquit the accused even when there is enough evidence to remove any reasonable doubt. An example of this is from a case *R v B(S)* from Newfoundland and Labrador where a defendant was acquitted of charges related to a sexual assault. Justice Stack did not succeed at upholding his role as a trial judge through a few factors. These factors include: did not "properly apply section 276 of the *Criminal Code*, failed to uphold his own ruling on the basis for admitting the texts, and failed to perform his role in controlling the trial process" (Craig 2018:173). When the case was put up for an appeal, Justice Malcom Rowe made a note that Justice Stack was wrong in what he did, but the acquittal was upheld (Craig 2018:173). Despite the judge's failure to keep the trial

fair for everyone, and his unlawfulness regarding the application of section 276, his behaviour did not receive any backlash. Judges can also embed rape myths into the courtroom and fail to maintain the laws—although the extent to which this occurs is unknown. An example of this is an Alberta judge, Robin Camp. Justice Camp made comments to a 19-year-old complainant in 2014 that "pain and sex go together sometimes" and asked why she did not keep her "knees together" (Anderson 2018).

LANGUAGE IN THE COURTROOM

Since the law was made by and for men, it makes sense that the language used within laws and in legal contexts would also be focused on men rather than women. As Easteal (2012:326) discusses, "Our language filters what we want to see, or choose to see, and by doing so it influences what we communicate to others." In the context of rape and sexual assault, the language surrounding this violent crime is filtered by what the lawmakers and legal actors want to focus on, and what they want non-legal actors to focus on. Changing the name from "rape" to "sexual assault" in the *CCC* is an example of how legal actors want to filter the language use around the crime. Rather than focus on the violation of penetrating a woman without consent, the legal actors wanted to have a focus on the assault, and that it has sexual connotations to it. Further, de-gendering the sexual assault laws takes the focus away from the woman, and the sexual violence women face. The de-gendering allowed for more people to come forward, but it discredits the fact that it is more likely a woman will be a victim of sexual violence.

Language surrounding sexual violence is also limited, which can cause problems when discussing the acts of rape or sexual assault. Actors in the criminal justice system use inappropriate language when discussing rape and sexual assault in the way that they

will use language discussing sex rather than forced penetration or sexual violence (Easteal 2012, Coates 1997). When examining Canadian sexual assault cases from 1986 to 1992, legal actors used

> terms such as 'engage in sexual intercourse', 'bout of intercourse' and 'a form of bondage' were used to describe forced vaginal penetration; non-consensual manual e genital contact was referred to as 'fondling', 'brief touching', 'hand beneath her panties', and 'advantage taken of a situation' (Easteal 2012:331).

When using this form of language, it belittles the violence that occurred, which leads to legal actors such as the jury and the judge view it as something that was consensual rather than sexual violence.

Legal actors can manipulate the jury or judge through language. As Easteal (2012:326) discusses, lawyers can create narratives around what occurred during the alleged sexual assault "by systematically highlighting and silencing certain aspects of the crime before the court, as well as by using different verb tenses and pronouns." There are some tactics lawyers can utilize in order to make their narrative sound more "believable" in front of the court. One way they can do this is through defense lawyers taking advantage of the silence from the complainant when they are asked a question. For example, O'Barr (nd:111) discusses how silence can be a power manipulating tool for lawyers because the lawyer can ask "do you not remember?" when there is enough time in between the question and silence. The ability to take advantage of the silence after the initial question was asked is "a tool for lawyers in their management and control of the courtroom speech. It is available to use in impugning witnesses and challenging credibility" (O'Barr nd:111). This is similar to the tactics used in "whacking the complainant"—lawyers will find ways to use language to make the complainant look less credible.

GENDER BIAS IN THE COURTROOM

There are some gender biases that play within Canadian courtrooms, whether it is on the part of the victim, the accused, or the judge. Depending on gender roles, the results of verdicts in sexual assault cases can vary. These gender biases derive from gender norms and roles that play throughout western society. Within these gender biases, there are some inequalities that arise.

Gender Bias of the Accused

The gender of the accused plays a role in their sentencing. Adopting chivalry theory, there have been studies that show:

> women are more likely to be released prior to trial, receive downward departures from sentencing guidelines, are less likely to be habitualized, sent to prison/jail, and more likely to receive leniency in sentencing if given a term of incarceration than their similarly situated male offending counterparts (Franklin 2008:280).

There are a few reasons as to why this occurs. As Leiber et al. (2018:101;104) discuss, there are decision-makers "who feel the need to 'protect women,'" as woman offenders

> are perceived as less dangerous, less threatening, weaker, less culpable, and as having a lower likelihood of recidivism compared to males …Parental responsibilities, demonstration of remorse, and caring for dependents are additional reasons for which research has found less severe sentences for females .

While Leiber et al. (2018) conducted their research in the United States and their study does not have a primary focus on sexual assault sentencing, Leiber et al (2018) investigated criminal cases that had Black and white who were accused of a crime to determine sentencing decisions in Iowa and found this chivalry theory to hold true. Thus, with the gender bias that women are the caregivers, and are more passive than their men counterparts, it enables the idea that women should not receive as severe of a sentence.

This theory suggests that women are getting a less severe punishment than men simply because they are women.

Opposing the chivalry theory, there are also gender biases which give women offenders and unfair disadvantage. As Franklin (2008:281) discusses, in relation to sex crimes, since that is seen as a "masculine" crime, or "crimes that fall outside of the stereotypically feminine mold," women who commit these crimes may be viewed as "not deserving of chivalrous/paternalistic treatment." While the impact of leniency or harshness on recidivism on more serious crimes such as sex crimes cannot be commented on here, deeming an offence "masculine" or "non-feminine" should not be the reason as to why women offenders get less leniency in their sentencing decision. Moreover, this theory suggests that it is because they are women committing these crimes, they are receiving a harsher sentence rather than receiving a harsh sentence because of the crime committed. However, as Franklin's findings point out, the "criminal justice system acts to protect women generally as they are inherently in need of help and protection" (2008:286), debunking this theory.

Gender Bias in the Victim

There are also gender biases depending on the gender of the victim. Some findings suggest "offenders who victimized females were no more likely to be incarcerated than offenders who victimized males " (Franklin 2008:281). However, there are other research findings that suggest that "victim gender did affect the severity of sanctions where offenders who aggressed against male victims received shorter sentences than those who victimized women" (Franklin 2008:281). The latter finding suggests that if the victim is a woman, the offender should have harsher sentences. It

enables the stereotypes that women cannot defend themselves, and offenders should have known that. It also enables the idea that men are stronger than women and can handle the assault.

Gender Bias in Judges

Based on studies discussed above, it can be assumed there are gender biases within the CCJS. For instance, there is a gender bias in how men and women judges sentence their sexual assault cases. Within their study, Steffensmeier and Herbert (1999) found some similarities and some differences in how women and men judges' sentence. For example, their results showed that "women and men judges give approximately equal sentences to white female offenders, whereas women judges sentence the other race-sex subgroups—black female offenders, white male offenders, black male offenders—more harshly than men judges do." (Steffensmeier and Herbert 1999:1183). Women judges give harsher sentences than men judges' because, according to Steffensmeier and Herbert (1999:1184) "women judges will be more affected by recidivism risk and will be more particularistic in their sentencing decisions than men judges." Without speaking to the effectiveness of sentence length on recidivism directly as it is beyond the scope of this thesis, in the context of sexual assault, Steffensmeier and Herbert (1999) suggest that women judges do not want sex offenders to have "light" sentences and want to be sure that sex offenders do not re-offend, thus giving them a harsher sentence.

With the limited amount of research on gender biases in the courtroom, it is unknown specifically why such biases exist. It is possible that the role of empathy plays a part in which women judges do not want people to be future victims, but it is uncertain. Moreover, it could tie into the theory that since women are "weak" and "passive," women

judges feel they need to prove themselves as the opposite by sentencing harsher than men judges.

SUMMARY LITERATURE AND HYPOTHESES

Bill C-127, arguably the most notable legal reform on sexual violence, emerged in 1983 during the second wave of feminism. Bill C-49 followed shortly thereafter to fill some gaps left by the 1983 reform. Although there have been various groups that contributed to such reforms, feminists' groups—specifically radical feminist groups—are some of the more noteworthy. Radical feminists raised important critiques of the laws surrounding sexual violence, which includes addressing the inequality, imbalances, and injustices for victims of sexual violence. Radical feminists wanted to ensure that Bill C-127 was accessible for victims of sexual violence, that legal actors would not further victimize the complainants, and that victims would be treated fairly in the criminal justice system. Scholars and activists identifying with this group raised arguments surrounding sexual violence that remain salient over thirty years later.

Summary

Theories around rape myths speak to a re-victimization of those who are victims of sexual assault and can discourage victims to come forward in the CCJS. Feminist theorists believe that despite the Canadian law reform in 1983 and the rape shield law embedded in 1992, rape myths still play a significant role within the CCJS. Although Canada is a democratic society where the defendant has access to a fair trial whereas the victim does not, it is possible that some judges will not be objective and embed rape myths into their language when describing the alleged sexual assault. While there are

case examples in which judges have done so during sexual assault cases, there is a lack of empirical evidence. Additionally, some literature suggests a gender bias in determining a verdict and sentence length for sexual assault cases. While again anecdotal case examples are found in Canadian case law, there is currently little empirical evidence. The present study serves to fill gaps in the literature around the role of gender in trial outcomes and shed light on the use (or disuse) of rape myths in the CCJS in the second millennium.

Chapter 3

Methodology

Research Questions/Hypotheses

The present study seeks to answer several research questions related to the gender of various actors involved in criminal court proceedings and sentencing outcomes, additional predictors of sentencing outcomes, and judge use of the *CCC* and language in written rulings:

1. Does gender influence sentencing decisions in sexual assault cases? Specifically, what, if any, is the association between sentencing outcomes and gender of the victim? What, if any, is the association between sentencing outcomes and gender of the offender? What, if any, are the associations between sentencing outcomes and verdicts, and gender of the judge presiding over the case?
2. How does the impact of various offender-related and victim-related predictors of sentencing outcomes in sexual assault cases compare to the impact of victim, offender, and presiding judge gender on sentencing outcomes? Specifically, what, if any, are the associations between sentencing outcomes and prior criminal record, substance use (offender and victim), province or territory of sentencing, and the victim-offender relationship?
3. How frequently, if at all, do presiding judges follow the *CCC* when determining sentence?
4. How frequently, if at all, do presiding judges employ language in written rulings that resemble that which might be found imbedded within popular rape myths? Is the use of such language associated with sentencing outcomes and verdicts?

These questions are essential to both determine whether the gender of the judge and other actors influences sentencing decisions, and whether the judges subscribe to rape myths within Canada. With these two themes in mind, I am also exploring other factors related to sentencing outcomes to determine whether additional factors are more strongly associated with verdicts and sentencing outcomes than gender.

I had multiple hypotheses pertaining to these research questions. First, I hypothesized that the gender of the judge does influence their decision making. Judges who are women will give harsher and longer sentences than judges who are men. Darrell Steffensmeier and Chris Hebert's (1999) research supports this prediction. Their results indicate that although women and men judges sentence white women offenders the same, women judges were more likely to give harsher sentences to other race-sex subgroups than men judges. Given the exploratory nature of the research, I was unable to hypothesize how gender of the victim and the gender of the offender is associated with sentencing outcomes.

Second, I hypothesized that judges will not completely follow the *CCC* in their decision-making. There are no sentencing guidelines when it comes to adult sexual assault as section 718 from the *CCC* states; only cases involving children or firearms have to follow the sentencing guidelines listed in the punishments in sections 272 and 273. However, judges do have follow what is referred to as “case law,” which is using former cases sentencing decisions as a tool to determine an appropriate sentence for a crime. Section 718 states sentencing principles: fundamental (s.718.1) and other sentencing principles (s.718.2). The fundamental sentencing principle states, “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the

offender," meaning that the judge is legally not allowed to sentence an offender harsher or more lenient than the proportionate sentence (R.S.C. 1985, C-46:992). Under section 718.2, there are five different sentencing principles. These include: "a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender" which include evidence towards factors such as the assault was a hate crime, the offender was abusing a spouse or common-law partner, that the offender abused trust from the victim, or that the offender was on parole during the time of the assault (R.S.C. 1985, C-46: 992). Further, when sentencing sexual assault cases, judges must use a sentence length "similar to sentences imposed on similar offenders for similar offences committed in similar circumstances", as well as sentencing "where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh." (R.S.C. 1985, C-46: 992). When sentencing the offender, they "should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" (R.S.C. 1985, C-46:992). Lastly, when sentencing an offender,

> all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders (R.S.C. 1985, C-46:993).

The sentencing principles allow for the offender to have not only a fair trial, but a fair sentence that relates to the offense(s) they were charged with.

While there are these sentencing principles, section 718 also states that "the punishment to be imposed is…in the discretion of the court that convicts a person who commits the offence" (R.S.C. 1985, C-46:995). This rule suggests that the judge has final say, thus leading to my hypothesis. They will find the accused not-guilty more often than

guilty, and if the accused is found guilty, they will receive a lenient sentence. To be clear, this is not suggesting that those who did not commit sexual assault should be convicted; it is suggesting that those people who did commit sexual assault may not receive a guilty verdict, or the sentence length suggested in the *CCC*. As stated in the literature review, according to Johnston (2012:632), "0.3 percent of perpetrators of sexual assault were held accountable and 99.7 percent were not." Further, out of 15,804 sexual assault cases that were resolved in court between 2009 and 2014, 8,742 (55%) cases received a guilty verdict; 3,846 (from 15,804 or 24%) of those received a sentence to custody (Rotenberg 2017:10). While these statistics do not provide an indication of how various mitigating and aggravating factors complicate outcomes, nor do they explicitly indicate the degree to which sentencing guidelines are followed, they do provide a jumping off point for the research questions being explored here. These statistics point to the possibility that while judges in this sample may be more likely find the offender guilty than not guilty, it is more likely that the offender will not receive a custodial sentence. In addition to the research results of Johnson, outcomes observed in high profile sexual assault cases point to the likelihood of such hypothesized results. For example, in a 2016 American case the accused, Brock Turner sexually assaulted an unconscious woman behind a dumpster. Based on his background of being a varsity swimmer at Stanford University, the judge gave him a six-month sentence for three of the felonies for which he was charged, including assault with intent to commit rape of an intoxicated woman, sexually penetrating an intoxicated person with a foreign object, and sexually penetrating an unconscious person with a foreign object (Koren 2016). According to California state laws surrounding these felonies, Turner should have had a minimum six-year sentence—

two years minimum per penalty (Koren 2016). Relating this hypothesis back to Canada, the Research and Statistics Division at Statistics Canada found "For the 2014/2015 fiscal year, 57% of accused found guilty of sexual assault (levels 1, 2, and 3) in adult court were ordered a custodial sentence and 18% were ordered probation as the most serious sentence" (2018:2). While most of the statistics of sexual assault in Canada surrounds the process of sexual assault cases through the CCJS, there are not as much data on how long the custodial sentences are within Canada. However, given that the *CCC* provides guidelines for a maximum sentence rather than a minimum, I foresaw the possibility that Canadian judges' decisions align with the decision from the judge in Brock Turner's trial.

My third and fourth hypotheses focused on use of language. Judges will employ language in written rulings that resemble that which might be found embedded within popular rape myths. One area in particular where I foresaw this being the case relates to victim substance use—I assumed judges would use the impairment of the victim's account to validate their not-guilty verdict. While there is no empirical evidence to support the formation of this hypothesis, there are case examples in which this did occur in Canada. Reference to victim substance use can be seen in a case in Newfoundland from February of 2017. A police officer sexually assaulted an intoxicated woman while he was on duty in 2015. The officer provided the victim with a ride home, and helped the woman get into her house when the alleged sexual assault occurred. Throughout the trial the woman stated that she could not recall if she consented to sex or not (CBC 2017). However, despite her not remembering and an on-duty police officer involving himself in sexual acts with an intoxicated citizen—consensual or not—the jury found him not guilty (CBC 2017). Another example comes from Halifax, Nova Scotia in 2017, *R. v. Al-Rawi*.

In this case a taxi driver was found by the police sexually assaulting an unconscious passenger. Al-Rawi was acquitted, with the judge stating “clearly, a drunk can consent”, despite the victim not remembering the assault or any events of that evening (Moore and Greenspan 2017). In 2015 in Toronto, Ontario, there was a woman who testified that “she had been so drunk or drugged that she couldn't move or speak during the January 2015, incident, which occurred in a hotel room” where three police officers sexually assaulted her (Fine 2017). These three police officers were acquitted for sexual assault, with the judge stating, “Although the slogan 'Believe the victim' has become popularized of late, it has no place in a criminal trial” (quoted in Fine 2017). Given how recent these example cases are, it is possible that sexual assault cases are trending toward not-guilty verdicts—the present study explores this notion to some extent.

Secondly, if the judge uses language that frames sexual assault as non-violent, such as referring to these cases as “sexual intercourse” cases, I hypothesized that a not-guilty verdict would be more likely. If a judge does not view it as assault or a form of violence by using words that suggest the assault was a consensual act, it is possible that the judge does not believe there was an assault, thus leading to a not guilty verdict.

Study Design

The present study is a cross-sectional exploratory study of whether or not gender has an impact on how the judiciary approaches sexual assault cases and the role of rape myths in such cases. Maxfield and Babbie (1995:79) state that criminal justice research with an exploratory approach is often cross-sectional. As Spector states, researchers “do not know what patterns of relationships to expect and what the timeframe might be…the goal is to investigate whether a large set of potential causes might relate to some outcome

variable/s of interest" (2019:133).There are strengths in using a cross-sectional design in this study. Cross-sectional designs are "highly efficient in researcher time" (Spector 2019:133). Since this is a master's thesis that has a small timeframe, an efficient study design is important. Cross-sectional designs are used when it is unknown if "X and Y covary" (Spector 2019:133). While there has been research conducted in sexual assault cases in Canada, there are not many explanatory studies that focus on judge or gender relations. Because this study explores whether or not gender (as well as other variables) has an influence on sentencing decisions of sexual assault cases, a cross-sectional design is beneficial. Lastly, Spector posits that cross-sectional designs can be used for retrospective reports and show temporal order in a timeframe (Spector 2019:133-134), which is ideal for this study. As I am only focused on sexual assaults that occurred in the years of 2000-2018, the cross-sectional design can be used to identify trends that occurred within these years and can demonstrate temporal order.

Cross-sectional designs have been used in a number of studies surrounding sexual assault. Fernández-Rouco et al. studied sexual violence within the Spanish trans* community. They used the cross-sectional design to determine "the presence and/or absence of sexual violence, the nature of said sexual violence, by whom sexual violence were committed, coping mechanisms used, and certain mental health indicators" (Fernández-Rouco et al., 2017:2885). Ben-Ezra et al. also employed a cross-sectional design as a retrospective tool to determine the influence sexual assault has on victim's religious beliefs (2010:7). Lastly, a study conducted by Messman-Moore, Walsh, and DiLillo (2010) used cross-sectional as their study design to determine if emotional dysregulation was used "as a mechanism underlying risky sexual behavior and sexual

revictimization among adult victims of child sexual abuse and child physical abuse" (267).

According to Maxfield and Babbie (1995:70), an exploratory approach is beneficial for studies that want "to explore the nature or frequency of the problem, or in some cases types of policy." Maxfield and Babbie (1995) posit that exploratory research is appropriate for research seeking to investigate sentence types for crimes, the responses of the criminal justice system to specific crimes, and how the court particles jurisdictions (70). Exploratory research has been a fairly common approach in criminology and legal literature as scholars in these fields attempt to establish a knowledge base on the issue. For example, Craig (2018) used an exploratory approach to examine the criminal justice system's handling of sexual assault cases. Craig (2018) conducted twenty semi-structured interviews, coded twenty trial transcripts from no earlier than 2009, and examined how legal firm websites promote sexual assault cases. Throughout the present study, I explore the impact of gender and a number of other covariates on sentencing outcomes and judge use of language. Thus, an exploratory approach is well-suited for the research conducted.

This exploratory research relies on a content analysis approach as the mode of observation, with the artefact under study being judgement rulings and sentencing decision documents. Content analysis, as Burg and Lune (2012:350) define, is "a coding operation and data interpreting process." The purpose of content analysis research is to observe already-made communication, whether that is through print, video, and audio mediums (Maxfield and Babbie 1995:286). Further, content analysis helps answer the question "Who says what, to whom, why, how, and with what effect?" which, in the context of this study, would answer what the judges say to those involved with cases of

sexual assault as well as their actual verdict and sentencing decisions (Maxfield and Babbie 1995:287). The specific form of content analysis I will be conducting in this study will be latent, meaning there is "interpretative reading of the symbolism underlying the physical data" (Burg and Lune 2012:355). Although some of the content analyzed will have some traits of manifest content—which Burg and Lune (2012:355) describe as the content on a surface level, such as the sentence length and the variables within the cases—, there will be interpretation with regard to the frequency with which presiding judges employ language in written rulings that resemble that which might be found embedded within popular rape myths.

Feminist Approach in Study Design

This study is a contemporary feminist content analysis, which Reinharz and Kulick (2007:259) define as interpreting both the content and the assumptions the producers and readers have about the content. Moreover, contemporary feminist content analysis has a focus on what is missing from the content and understanding why particular content is missing and what it means (Reinharz and Kulick 2007:259). In the context of court cases regarding sexual assault, it is important to not only focus on what is present in the cases, but also what is absent. Moreover, given the exploratory nature of the study, it is important to explore the implications these cases hold, not only for those involved, but also what these cases symbolize for both the criminal justice and legal systems.

This thesis has a focus on gender, which is also the focus of feminist research. As Brisolara and Seigart (2014:4) discuss, feminist evaluation "begins with the premise that gender matters." The goal in feminist research is determining what is or is not effective

within programs, and hope to make an influence towards social justice and "gender equity for those who are marginalized" (Brioslara and Seigart 2014:4). In the context of this study, I am hoping to create more discourse around how the CCJS handles sexual assault cases and to create equity for those who are victims of sexual violence in the courtroom should results indicate inequity by gender. Feminist research has a focus on responding to dominant men and patriarchal ideologies within a given society to address the inequities and inequalities that non-men identifying groups have to live with (ibid 2014:11). The sexual assault laws in Canada have been designed for men by men, and the changes these laws have seen emerged, in part, as a result of feminist critique. Sexual assault is one of the more difficult crimes to prove, as it is predominantly a "he said she said" scenario. Through the application of a feminist lens in this study and the production of empirical evidence, I hope to determine whether or not there is an association between gender and how Canadian judges handle sexual assault cases.

Data Source and Sampling

To answer the research questions and to determine the accuracy of my hypotheses, I rely on the *CanLII* database to locate court case judgement rulings and sentencing decision documents. *CanLII* is a publicly accessible database, which can be described as:

> a non-profit organization that has been engaged by the law societies of Canada that are members of the Federation of Law Societies of Canada to establish, operate, maintain and provide to the law societies a website dedicated to providing continuous access to a virtual library of Canadian legal information. CanLII's goal is to make Canadian law accessible on the Internet. The present website provides access to court judgments, tribunal decisions, statutes, and regulations from all Canadian jurisdictions (CanLII, May 9th, 2018).

While CanLII is a public database, and one did not need to make an account or verify their use of the website, there are some drawbacks to this database. CanLII only has court cases that has written decisions, which means that any case that does *not* have a written decision would not be entered into this database. While there is no known statistic of how many cases that may be, CanLII notes that cases that are not written decisions are when "verdict decisions are rendered by a jury" (CanLII 2019). However, Rotenberg (2017:3) states between the years of 2009-2014, "about 1 in 10 (12%) sexual assaults reported by police led to a criminal conviction, and 7% resulted in a custody sentence." It is unknown how many of these cases have written decisions and which do not, but Rotenberg's statistic suggests that there is already a small sample of sexual assault cases that go through the CCJS. Using this database, I gathered a census of all sexual assault cases at the provincial and territorial level, rather than federal. I chose to look at provincial and territorial jurisdiction cases rather than federal jurisdiction because it provides the opportunity to explore possible trends by province or territory, such as judge's decision to convict. Further, many cases under federal jurisdiction do not align with my study purpose. Such cases often involve immigration-related matters or are focused on an organization rather than individuals.

While my sample is a census and thus has a high level of external validity, there are several exclusionary criteria within the sampling frame. To eliminate history effects by ensuring all sampled cases fall under the same sexual assault laws, I have elected to sample cases from between the years 2000 and 2018. The enactment of Bills C-127 and C-46 influence this timeframe, as they have been around since 1983 and 1992, respectively. Given the time restrictions of the present study, it would not have been

feasible to extend the study period back another decade. Additionally, I am investigating original decisions on cases, and not appeal cases. As such appeals during the study timeframe may be from cases that originally occurred before 2000.

Within the study timeframe I included only cases involving adults, meaning both the victim and the accused were over the age of 18. While the age of consent is 16, 16-year-olds are "minors" in general law. To construct a sample where every accused is above age of majority, age of consent did not factor into the sampling frame. Further, excluding non-adult cases serves to limit the size and scope of the study to one appropriate to a master's thesis given the time restraints. The sampling frame also excludes cases of incest. Following a preliminary search of CanLII it was determined that majority of incest cases occurred when the victim was under the age of 18, eliminating them from the sampling frame. Further, this study focuses on court cases that have no family involvement to eliminate the possible confounding effects of family involvement, which includes incest, extended family, step-relatives, and other non-blood-related family. While this study does not focus on these cases, it is important to acknowledge that sexual assault within the family does occur; according to 2014 UCR statistics, 22% of police-reported sexual assault cases were committed by a family member or an extended family member (Conroy and Cotter 2017:11). However, this study has to exclude these cases to maintain a feasible sample size for a study with time constraints such as this.

The following presents the search string utilized in order to filter out any cases regarding minors, children or infants, as well as family connection: "Sexual assault" OR "Rape" AND "Decision" NOT "Appeal" NOT "Infant" NOT "Father" NOT "Mother"

NOT “Parent” NOT “Family” NOT “Child” NOT “Minor”. Timeframe was restricted to verdict and sentencing decisions made from January 1st, 2000 to December 31st, 2018. These filters produced an *N* of 106 cases.

Measurement and Coding Procedures

The focus of the present study is the impact of gender and a variety of covariates on verdicts and sentencing outcomes in sexual assault cases. The conceptualization of sexual assault in this research will follow the *CCC* definition of assault. The definition of assault comes from R.S.C 1985 Bill C-46, section 265, which states:

> (1) A person commits an assault when (*a*) without the consent of another person, he applies force intentionally to that other person, directly or indirectly; (*b*) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person to believe on reasonable grounds that he has, present ability to effect his purpose; or (*c*) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs. (2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault (328).

It is also important to note that there are varying levels of sexual assault, as Bill C-46, section 271-273 discusses. These levels include sexual assault (271), sexual assault with a weapon, threats to a third party or causing bodily harm (272), and aggravated sexual assault (273) (Criminal Code R.S.C. 1985, C-46: 334-335). Throughout these levels, there are different indicators of the occurrence of the assault, depending on which type of sexual assault the victim endures. To be more specific, section 271 follows the definition of assault which section 265 presents. Section 272 is defined as:

> Every person commits an offence who, in committing a sexual assault, (a) carries, uses or threatens to use a weapon or an imitation of a weapon; (b) threatens to cause bodily harm to a person other than the complainant; (c) causes bodily harm to the complainant; or (d) is a party to the offence with any other person (Criminal Code R.S.C 1985 C-46: 334).

Lastly, Section 273 is defined as “Everyone commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant” (Criminal Code R.S.C 1985 C-46: 335).

The central concept for the present study is gender. For the purposes of this research the concept of gender includes three dimensions, translating into three distinct gender variables: the gender of the judge, the gender of the offender, and the gender of the victim. The gender of the judge was determined through languages used in court documents to address the Honourable Judge presiding, such as “Mr” or “Madamme”. If there was no inidcation of “Mr” or “Madamme” a Google search was run of their name and their location to find a first name or websites and news articles containing their pronouns. When their pronoun was not indicated I would assume their gender according to whether their first name was dominantly masculine or feminine. The gender of the offender and victim was determine by the pronouns the judge used when referring to these peoples. When there was no indiciation of the gender of either the judge, offender, and/or the victim, I coded the case as “unknown” on their respective gender variable. It was coded as follows: 0=woman; 1=man; 9=unknown.

The following concepts were coded vis-à-vis objective, latent content: sentence length, judge verdict, defendant’s prior sexual assault charges, defendant’s prior criminal charges, offense type, and location of jurisdiction. However, several concepts were embedded within what can be considered manifest content and required some interpretation. For example, “substance use as an excuse for a not guilty verdict” needed manifestation. The following is an example of such manifest content:

> Due to the excessive amount of drinking that was taking place at the time the alleged sexual assaults occurred and concerns regarding the reliability and

> credibility of the witnesses who testified about the acts which constituted the assaults, the Court concluded the Crown had not met its burden of proof beyond a reasonable doubt in respect of the sexual assault charges (*R. v. L.S* 2017: NLTD (G) 210).

The following is another example:

> I find that Ms. S. did her best with her limited resources at trial. She was hampered in that effort by her intoxication that night and by the passage of time since the event. Of the two, intoxication probably worked most to fog her perception of events and her recollection of them. That her recollection is unreliable is illustrated by her having told Dr. Hagen that Mr. N. had penetrated her with his finger and then her unequivocal rejection of that detail at trial (*R. v. M.S.N.* 2003: BCSC 269).

Another concept that needs manifestation is "language use". An example of this includes: "Thus, it is reasonable to infer, and I do so infer that the mood was now set for them, with mutual consent, to achieve the 'get lucky' objective" (*R. v. W.K.* 2001: NSPC 21).

A description of all other variables used in this study is presented below in Table 1.

Table 1
Description of Study Measures

Dependent Variables		
Concept	Indicator	Measurement
Language Use	-Judge not using the term "sexual assault" when referring to the crime.	0=No 1= Yes
Sentence Length*	-Judge stating a punishment length.	0= 0-1 Years 1= 1-5 Years 2= 5-10 Years 3= 10-18 Years
Judge Verdict**	-Judge stating if the accused was guilty, not guilty, acquitted, dismissed, or discharged.	0=Guilty 1= Not guilty 2=Other
Substance Use	-Offender use of drugs/alcohol during the time of the alleged assault based on judge's statements. -Victim use of drugs/alcohol during the time of alleged sexual assault based on judge's statements.	0=No 1=Yes 9=Unknown
Independent Variables		
Concept	Indicators	Measurement

Accused's Prior Sexual Assault Convictions	-If the offender has previous convictions of sexual assault stated by the judge	0=No 1=Yes 9=Unknown
Defendant's Prior Criminal Convictions	-If the offender had previous convictions of crimes not sexual assault stated by the judge	0=No 1=Yes 9=Unknown
Substance Use as an Excuse for a Not Guilty Verdict	-Judge using victim's substance use during the alleged sexual assault as a reason for reasonable doubt.	0=No 1=Yes
Offense Type	-What the accused was being charged with based on what the judge stated	0 = Sexual Assault 1 = Sexual Assault Causing Bodily Harm 2 = Aggravated Sexual Assault
Province/Territory of Sentencing	-Where the trial was being held based on court documents	1 = NL 2 = PE 3 = NS 4 = NB 5 = QC 6 = ON 7 = MB 8 = SK 9 = AB 10 = BC 11 = NT 12 = YT 13 = NU

Table 1 Continued

Description of Study Measures

* When coding the sentence length, i.e., 0-1 years to 1-5 years, if the accused received a sentence length ≥1, it would go in the 0-1 whereas when the sentence length was greater than 1 year, it would go to 1-5 year.

**In the scenario where the accused was charged with other charges outside of sexual assault, the verdict coded for this study regards the alleged sexual assault only. As this study is only focusing on the decision of a guilty or not guilty verdict of sexual assault, it would alter results if coding for any other possible counts they were being tried for.

Analytical Framework

Following coding procedures data were analyzed in SPSS statistical software using a combination of cross-tabulations and other descriptive statistics tables, chi-square (X^2) test of statistical significance, and Phi and Cramer's V measures of association tests. As Maxfield and Babbie (1995:359) discuss, a statistical significance test is used to

determine if patterns identified in cross-tabulation tables are due to random chance or not. With that said significance does not indicate strength of association between independent and dependent variables. A measure of association test is needed to achieve this goal. Both Cramer's V and Phi are appropriate when at least one variable in a cross-tabulation is at the nominal level. None of the cross-tabulation tables produced here include two ordinal scales. While more sophisticated analysis is preferable to descriptive statistics, regression models which can determine the extent to which each independent variable predicts a particular outcome (controlling for all other covariates), are not appropriate here. This is because of a lack of statistical power due to small sample sizes. Statistical power refers to the odds of accurately identifying a relationship between two variables. The probability of identifying such relationships decreases with smaller sample sizes and models which include multiple predictors are not recommended in such instances. Maxfield and Babbie (1995:357) discuss how regression equations "seem to make illogical predictions". Maxfield and Babbie emphasize that "its [regression models] applicability is limited to a particular range of population sizes."

Ethics

I secured ethical clearance from Queen's University General Research Ethics Board (GREB) for secondary use of data prior to conducting the present research. Although the cases reviewed for this research are publicly accessible, the cases sometimes include the offender/victim/judge names, which could lead to indirect harm to the people involved in specific cases as a result of my work calling attention to these cases. To mitigate potential for harms, I have not included any identifying information beyond the charges and gender. Data is presented in the aggregate as the purpose of the

study is to focus on the overall perspective of how Canadian judges sentence the cases related to sexual assault; therefore, there is no reason to be specific about cases and to give information outside of statistical data.

Chapter 4

Results

Descriptive Statistics

Within my sample, 88.1% of victims are women; 100% of offenders are men; and 79% of judges are men. Of the offenders, 91.5% were charged with sexual assault (sexual assault 271 in the *CCC*); 67% of offenders were found guilty; and 64.7% of cases received a sentence between 1-5-years. Of the offenders, 78.7% did not have a sexual assault history; and 63.8% of offenders had a criminal record not related to sexual assault. Of the victims, 59.4% did not use drugs or alcohol; and 60.4% of offenders did not use drugs or alcohol. Lastly, 53.7% of cases had an acquaintance relationship (acquaintance is conceptualized as the victim and offender knowing each other, but there did not appear to be a present or prior romantic relationship) between offender and victim. While Ontario has the highest percentage of cases (22.6%), Yukon that has the highest rate per 100,000 (71.6). Quebec (.03) and New Brunswick (0) have the lowest rate of court cases involving sexual assault per 100,000.

Table 2
Descriptive Statistics of Sample

Variable		**% (n)**
Gender of Victim	Woman	88.1% (89)
	Man	11.9% (12)
Gender of Offender	Woman	0% (0)
	Man	100% (105)
Gender of Judge	Woman	21.0% (22)
	Man	79.0% (83)
Language Use	No	91.5% (97)
	Yes	8.5% (9)
Sentence Length	0-1 Years	23.5% (8)
	1-5 Years	64.7% (22)
	5-10 Years	5.9% (2)
	10-18 Years	5.9% (2)
Judge Verdict	Guilty	67% (71)
	Not guilty	12.3% (13)
	Other	20.8% (22)

Table 2 Continued

Descriptive Statistics of Sample

Defendant's Prior Sexual Assault Charges	No	78.7% (37)	
	Yes	21.3% (10)	
Defendant's Prior Criminal Charges	No	36.2% (17)	
	Yes	63.8% (30)	
Substance Use as an Excuse for a Not Guilty Verdict	No	79.4% (27)	
	Yes	20.6% (7)	
Offense Type	Sexual Assault	91.5% (97)	
	Sexual Assault Causing Bodily Harm	3.8% (4)	
	Aggravated Sexual Assault	4.7% (5)	
Substance use of Victim	No	59.4% (63)	
	Yes	40.6% (43)	
Substance use of Offender	No	60.4% (64)	
	Yes	39.6% (42)	
Victim-Offender Relationship	Stranger	28.4% (27)	
	Acquaintance	53.7% (51)	
	Romantic Partner	17.9% (17)	

Variable		**% (n)**	**Rate per 100,000**
Province/Territory of Sentencing	NL	3.8% (4)	0.779
	PE	0% (0)	0.981
	NS	8.5% (9)	0.406
	NB	2.8% (3)	0.000
	QC	1.9% (2)	0.026
	ON	22.6% (24)	0.192
	MB	5.7% (6%)	0.509
	SK	4.7% (5)	0.497
	AB	10.4% (11)	0.317
	BC	13.2% (14)	0.329
	NT	2.8% (3)	7.235
	YT	21.7% (23)	71.579
	NU	1.9% (2)	6.516

Variable*	**Median**	**SD**	**Min**	**Max**
Rate of Cases per 100,000	0.497	19.593	0.000	71.579

*Note: Rate calculated based on 15-year median population. Population data taken from Statistics Canada's Census Profile tool (Statistics Canada, 2019).

Research Question One

Judge Decision and Victim/Offender Gender

Cross-tabulation, chi-square (X^2) significance test, and Cramer's V measure of association were employed to determine if the gender of the victim is associated with judges' decisions on verdict. Approximately 88% of all cases involve a woman victim and 11% involve a victim who is a man. Of the cases involving women as victims, 12.4% resulted in a not-guilty verdict, and 22.5% result in an "other" verdict. Cases involving

men as victims are more likely than with victims who are women to result in a not-guilty verdict (16.7%), but less likely to receive an "other" verdict than victims who are woman (16.7%). The relationship between victim gender and judge decision is negligible (Cramer's V=.056) and could be due to random chance ($X^2(2) = .320$, p =.852). See Table 3. In all cases sampled the offender is a man, and therefore judge decision cannot be cross tabulated with offender gender.

Table 3
Cross-tabulation: Judge Decision Based on Victim Gender

Judge Decision		Victim Gender		Total
		Woman	Man	
Guilty	Count	58	8	66
	% within Judge Decision	87.9%	12.1%	100.0%
	% within Victim Gender	65.2%	66.7%	65.3%
	% of Total	57.4%	7.9%	65.3%
Not Guilty	Count	11	2	13
	% within Judge Decision	84.6%	15.4%	100.0%
	% within Victim Gender	12.4%	16.7%	12.9%
	% of Total	10.9%	2.0%	12.9%
Other	Count	20	2	22
	% within Judge Decision	90.9%	9.1%	100.0%
	% within Victim Gender	22.5%	16.7%	21.8%
	% of Total	19.8%	2.0%	21.8%
Total	Count	89	12	101
	% within Judge Decision	88.1%	11.9%	100.0%
	% within Victim Gender	100.0%	100.0%	100.0%
	% of Total	88.1%	11.9%	100.0%

p=.852; Cramer's V=.056

Judge Decision and Judge Gender

Approximately 21% of all cases involve a woman judge and 79% involve a judge who is a man. Of the cases involving women judges, 4.5% resulted in a not-guilty verdict, and 31.8% resulted in an "other" verdict. Cases involving men judges are more likely to result in a not-guilty verdict (14.5%), and less likely to receive an "other" verdict (18.1%).

While men judges are slightly more likely to hand down a guilty verdict compared to women, the relationship between judge decision and judge gender is negligible (Cramer's V=.169) and could be due to random chance ($X^2(2) = 2.987$, p =.225).

Table 4
Cross-Tabulation: Judge Decision based on Judge Gender

Judge Decision		Judge Gender		Total
		Woman	Man	
Guilty	Count	14	56	70
	% within Judge Decision	20.0%	80.0%	100.0%
	% within Judge Gender	63.6%	67.5%	66.7%
	% of Total	13.3%	53.3%	66.7%
Not Guilty	Count	1	12	13
	% within Judge Decision	7.7%	92.3%	100.0%
	% within Judge Gender	4.5%	14.5%	12.4%
	% of Total	1.0%	11.4%	12.4%
Other	Count	7	15	22
	% within Judge Decision	31.8%	68.2%	100.0%
	% within Judge Gender	31.8%	18.1%	21.0%
	% of Total	6.7%	14.3%	21.0%
Total	Count	22	83	105
	% within Judge Decision	21.0%	79.0%	100.0%
	% within Judge Gender	100.0%	100.0%	100.0%
	% of Total	21.0%	79.0%	100.0%

p=.225; Cramer's V=.169

Judge Gender and Sentence Length

Cross-tabulation was employed to determine if the gender of the judge is associated with sentence length. Approximately 17.6% of all cases involve a woman judge and 82.4% involve a judge who is a man. Of those judges who are men, 28.6% of their sentencing decisions fell within the 0-1-year range and 60.7% of their sentencing decisions fell within the 1-5-year range. Men judges provide a larger range of sentencing decisions in comparison to women judges. Women judges had 83.3% of sentencing decisions between the 1-5-year range, following 16.7% of sentencing decisions within 5-10 years. The

results suggest that men judges tend to vary from 0-18 years of sentencing decisions whereas women judges tend to vary from 1-10 years. According to Cramer's V measure of association the relationship between sentence length and judge gender is weak to moderate (V=.342). and could be due to random chance ($X^2(3) = 3.974$, p = .264).

Table 5
Crosstabulation: Sentence Length and Judge Gender

Sentence Length		Judge Gender		Total
		Woman	Man	
0-1 Years	Count	0	8	8
	% within Sentence Length	0.0%	100.0%	100.0%
	% within Judge Gender	0.0%	28.6%	23.5%
	% of Total	0.0%	23.5%	23.5%
1-5 Years	Count	5	17	22
	% within Sentence Length	22.7%	77.3%	100.0%
	% within Judge Gender	83.3%	60.7%	64.7%
	% of Total	14.7%	50.0%	64.7%
5-10 Years	Count	1	1	2
	% within Sentence Length	50.0%	50.0%	100.0%
	% within Judge Gender	16.7%	3.6%	5.9%
	% of Total	2.9%	2.9%	5.9%
10-18 Years	Count	0	2	2
	% within Sentence Length	0.0%	100.0%	100.0%
	% within Judge Gender	0.0%	7.1%	5.9%
	% of Total	0.0%	5.9%	5.9%
Total	Count	6	28	34
	% within Sentence Length	17.6%	82.4%	100.0%
	% within Judge Gender	100.0%	100.0%	100.0%
	% of Total	17.6%	82.4%	100.0%

p=.264; Cramer's V=.342

Research Question Two

Defendant's Criminal Record and Judge Decision

Cross-tabulation was employed to determine if the accused's sex offender history is associated with judge decision. Approximately 76.6% of all cases found the accused guilty, 6.4% found the accused not-guilty, and 17% gave the accused an "other" verdict. Of the cases involving a guilty verdict, 72.2% of the accused did not have a sex offender

history, and 27.8% of the accused did. In cases involving not-guilty and "other" verdicts 100% of the accused did not have a sex offender history. The results suggest that if the accused had a sex offender history, the accused is guaranteed to receive a guilty verdict. Based on Cramer's V measure of association the relationship between defendant's sex offender history and judge decision is a weak to moderate relationship (phi=.287) and is likely due to random chance ($X^2(2) = 3.881$, p =.144).

Table 6
Cross-Tabulation: Defendant's Sex Offender History and Judge Decision

Judge Decision		Sex Offender History		Total
		No	Yes	
Guilty	Count	26	10	36
	% within Judge Decision	72.2%	27.8%	100.0%
	% within Sex Offender History	70.3%	100.0%	76.6%
	% of Total	55.3%	21.3%	76.6%
Not Guilty	Count	3	0	3
	% within Judge Decision	100.0%	0.0%	100.0%
	% within Sex Offender History	8.1%	0.0%	6.4%
	% of Total	6.4%	0.0%	6.4%
Other	Count	8	0	8
	% within Judge Decision	100.0%	0.0%	100.0%
	% within Sex Offender History	21.6%	0.0%	17.0%
	% of Total	17.0%	0.0%	17.0%
Total	Count	37	10	47
	% within Judge Decision	78.7%	21.3%	100.0%
	% within Sex Offender History	100.0%	100.0%	100.0%
	% of Total	78.7%	21.3%	100.0%

p=.144; phi=.287

Cross-tabulations, chi-square (X^2) significance test, and Cramer's V measure of association were employed to determine if the accused's offender history is associated with judge decision. Within this cross-tabulation approximately 76.6% of all cases involve a guilty verdict and 6.4% involve a not-guilty verdict and 17% involve an "other" verdict. Of the cases involving guilty verdicts, 25% of the accused did not have a

criminal record, and 75% of the accused did. Of those cases involving a not-guilty verdict, 72.7% of the accused did not having a criminal record, and 27.3% of the accused did have a criminal record. The results suggest that it is more likely for the accused that have a criminal record to be found guilty, but a previous criminal record does not always guarantee a guilty verdict. The relationship between offender history and judge decision is a moderate relationship (phi=.486) and is not likely due to random chance ($X^2(2) = 11.086$, p =.004).

Table 7
Cross-Tabulation: Accused's Offender History and Judge Decision

Judge Decision		Accused Offender History		Total
		No	Yes	
Guilty	Count	9	27	36
	% within Judge Decision	25.0%	75.0%	100.0%
	% within Accused Offender History	52.9%	90.0%	76.6%
	% of Total	19.1%	57.4%	76.6%
Not Guilty	Count	1	2	3
	% within Judge Decision	33.3%	66.7%	100.0%
	% within Accused Offender History	5.9%	6.7%	6.4%
	% of Total	2.1%	4.3%	6.4%
Other	Count	7	1	8
	% within Judge Decision	87.5%	12.5%	100.0%
	% within Accused Offender History	41.2%	3.3%	17.0%
	% of Total	14.9%	2.1%	17.0%
Total	Count	17	30	47
	% within Judge Decision	36.2%	63.8%	100.0%
	% within Accused Offender History	100.0%	100.0%	100.0%
	% of Total	36.2%	63.8%	100.0%

p=.004; Phi=.486

Substance Use and Judge Decision

Regarding the association between victim's substance use and judge decision, approximately 67% of all cases involve a guilty verdict in this cross-tabulation and 12% involve a not-guilty verdict, and 21% of cases involve an "other" verdict. Of the cases involving a guilty verdict, 62.0% of victims did not use substances, and 38.0% of them did. In comparison, of those cases that resulted in a not-guilty verdict, 69.2% of victims did not use substances, and 30.8% of victims did, and those cases resulting in an "other" verdict, 45.5% of victims did not use substances and 54.5% did. The results suggest that it is more likely for the accused to be found not guilty or receive an "other" verdict (45.7% total) when the victim has used drugs or alcohol; however according the Cramer's V and X^2, the relationship between victim substance use and judge decision is a weak relationship (Cramer's V=.153) and could be due to random chance ($X^2(2) = 2.490$, p=.288).

Table 8
Cross-Tabulation: Victim's use of Drugs or Alcohol and Judge Decision

Judge Decision		Victim Use of Drugs or Alcohol		Total
		No	Yes	
Guilty	Count	44	27	71
	% within Judge Decision	62.0%	38.0%	100.0%
	% within Victim Use of Drugs or Alcohol	69.8%	62.8%	67.0%
	% of Total	41.5%	25.5%	67.0%
Not Guilty	Count	9	4	13
	% within Judge Decision	69.2%	30.8%	100.0%
	% within Victim Use of Drugs or Alcohol	14.3%	9.3%	12.3%
	% of Total	8.5%	3.8%	12.3%
Other	Count	10	12	22
	% within Judge Decision	45.5%	54.5%	100.0%
	% within Victim Use of Drugs or Alcohol	15.9%	27.9%	20.8%
	% of Total	9.4%	11.3%	20.8%

Table 8 Continued
Crosstabulation: Victim's use of Drugs or Alcohol and Judge Decision

Total	Count	63	43	106
	% within Judge Decision	59.4%	40.6%	100.0%
	% within Victim Use of Drugs or Alcohol	100.0%	100.0%	100.0%
	% of Total	59.4%	40.6%	100.0%

p=.288; Cramer's V=.153

Cross-tabulations, chi-square (X^2) significance test, and Cramer's V measure of association were employed to determine if the offender's substance use is associated with judge decision. Approximately 67% of all cases involve a guilty verdict and 33% involve a not-guilty verdict. Of the cases involving a guilty verdict, 60.6% of offenders did not use substances, and 39.4% of them did. Those cases that resulted in a not-guilty verdict, 76.9% of offenders did not use substances, and 23.1% of offenders did. Those cases that resulted in an "other" verdict, 50% did not use substances, and 50% did. The results suggest that while it is more likely for the accused to be found guilty, substance use did not make a significant difference within judges deciding a verdict. The relationship between offender substance use and judge decision is a weak relationship (Cramer's V=.153).and could be due to random chance ($X^2(2) = 2.479$, p=.290).

Table 9
Cross-Tabulation: Offender use of Drugs or Alcohol and Judge Decision

Judge Decision		Offender Use of Drugs or Alcohol		Total
		No	Yes	
Guilty	Count	43	28	71
	% within Judge Decision	60.6%	39.4%	100.0%
	% within Offender Use of Drugs or Alcohol	67.2%	66.7%	67.0%
	% of Total	40.6%	26.4%	67.0%

Table 9 Continued:
Cross-Tabulation: Offender use of Drugs or Alcohol and Judge Decision

Not Guilty	Count	10	3	13
	% within Judge Decision	76.9%	23.1%	100.0%
	% within Offender Use of Drugs or Alcohol	15.6%	7.1%	12.3%
	% of Total	9.4%	2.8%	12.3%
Other	Count	11	11	22
	% within Judge Decision	50.0%	50.0%	100.0%
	% within Offender Use of Drugs or Alcohol	17.2%	26.2%	20.8%
	% of Total	10.4%	10.4%	20.8%
Total	Count	64	42	106
	% within Judge Decision	60.4%	39.6%	100.0%
	% within Offender Use of Drugs or Alcohol	100.0%	100.0%	100.0%
	% of Total	60.4%	39.6%	100.0%

p=.290; Cramer's V= .153

Judge Decision and Location of Jurisdiction

With regard to the relationship between case jurisdiction and judge decision, the following is a breakdown by jurisdiction for those cases involving a guilty or "other" verdict: NL 1.4%; NS 5.6%; NB 1.4%; QC 2.8%; ON 19.7%; MB 2.8%; SK 5.6%; AB 12.7%; BC 15.5%; NT 4.2%; YT 25.4%; NU 2.8%; and cases involving a not-guilty verdict: NL 8.6%, NS 14.3%; NB 5.7%; QC 0.0%; ON 28.6%; MB 11.4%; SK 2.9%; AB 5.7%; BC 8.6%; NT 0.0%; YT 14.3%; NU 0.0%. These results suggest that provinces like NL, NS, NB, and MB are more likely to find the accused not-guilty or "other", whereas the rest of country are more likely to find the accused guilty. With that said the distribution of cases in general varies widely by jurisdiction due to differences in population density (see Table 1 for a breakdown of case rates per 100,000). The relationship between location of jurisdiction and judge decision is a moderate relationship (V=.396) but is not be due to random chance ($X^2(22) = 33.243$, p=.059

Table 10
Cross-Tabulation: Location of Jurisdiction and Judge Decision

Province or Territory		Judge Decision			Total
		Guilty	Not Guilty	Other	
NL	Count	1	1	2	4
	% within Province or Territory	25.0%	25.0%	50.0%	100.0%
	% within Judge Decision	1.4%	7.7%	9.1%	3.8%
	% of Total	0.9%	0.9%	1.9%	3.8%
NS	Count	4	1	4	9
	% within Province or Territory	44.4%	11.1%	44.4%	100.0%
	% within Judge Decision	5.6%	7.7%	18.2%	8.5%
	% of Total	3.8%	0.9%	3.8%	8.5%
NB	Count	1	2	0	3
	% within Province or Territory	33.3%	66.7%	0.0%	100.0%
	% within Judge Decision	1.4%	15.4%	0.0%	2.8%
	% of Total	0.9%	1.9%	0.0%	2.8%
QC	Count	2	0	0	2
	% within Province or Territory	100.0%	0.0%	0.0%	100.0%
	% within Judge Decision	2.8%	0.0%	0.0%	1.9%
	% of Total	1.9%	0.0%	0.0%	1.9%
ON	Count	14	6	4	24
	% within Province or Territory	58.3%	25.0%	16.7%	100.0%
	% within Judge Decision	19.7%	46.2%	18.2%	22.6%
	% of Total	13.2%	5.7%	3.8%	22.6%
MB	Count	2	1	3	6
	% within Province or Territory	33.3%	16.7%	50.0%	100.0%
	% within Judge Decision	2.8%	7.7%	13.6%	5.7%
	% of Total	1.9%	0.9%	2.8%	5.7%
SK	Count	4	1	0	5
	% within Province or Territory	80.0%	20.0%	0.0%	100.0%
	% within Judge Decision	5.6%	7.7%	0.0%	4.7%
	% of Total	3.8%	0.9%	0.0%	4.7%
AB	Count	9	1	1	11
	% within Province or Territory	81.8%	9.1%	9.1%	100.0%
	% within Judge Decision	12.7%	7.7%	4.5%	10.4%
	% of Total	8.5%	0.9%	0.9%	10.4%
BC	Count	11	0	3	14
	% within Province or Territory	78.6%	0.0%	21.4%	100.0%
	% within Judge Decision	15.5%	0.0%	13.6%	13.2%
	% of Total	10.4%	0.0%	2.8%	13.2%

Table 10 Continued
Cross Tabulation: Location of Jurisdiction and Judge Decision

NT	Count	3	0	0	3
	% within Province or Territory	100.0%	0.0%	0.0%	100.0%
	% within Judge Decision	4.2%	0.0%	0.0%	2.8%
	% of Total	2.8%	0.0%	0.0%	2.8%
YT	Count	18	0	5	23
	% within Province or Territory	78.3%	0.0%	21.7%	100.0%
	% within Judge Decision	25.4%	0.0%	22.7%	21.7%
	% of Total	17.0%	0.0%	4.7%	21.7%
NU	Count	2	0	0	2
	% within Province or Territory	100.0%	0.0%	0.0%	100.0%
	% within Judge Decision	2.8%	0.0%	0.0%	1.9%
	% of Total	1.9%	0.0%	0.0%	1.9%
Total	Count	71	13	22	106
	% within Province or Territory	67.0%	12.3%	20.8%	100.0%
	% within Judge Decision	100.0%	100.0%	100.0%	100.0%
	% of Total	67.0%	12.3%	20.8%	100.0%

p=.059; Cramer's V=.396

Victim-Offender Relationship and Judge Decision

Cross-tabulations, chi-square (X^2) significance test, and Cramer's V measure of association were employed to determine if the victim-offender relationship is associated with judge decision. Approximately 64% of all cases in this cross-tabulation involve a guilty verdict, 12.6% involve a not-guilty verdict, and 23.2% involve an "other" verdict. Of the cases involving a guilty verdict, 34.4% of offenders were strangers to the victim; 54.1% of offenders were acquaintances to the victim; and 11.5% were romantic partners. Of those cases involving a not-guilty verdict or "other" verdict, 17.6% of offenders were strangers to the victim; 52.9% were acquaintances; and 29.4% were romantic partners. With both stranger and acquaintance relationships, the accused was more likely to be found guilty; however, it was more likely for the accused to be found not-guilty when the relationship had a romantic background. The relationship between victim-offender

relationship and judge decision is a moderate relationship (V=.206) and is likely due to random chance ($X^2(4) = 8.095$, p =.088).

Table 11
Cross-Tabulation: Victim-Offender Relationship and Judge Decision

Judge Decision		Victim-Offender Relationship			Total
		Stranger	Acquaintance	Romantic Partner	
Guilty	Count	21	33	7	61
	% within Judge Decision	34.4%	54.1%	11.5%	100.0%
	% within Victim-Offender Relationship	77.8%	64.7%	41.2%	64.2%
	% of Total	22.1%	34.7%	7.4%	64.2%
Not Guilty	Count	2	5	5	12
	% within Judge Decision	16.7%	41.7%	41.7%	100.0%
	% within Victim-Offender Relationship	7.4%	9.8%	29.4%	12.6%
	% of Total	2.1%	5.3%	5.3%	12.6%
Other	Count	4	13	5	22
	% within Judge Decision	18.2%	59.1%	22.7%	100.0%
	% within Victim-Offender Relationship	14.8%	25.5%	29.4%	23.2%
	% of Total	4.2%	13.7%	5.3%	23.2%
Total	Count	27	51	17	95
	% within Judge Decision	28.4%	53.7%	17.9%	100.0%
	% within Victim-Offender Relationship	100.0%	100.0%	100.0%	100.0%
	% of Total	28.4%	53.7%	17.9%	100.0%

p=.088; Cramer's V=.206

Research Question Three

Cross-tabulations, chi-square (X^2) significance test, and Cramer's V measure of association were employed to determine if the sentence length is associated with offense type. Approximately 91.2% of all cases involve a charge of sexual assault; 2.9% of cases involve a charge of sexual assault causing bodily harm, and 5.9% of cases involve a charge of aggravated sexual assault. Of the cases involving offense type of sexual assault,

25.8% of cases had a sentence of 0-1 years, 71.0% of cases had a sentence between 1-5 years, and 3.2% of cases resulted in a sentence between 5-10 years. There was only one cases involving offense type of sexual assault causing bodily harm, and that case had a sentence length between 10-18 years. Of the cases involving offense type of aggravated sexual assault, 50% of cases were in the 5-10-year range, and 50% of cases were in the 10-18-year range. While the relationship between sentence length and judge gender is strong (V=.7) and is not likely due to random chance ($X^2(6) = 33.452$, p = .000), this finding should be taken with extreme caution given the small number of 'sexual assault causing bodily harm' cases (*n*=1) and the small number of 'aggravated sexual assault' cases (*n*=2).

Table 12
Cross-Tabulation: Sentence Length and Offense Type

Sentence Length		Offense Type			Total
		Sexual Assault	Sexual Assault Causing Bodily Harm	Aggravated Sexual Assault	
0-1 Years	Count	8	0	0	8
	% within Sentence Length	100.0%	0.0%	0.0%	100%
	% within Offense Type	25.8%	0.0%	0.0%	23.5%
	% of Total	23.5%	0.0%	0.0%	23.5%
1-5 Years	Count	22	0	0	22
	% within Sentence Length	100.0%	0.0%	0.0%	100.0%
	% within Offense Type	71.0%	0.0%	0.0%	64.7%
	% of Total	64.7%	0.0%	0.0%	64.7%
5-10 Years	Count	1	0	1	2
	% within Sentence Length	50.0%	0.0%	50.0%	100.0%
	% within Offense Type	3.2%	0.0%	50.0%	5.9%
	% of Total	2.9%	0.0%	2.9%	5.9%
10-18 Years	Count	0	1	1	2
	% within Sentence Length	0.0%	50.0%	50.0%	100.0%
	% within Offense Type	0.0%	100.0%	50.0%	5.9%
	% of Total	0.0%	2.9%	2.9%	5.9%
Total	Count	31	1	2	34
	% within Sentence Length	91.2%	2.9%	5.9%	100.0%
	% within Offense Type	100.0%	100.0%	100.0%	100.0%
	% of Total	91.2%	2.9%	5.9%	100.0%

p=.000, Cramer's V=.701

Research Question Four

Language use by Judge and Judge Decision

Cross-tabulations, chi Square (X^2) significance test, and Phi measure of association were employed to determine if the language use of the judge is associated with judge decision. In this cross-tabulation approximately 67% of all cases involve a guilty verdict and 33% involve a not-guilty verdict. Of the cases involving a guilty verdict, 91.5% resulted in judges not using words outside of "sexual assault", and 8.5% of judges did use words outside of "sexual assault". Cases involving a not-guilty verdict had 100% of judges did not use words outside of "sexual assault". For Cases involving a verdict of "other," 86.4% of judges did not use words outside of "sexual assault" and 13.6% of judges did use words outside of "sexual assault." In other words, there is no difference in use of language by verdict and, the relationship between judge language use and judge decision is weak (Cramer's V=.136). That said these findings could be due to random chance (X^2(2)=1.956, p =.376).

Table 13
Cross-Tabulation: Language Use by Judge and Judge Decision

Judge Decision		Judge's Use of Words not Sexual Assault		Total
		No	Yes	
Guilty	Count	65	6	71
	% within Judge Decision	91.5%	8.5%	100.0%
	% within Judge's Use of Words not Sexual Assault	67.0%	66.7%	67.0%
	% of Total	61.3%	5.7%	67.0%
Not Guilty	Count	13	0	13
	% within Judge Decision	100.0%	0.0%	100.0%
	% within Judge's Use of Words not Sexual Assault	13.4%	0.0%	12.3%
	% of Total	12.3%	0.0%	12.3%
Other	Count	19	3	22
	% within Judge Decision	86.4%	13.6%	100.0%
	% within Judge's Use of Words not Sexual Assault	19.6%	33.3%	20.8%

Table 13 Continued

Cross-Tabulation: Language Use by Judge and Judge Decision

	% of Total	17.9%	2.8%	20.8%
Total	Count	97	9	106
	% within Judge Decision	91.5%	8.5%	100.0%
	% within Judge's Use of Words not Sexual Assault	100.0%	100.0%	100.0%
	% of Total	91.5%	8.5%	100.0%

p=.376; Cramer's V=.136

Judge Using Substance Use as a Reason for a Not-Guilty Verdict

A frequency table was employed to present the extent to which judges mention substance use as a reason for a not-guilty verdict. Since the variable "victim use of drugs or alcohol as a reason for reasonable doubt" was only applied to cases that reached a "not-guilty" verdict, Chi-Square (X^2) and phi measures of association would not apply here. In approximately 80.0% of all cases the judge did not cite victim substance use as a reason for a not-guilty verdict. The results suggest that it is more likely that judges will not use victim substance use as a reason for reasonable doubt, but it is still a possibility that judges will use that as a reason for reasonable doubt.

Table 14

Frequency Table: Judge Decision and Judge Use of Victim's Substance Use as a Reason for Reasonable Doubt.

Victim use of Drugs or Alcohol as Reason for Reasonable Doubt	Frequency	Percent
No	28	80.0
Yes	7	20.0
Total	35	100.0

Chapter 5

Discussion

Study results related to research questions and hypotheses indicate relationships that ranged from negligible to moderate, and many tests indicate non-significant results. Despite small effect sizes and several results likely due to random chance, there are a number of findings that warrant detailed discussion. Some literature suggests suspect or even unlawful actions occurring within the CCJS at the hands of judges, however the present study indicates that such behaviours are infrequent.

Findings: Hypotheses Testing

Hypothesis 1

I hypothesized that the gender of the judge has a relationship with trial outcomes. This study found no relationship between the gender of the judge and their verdict. Despite results being non-significant, my findings demonstrate that it is more likely for men to give a guilty verdict than women. Further, results suggest that compared to women, judges who are men rely on a larger range of sentencing length options within a 0 to 18-year boundary. Both findings disprove my hypothesis that women are more likely to give longer and harsher sentences than men and the present findings are incongruent with previous literature (see Krtizer and Uhlman 1977; Coontz 2000; Steffensmeier, and Hebert 1999). However, Coontz' (2000:68), found that judges who are men are more likely to give shorter sentences for simple assault than women judges. Coontz's study (2000:68) focused on data collection through two surveys for state trial judges in Pennsylvania to determine if the gender of the judge makes a difference in sentencing. Although the Coontz study does not specifically focus on sexual assault, Coontz' finding

lines up with the findings in the present study. While somewhat dated, a study by Krtizer and Uhlan (1977) focused on gender differences by collecting court cases within an American court that they called "Metro City" between 1968-1974 and coding for the gender of the victim, offender, judge, and the sentence. Their findings have similarities and differences from the present study. While women and men judges sentence the same in majority of criminal cases, and women judges are not consistently harsher than men judges, women judges were more likely to sentence harsher in robbery, aggravated assault, and drug related cases (Kritzer and Uhlan 1977:83). As previously mentioned in the literature review, Steffensmeier and Herbert's (1999) study focused on how men and women judges sentenced differently within Pennsylvania between the years of 1991 and 1993. Steffensmeier and Herbert found that women and men judges sentenced white women offenders the same, but women judges gave harsher sentences to other sub race-sex groups than men judges.

These three studies are based in the United States and were conducted in the late 20th century. Given the discrepancies in research results and the limited research within this field, further and more up to date inquiry is needed.

Notwithstanding results around verdict and sentence length, it should be noted that the present study identified substantially more judges who are men (*n=83*) compared to women (*n=22*). These results suggest an imbalance of gender representation. Table 15 presents the total number of judges, total number of women judges, and the approximate percentage of women judges in each Canadian province and territory, as well as the overall total. Data comes from the Office of the Commissioner for the Federal Judicial Affairs Canada.

Table 15

Distribution of Women Judges in Canada*

Province/Territory	Total Number of Judges in Office**	Total Number of Women Judges	Approximate % of Women Judges
Alberta	91	44	48%
British Columbia	105	43	41%
Manitoba	25	7	28%
New Brunswick	21	4	19%
Newfoundland and Labrador	29	13	45%
Northwest Territories	4	3	75%
Nova Scotia	33	10	30%
Nunavut	6	3	50%
Ontario	293	115	40%
Prince Edward Island	8	3	38%
Quebec	193	79	41%
Saskatchewan	41	15	37%
Yukon	3	2	67%
Total	1193	492	41%

*Note: This table only looks at judges within the Trial courts. Does not include Appeal, or Family Courts. From Office of the Commissioner for Federal Judicial Affairs Canada, "Number of Federally Appointed Judges in Canada, as of April 1st, 2019."
**Includes Supernumerary judges, which are judges who are not full-time.

The imbalance of women judges within present results aligns with the total number of judges within Canada, bringing important policy implications given that there are fewer women judges presiding over sexual assault cases in Canada. There are benefits to having a diverse group of people within a workplace, as it creates a more well-rounded group of perspectives and experiences to enhance that given workplace (Nishii 2013).

In the context of judiciary diversity, there are some important reasons why there should be an equal representation of men and women judges. Hunter (2015:123) discusses six reasons; three symbolic reasons, and three practical reasons. The first three reasons that Hunter sets out are as follows: first, presence of women judges "increases the democratic legitimacy of the judiciary," as the judiciary should represent the proportions within the general population of men and women as well as the population of law graduates (Hunter 2015:123). Secondly, as Hunter (2015:123) states, more women judges

symbolizes “equality of opportunity for women in the legal profession who aspire to judicial office”, and allows for the judiciary to follow the policies that they have set out, which are to be “fair, meritocratic, and non-discriminatory.” The last symbolic reason as to why there should be more women judges is to encourage girls and young women that it is possible to be in the judiciary, and to promote it is no longer a man-dominated profession (Hunter 2015:123). The three practical reasons for equal representation are as follows: first, women are more likely to be empathic “with women litigants and witnesses, including victims of crime” which can lead to a more positive courtroom experience for these women (Hunter 2015:123). While the gender norms of women line up with what Hunter states, Hunter is implying that all or most women hold these traits. She also implies that men do not hold these traits. With that said I would also add such a generalization about men and women without empirical evidence to back up this claim can be harmful and create more sexist beliefs.

Further, a woman judge can decrease the likelihood of sexist subjection or gender bias for women litigants, witnesses, and lawyers (Hunter 2015:123). The second practical reason ties with the first reason in that women judges will not only show fairness in the courtroom but will also “operate to educate and civilize their male colleagues by not allowing sexist comments, stereotyping, and gender bias to go unquestioned” (Hunter 2015:124). I would add to Hunter’s statement that rather than assuming all men judges are sexist and need “civilization” training and that all women judges are not sexist, each judge that is part of sexual assault trials should undergo training on how to handle these cases. As Craig (2018:211-212) discusses, Canada should follow the United Kingdom’s approach in that judges must complete “the ‘Serious Sexual Offences Seminar’ every

three years." Craig suggests that the training for judges should include "education on substantive sexual assault law and the relationship between gender stereotypes and the legal process in the context of sexual assault trials" (2018:212). These courses should include the nature of cases regarding sexual violence, including but not limited to,

> the gendered notion of sexual violence; the intersection of race, disability, and socio-economic status with sexual violence; the common myths and stereotypes about sexual assault and victim-blaming/shaming; and programming that encourages judges to reflect upon, and challenge, their own stereotypical assumptions about gender, sexuality, and sexual violence (Craig 2018:212).

The last reason for an increase in women judges that Hunter discusses is that "women judges will bring a gendered sensibility to the process of decision-making, and thus (at least sometimes) alter the outcomes of cases" (2015:124). Although my research findings suggest that men judges are more likely to find the accused guilty, it is important to have gender diversity within the judiciary, and to have more well-rounded thoughts and ideas.

Hypothesis 2

In addition to my hypothesis around gender and trial outcomes, I hypothesized that judges will not completely follow the *CCC* in their decision-making in that they would rarely apply the "case law" tactic and would give short sentence lengths. I have hypothesized this because as previously mentioned in the literature review and methodology, the media only shows the CJS giving minimal or no custody time to those who committed sexual assault. In Canada, the trial judge "must decide the appropriate sentence" if the accused is guilty (Department of Justice Canada: 2017). Within this decision, the judge must consider these variables: "the seriousness of the crime; the range of sentences possible in the *Criminal Code* or other statutes; preventing or deterring the

offender or others from committing similar crimes; denouncing the harm to the victim and the illegal conduct; and the prospects for rehabilitation" (Department of Justice Canada:2017). While acknowledging that some of the sentences sex offenders receive are appropriate to the crime they had committed, there are also sex offenders who get an inappropriately short sentence. For instance, in *R.v Caputo* the accused was charged for six different sexual assault charges in a 25-year timeline. He pled guilty for all six charges, and his sentence was 90 days in jail, which he served on the weekends between Friday at 7:00 p.m. to Sunday at 4:00 p.m., alongside probation on the weekdays (2002 BCPC 237). Further, another note from the Department of Justice about criminal cases, the website states,

> A judge does not always have to convict, even if the accused person has pleaded guilty or been found guilty. The judge may give an offender an absolute or conditional discharge. An offender given a conditional discharge must obey the conditions imposed by the judge or face a more severe sentence. An offender who is given a discharge will not receive a criminal record for the offence (2017).

In other words, while the *CCC* gives details on how to sentence a defendant who is guilty, there is some leeway in which the judge is not *required* to follow the *CCC*'s punishment. While there is not empirical evidence to support this hypothesis, the description above within the Department of Justice Canada raises the concern of whether judges are convicting offenders of sexual assault. As previously discussed in the literature review, only 2-4% of sexual assault cases are false allegations. However, it is important to reiterate that people must be exonerated when there is reasonable doubt.

According to the *CCC*, there is no minimum sentence for section 271, which is sexual assault; only a maximum of 10 years (R.S.C. 1985, C-46:334). Results demonstrate that sentencing for the charge of sexual assault ranges from 0-10 years; but

predominantly falls within the 1-5-year range (refer to "Table 12" in results). The findings suggest that judges do not go over 10 years of punishment, meaning that judges are following the *CCC* for this type of offense. Without a minimum sentence length within the *CCC*, there cannot be a critique of minimal punishment. Within section 272 (sexual assault causing bodily harm), there is a minimum and a maximum punishment of 5 to 14 years in custody (R.S.C. 1985, C-46:334-335). Based on my findings, while there is only one case that received a sentence with a charge of sexual assault causing bodily harm, the accused was sentenced to 5-10 years (refer to "Table 12" in results). Lastly, within section 273 (aggravated sexual assault), there is also a minimum and a maximum punishment of 5 years to life in custody (R.S.C. 1985, C-46:335). Based on my findings, sentences range from 5-18 years, which is within the minimum and maximum within the *CCC.* The results in this hypothesis are not due to random chance, which suggests that the judges do sentence in accordance to the *CCC* and are less likely to not convict the accused.

There should be more oversight to ensure judges are following the case law, as well as frequent statistics on sexual assault sentencing. Criminologists discuss the unpopularity and ineffectiveness with mandatory minimum sentencing, as it could result in "unjust outcomes" and could create an even more disproportionate impact on vulnerable populations, particularly Aboriginal people" (Allen 2017:3). Moreover, Allen (2017:3) states,

> Research in Canada and the United States has found no evidence that MMPs have deterred crime; rather, some studies suggest that MMPs can result in overly harsh penalties and disparities, that they increase costs to the criminal justice system as a result of higher levels of incarceration, and that lengthier sentencing may actually increase recidivism.

However, there needs to be change in how sexual assault convictions are sentenced. As previously discussed, section 271 in *CCC* does not give much guideline of what classifies as "sexual assault"—as it ranges from summary offenses such as sexual harassment to indictable offenses such as sexual assault— and how to go about sentencing these crimes. A more impactful solution would be what criminologists refer to as "structured discretion" for general sexual assault (section 271 of the *CCC*). In this structured discretion, there should be more clear definitions of what classifies as sexual assault under law. Moreover, there should be more clarity under "sexual assault", for that section 271 is too broad of a section. Within sections 272 and 273, there are clear indications of what needs to be required to receive those charges. This is not to suggest there should be a "checklist" for sexual assault, but there should be more descriptive and specific aggravating and mitigating factors within section 271. In doing these things, it could make sentencing these crimes easier for judges, and could make the case law regarding sexual assault s.271 more appropriately represented. Moreover, in changing this section to clarify what falls under this charge, it is possible that it could decrease the gaps that were in Johnston's (2012) attributional pyramid (refer Figure one on page 19) and Rotenberg's bottle neck statistical model (refer to Figure 2 on page 20), as the law change would affect other actors in the CCJS.

Hypothesis 3

I hypothesized judges will employ language in written rulings that resemble that which might be found embedded within popular rape myths, specifically victim substance use during the alleged sexual assault. This hypothesis derived from cases within Canada in which judges used the victim's use of substances as a reason to not believe the victim,

and to create reasonable doubt. As mentioned within the literature review, rape myths hold the idea that there is an ideal "victim" and an ideal "script" in which the victim is a woman who was sober and alone in the dark, and a stranger who was a man sexually assaulted her. I suspected that judges will use the impairment of the victim's account to validate their not-guilty verdict. The results suggest that it is more likely for judges to not use this rape myth to find a not guilty verdict (refer to "Table 13" in results), but some judges do adhere to this rape myth. Although the null hypothesis can be rejected, findings suggest adherence this rape myth is not as common as the literature and news media suggest. The misconceptions found in the media and literature are likely due to lack of empirical evidence of how often this occurs within Canada, and the literature surrounding rape myths only use specific case examples in which this occurs. However, given the notable percentage of judges who did adopt this rape myth, further research needs to be conducted to determine why the embedment of rape myths continues to occur in contemporary Canadian jurisdictions. With more empirical research on this topic, it can be determined how often rape myths are subtly embedded within sexual assault trials.

There are ways in which the public can have a voice, and to challenge a judge that engaged in misconduct in trial or during the verdict and sentencing decision. The "Canadian Judicial Council" have a role to oversee Canadian judges' behaviours and to determine if there was any misconduct from a given judge. The Canadian Judicial Council (2019) states,

> By directing complaints to the Canadian Judicial Council, Parliament acknowledges that the public must have a way to voice its concerns about judges. At the same time, the system must allow judges to respond to allegations of misconduct in a fair manner. The process must be efficient, fair, and objective.

The policy of directing complaints is fair for both the public and the judge in question. However, from the statement above, it suggests that the council only looks for misconduct when there is a complaint put in from someone from the trial or from the public. There should be other ways to find misconduct of judges than relying on complaints from the public. The Canadian Judicial Council should also do their part to ensure judges are following conduct in their rulings. The Council should ensure that judges are receiving proper training and are following the conduct in handling sexual assault cases.

Moreover, as previously discussed, there should be mandatory training for judges who are making rulings in sexual assault trials that should be renewed every few years. It should be federally governed, so each judge gets the same training. To summarize what Craig (2018) suggests, there should be sensitivity training, training about rape myths and how to avoid using them, and to ensure that as well as the accused receiving a fair trial, that the victim also perceives a just outcome without myths and stereotypes of race, gender, sexuality, and so forth.

Hypothesis 4

I hypothesized that if the judge uses language that frames sexual assault as non-violent, such as referring to these cases as "sexual intercourse" cases, a not-guilty verdict is more likely. Findings indicate that this is not the case: only 8.6% of judges used language that succeeds in downplaying the crime while finding a not-guilty verdict (refer to "Table 13" in results). This finding suggests that most judges appropriately frame sexual violence through their use of language. For example, it is uncommon for judges to

remove the violence of the assault by calling it "sexual intercourse." I believe there is a misconception regarding language use by the judge because much like the third hypothesis, there is a lack of empirical evidence as to how often this occurs. Most of the literature uses specific case examples, which does not explain how often it happens, but rather that it can happen.

There is still a small percentage of judges who do adopt words outside of "sexual assault" when describing the alleged sexual violence, which should not be overlooked. Regarding those cases where the judge employed softened language *and* found the accused not-guilty, it must be noted that judges using such language does not invalidate not-guilty findings. In other words, there is absolutely no causal relationship between the language used by the judge and findings of guilt.

Craig (2018:209) discusses how Canada has "been assessed by some as among the weakest [jurisdictions] in the world" with regard to how judges are appointed. For example, in Alberta between the years 1999 to 2007 there were twenty-eight appointed judges, within which "fifteen of those twenty-eight had no criminal law experience" (Craig 2018:209). With slightly more than 50% of these appointed judges having no criminal law experience, it may be that many judges are not properly trained to preside over sexual assault cases. While Craig only discussed one province, there is a possibility that this is occurring in other parts of Canada. Craig (2018:211) also discusses training programs for judges presiding over sexual assault cases, but they are not mandatory for most of Canada. While this author is not aware of any outcome evaluations demonstrating that sexual assault training programs are effective on various outcomes measures, creating a mandatory course for judges to become better educated with sexual

assault trials could impact judge conduct, such as language used, in a way that results in increased satisfaction with the process for victims and even the accused.

Discussion of Additional Findings

Aside from my hypotheses stated above, there were other unexpected and interesting findings that did not relate back to my central research purpose.

Criminal Record and Judge Decision

Both 'sex offender history' and 'other criminal charges history' show a significant weak to moderate relationship with verdict. Approximately 28% of the accused in this sample have a sex offender history. The literature suggests it is not likely for sex offenders to reoffend sexually. For instance, Harris and Hanson (2004:11) found that "after 15 years, 73% of sexual offenders had not been charged with, or convicted of, another sexual offence." Harris and Hanson (2004) also note that this finding is common (see Hanson and Bussière 1998). There are a couple of reasons why this occurs. From Lussier's (2011) study on "significant variations in criminal achievement across sex offenders", in which the sample was using adult men sexual offenders, results show that sexual recidivism is more common in child sexual abuse, which was not included in this study. This finding suggests that sex offenders who victimize those above the age of 18 are not as likely to reoffend than those offenders who victimize those under the age of 18. Lussier (2011) also discusses how event-to-victim ratio is not a variable considered when dealing with sexual offenders, which can alter results as to why there is a lower recidivism rate in sexual offenders. Lussier (2011:441) states,

> Event-to-victim ratio and sexual revictimization are not taken into account by official data on sex offending (e.g., arrest, conviction, incarceration) which in turn minimize the true extend of these offenders' level of offending, but also their tendency to specialize in sex crimes.

Therefore, it is difficult to determine how often sexual offenders do offend if one is to base it off official data records, which can lead to the assumption as to why there is little recidivism within sexual offending.

Another reason as to why sexual offenders are less likely to reoffend is age. In Lussier and Healey's (2009) study on examining "the role of age at release on the risk of reoffending using a sample of sex offenders", with using a sample if 553 Canadian sex offenders found that the age of the sex offender in their release "showed a predictive accuracy comparable to that of the actuarial tool" and "risk assessors should adjust the risk of reoffending based on the offender's age of release" (827). The older the offender is at their release, the less likely they will reoffend. Lussier and Healey (2009:848-49) found that offenders who were released at the age of 40 or older were less likely to reoffend than those who were released under the age of 30. Therefore, the assumption here is that there should be more consideration of age to determine whether one is to reoffend sexually; the older the offender is at release, the less likely they are to reoffend.

Victim-Offender Relationship and Judge Decision

Results show that if the victim and offender were strangers, or did not have a romantic background, the judge is more likely find the offender guilty; whereas if there was a romantic relationship—whether past or present—between the offender and victim, judges are more likely find the accused not-guilty. A reason for this could rooted in the rape myth in which romantic partners cannot sexually assault one another. While there is no empirical evidence to be certain this is a reason, earlier Canadian laws surrounding sexual assault included spousal immunity, which can embed itself in judge's beliefs.

These findings align with the literature on relational distance and sentencing in sexual assault cases. For instance, in Felson's (2007) research found that "offenders who assault people they know are much less likely to be incarcerated than those who assault strangers" (451). Felson's findings also suggest that "police are more likely to consider minor forms of violence between people who know each other as less of a threat to the community" (2007:453). While this finding is at the police level, it is possible that judges hold the same belief, and will acquit the accused who have or have had a romantic relationship with the complainant. Along with this myth, judges might find reasonable doubt with sexual assault among romantic partners because of the myth of saying yes once means yes always.

The present study finds fewer cases with a romantic victim-offender relationship compared to stranger or acquaintance relationships. This is not to suggest that violence between intimate partners does not occur. Using 1999 GSS data, Johnson (2000:13) found that "women with current partners were three times as likely as men to report being beaten (13% versus 4% of men), and much more likely to report being choked and sexually assaulted." However, the present finding of romantic relationships as less frequent does align with the 2009 GSS: "Rates of self-reported violent victimization were found to be highest among single people and lowest among people who were married. People in common-law relationships also had higher rates of violent victimization relative to people in marriages" (Perreault and Brennan 2010:10) reflects what the GSS finds.

Both Men and Women Victims

The results of this study show that not only are there both men and women victims, but that cases involving men as victims were as likely as cases with victims who are women to result in a not-guilty verdict. While this finding could be due to random chance, it does demonstrate that women are not the only ones being sexually assaulted and the courts do not seem to favour one type of victim over the other. With that said it is important to note that women are more likely to be victims of sexual assault than men, as statistics show that "women were 10 times more likely than men to be the victim of a police-reported sexual assault in 2008" (Vaillancourt 2010:5); however, my findings suggest that both men and women victims hold the same likelihood to have the accused be found not-guilty. Again, this is not to say the verdict is unjustified—it is possible or even likely that accused who are found not-guilty are in fact not guilty. This study simply demonstrates that verdicts do not tend to vary by victim gender.

Only Men Offenders

The results of this study show that all but one of the offenders (*n=105*) are men. The lone offender that was not classified as a man did not have any indicators suggesting a gender throughout the case, thus being identified as "unknown" and leading to the conclusion that there were little to no offenders who are women in this sample. Within the admissions to adult correctional services, 16% of those adults admitted to provincial and territorial correctional services in 2015-2016 were women (Reitano 2017:5). Further, in 2015-2016, adult women offenders "who received a guilty decision for violent crimes were almost half as likely as their male counterparts to receive a custodial sentence (22% versus 39%)" (Savage 2019:10). While these statistics are not specific to sexual assault, women are less likely to commit violent offenses than men are, which can explain why

there were no women offenders in my sample. With that said, while there were both men and women victims (contrary to the suggestion that men will not come forward as a victim of sexual assault), the offender finding does align with literature suggesting women offenders are less likely to be charged than offenders who are men. In other words, my results may be underestimating the number of women offenders because complaints against women do not make it to the trial stage because they are either not reported to police, or police have elected not to charge. According to the GSS self-reporting data from 2004 to 2014, a population sample of 1,000 people, 35 women fall victim to sexual assault, and approximately 5 men will fall victim to sexual assault (Conroy and Cotter 2017:5). Further, according to UCR data from 2009 to 2014, police reports of sexual assault charges that were laid had "99% female victims were sexually assaulted by a male . Conversely, 7% of male victims were victimized by a female . In turn, the vast majority (93%) of sexual assaults against males were perpetrated by another male " (Rotenberg 2017:18). Regarding police reporting, Felson (2007) found that police were "particularly unlikely to arrest women who assault their male partners" because police held the assumption that

> a man can protect himself from his female partner and that a woman's violence is not dangerous unless she assaults someone other than her partner. It may also be that the police are chivalrous toward female offenders unless they are a threat to outsiders (452).

Location of Jurisdictions and Judge Decision

The results of this study show that there is a moderate relationship between the location of the jurisdiction and judge decision, and it is not due to random chance. Based on both a cross-tabulation and rates per 100,000, the findings in this study align with findings of Statistics Canada. While Ontario has the most sexual assault cases when

measured as raw counts, the Yukon has the highest rate per 100,000. In comparison to other parts of Canada, the territories in general have higher crime rates. Similarly, Allen and Perrreault's (2015) divide the country up in three sections: the territories, the north (which includes northern regions of Newfoundland and Labrador, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia), and the south (which includes the southern regions of those provinces listed above as well as Prince Edward Island, Nova Scotia, and New Brunswick). In 2013, police-reported crime was notably higher in the territories than in Northern or Southern parts of Canada (Allen and Perreault 2015:10). The reasons as to why the territories have a higher crime rate than other parts of Canada are because many residents "live in small, isolated communities or remote areas and face the challenges of low education levels, high unemployment, and low income" (Allen and Perreault 2015:4). With living in isolated areas, residents of the territories are more likely to be lacking resources than residents who live in more urban areas throughout the country. Further, Allen and Perreault (2015:4) found that those people who live in isolated areas involve themselves in "high levels of substance abuse, particularly alcohol." Moreover, in relation to victimization, the rate of women victims of violent crime were "8 times higher in the Territories" (Allen and Perreault 2015:15). While these statistics are not specific to sexual assault, these findings align with my findings.

There is room for improvement regarding the increased crime rates in the territories. Some ways to decrease the crime rate could include better police services in remote areas; more police officers, better pay, and specialized training in how to reduce crime rates and sexual assault in these areas. Moreover, there should be more resources

for those living in the territories to get help, as well as to get educated on these topics. Further, there should be better access to social services in these areas. Considering the missing and murdered Indigenous women, as well as Indigenous women have higher rates of sexual assault than non-Indigenous women (approximately three times higher, according to GSS 2014 results (Conroy and Cotter 2017:8)), there should be training on how to protect Indigenous women from sexual assault, and for Indigenous women to have more resources and access to social services.

Concluding Thoughts

While study findings mostly run contrary to hypotheses which were informed by a particular body of literature, results should not be interpreted to mean there is little inequality within the CCJS; rather, these findings should be used as a starting point for further exploration. The statistics here only reflect trial outcomes. As such it is important to look at both Johnson's (2012) attributional pyramid (refer to Figure 1 on page 19 in the Literature Review) and Rotenberg's (2017) bottle neck statistical model (refer to Figure 2 on page 20 in the Literature Review), and explore why the number of sexual assault cases decrease as they go through the CCJS.

Chapter 6

Conclusion

Summary

This is an exploratory cross-sectional study to examine whether gender has an influence on the outcomes of sexual assault cases and the frequency with which presiding judges employ language in written rulings that resemble that which might be found imbedded within popular rape myths. The findings in this study do not line up with earlier literature, as there is no gender influence in judge's decision making within sexual assault cases and use of language that resemble that which might be found imbedded within popular rape myths does occur but is not the norm. Indicators of receiving a guilty verdict, such as offender criminal history, victim-offender relationship, and location of trial align with earlier research, and the present research demonstrates that certain variables within a case will more likely result in a guilty verdict.

Limitations

There are a few significant limitations within this study. By only using the database CanLII, there is the possibility that there are court cases that did not make it to this database. Further, by only focusing on adult cases that do not have family involvement, my findings only apply to that context and are not generalizable to all sexual assault cases that go through the system. Another limitation is the small sample size, which can contribute to relationships being disregarding due to lack of statistical significance. Moreover, not every court document accessed included a sentencing decision, and instead simply stated a guilty or not guilty verdict; thus, limiting ability to explore sentencing outcomes for the full sample. I was also unable to access full trial

documents for each case—only the verdict hearing or the sentencing hearing documents are available on CanLII. Thus, results around language use as it relates to questions around perpetuating rape myths are limited. My findings are based on the verdict or sentencing decisions that judges make, which means I am only aware of what was said at these hearings.

Future Research

The purpose of my research is not to deter from the problems that occur in the CCJS, or to state that there are no issues within the court system when dealing with sexual assault cases. There must be more up-to-date empirical research on the CCJS regarding sexual assault cases. This includes, but not limited to, language use throughout the trial from both lawyers and judges, rape myths embedded throughout testimonies and how often they occur and how often these myths receive objection from the Crown or judge. There should also be explanatory research regarding the statistics trend from initial report to conviction—why is there a decrease in cases from the first report to a conviction rate? What causes it, and what can be done to fix it?

When examining sexual assault within the CCJS, the literature and news media hyper focus on either cases that do not follow the *CCC*, or actors within the CCJS who re-victimize the victim. With recent feminist movements such as '#MeToo' occurring, there must be a focus on cases that do not make it to the media and news outlets. As well, we must question how frequently injustices within high profile cases occur, and whether it is a common theme throughout the CCJS. If so, what needs to change? If not, what is the likelihood that injustices in sexual assault cases actually occur? What can be done to understand the frequency with which victim-blaming actually occurs? What has to occur

in order for victims of sexual assault to receive appropriate justice and a voice? Throughout the research for this master's thesis, there were either gaps within data, or there were few recent publications about sexual assault in the CCJS. There must be more up-to-date information about sexual assault within the CCJS to fill in gaps, and to determine what specific problems are within the CCJS when handling a sexual assault case.

Chapter 7

Works Cited

Allen, Mary. 2017. *Mandatory Minimum Penalties: An Analysis of Criminal Justice System Outcomes for Selected Offences.* Cat. No. 85-002-X Ottawa, ON: Statistics Canada.

Allen, Mary and Samuel Perreault. 2015. *Police-reported Crime in Canada's Provincial North and Territories, 2013*. Cat. No. 85-002-X. Ottawa, ON: Statistics Canada.

Anderson, Drew. 2018. "Controversial Former Judge Robin Camp can Once Again Practise Law in Alberta." Retrieved March 8, 2019. (https://www.cbc.ca/news/canada/calgary/robin-camp-sexual-assault-trial-judge-reinstated-lawyer-1.4674420)

Ben-Ezra, Manachem, Yuval Palgi, Dina Sternberg, Dina Berkley, Hadar Eldar, Yael Glidai, Liron Moshe, and Amit Shria. 2010. "Losing My Religion: A Preliminary Study of Changes in Belief Pattern After Sexual Assault." *Traumatology* 16(2): 7-13.

Berg, Bruce L. and Howard Lune. 2012. *Qualitative Research Methods for the Social Sciences*. 8th ed. New Jersey, United States of America: Pearson.

Brisolara, Sharon, and Denise Seigart. 2012. "Feminist Evaluation Research" Pp. 290-312 in *Handbook of Feminist Research: Theory and Praxis Second Edition* Edited by Sharlene Nagy Hesse-Biber. Thousand Oaks, CA: SAGE Publication

Burt, Martha R. 1980. "Cultural Myths and Supports for Rape." *Journal of Personality and Social Psychology* 38(2): 217-230.

Busby, Karen. 1999. "'Not a Victim until a Conviction is Entered': Sexual Violence Prosecutions and Legal 'Truth.'" Pp. 260-288 in *Locating Law: Race/Class/Gender Connections* Edited by Elizabeth Comack. Halifax, NS: Fernwood Publishing.

Cahill, Ann J. 2000. "Foucault, Rape, and the Construction of the Feminine Body." *Hypatia* 15(1): 43-63.

Canada Dept. of Justice. Research Section. 1990. *Sexual Assault Legislation in Canada: An Evaluation.* Ottawa: Authority of the Minister of Justice and Attorney General of Canada.

Canadian Code, R.S.C., 1985, c. C-46, ss. 265, 271, 272, 273

Canadian Judicial Council. 2019. "Judicial Conduct." Retrieved May 3, 2019. (https://www.cjc-ccm.gc.ca/english/conduct_en.asp?selMenu=conduct_judicial_conduct_en.asp)

CanLII. Nd. "About CanLII." Retrieved May 9, 2018. (https://www.canlii.org/en/info/about.html).

CBC News. 2017. "Sex was Consensual, Tearful Police Officer Tells Sexual Assault Trial." Retrieved March 8, 2019. (https://www.cbc.ca/news/canada/newfoundland-labrador/carl-snelgrove-sexual-assault-trial-1.3990902).

Coates, Linda. 1997. "Casual Attributions in Sexual Assault Trial Judgements." *Journal of Language and Social Psychology* 16(3):278-296.

Comack, Elizabeth and Gillian Balfour. 2004. *The Power to Criminalize: Violence, Inequality, and the Law.* Halifax, NS: Fernwood Publishing.

Comack, Elizabeth and Stephen Brickey., eds. 1991. *The Social Basis of Law: Critical Readings in the Sociology of Law.* Halifax, NS: Garamond Press.

Condon, Mary. 1993. “Sexual Assault: The Criminal ‘Injustice’ System.” Project Submission, School of Public Administration, Queen’s University, Kingston, CA.

Conroy, Shana and Adam Cotter. 2017. *Self-Reported Sexual Assault in Canada, 2014.* Cat. no. 85-002-X Ottawa, ON: Statistics Canada.

Coontz, Phyllis. 2000. “Gender and Judicial Decisions: Do Female Judges Decide Cases Differently than Male Judges?” *Gender Issues* 59-73.

Craig, Elaine. 2012. *Troubling Sex: Towards a Legal Theory of Sexual Integrity.* Vancouver: UBC Press.

Craig, Elaine. 2018. *Putting Trials on Trial*. Canada: McGill-Queen’s University Press.

Deming, Michelle E., Eleanor Krassen Covan, Suzanne C. Swan, and Deborah L. Billings. 2013. “Exploring Rape Myths, Gendered Norms, Group Processing, and the Social Context of Rape Among College Women: A Qualitative Analysis. *Violence Against Women* 19(4):465-485.

Department of Justice 2017. *Civil and Criminal Cases.* Ottawa: Government of Canada. Retrieved April 23rd, 2019. (https://www.justice.gc.ca/eng/csj-sjc/just/08.html).

Department of Justice. 2017. “To Role of the Public.” Retrieved May 2, 2019. (https://www.justice.gc.ca/eng/csj-sjc/just/12.html)

Du Mont, Janice. 2003. "Charging and Sentencing in Sexual Assault Cases: An Exploratory Examination." *Canadian Journal of Women and Law* 15:305-330.

Easteal, Patrica, Lorana Bartles, and Sally Brandford. 2012. “Language, Gender, and ‘Reality’: Violence Against Women.” *International Journal of Law, Crime and Justice* 40:324-337.

Edwards, Katie M., Jessica A. Turchik, Christina M. Dardis, Nicole Reynolds, and Christine A. Gidyez. 2011. “Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change.” *Sex Roles* 65:761-773.

Ellis, Megan. 1985. *Surviving: Procedures After a Sexual Assault. Vancouver, BC: Press Gang.*

Fine, Sean. 2017. “ ‘Believe the Victim’ has no Place in Courts, Judge Says in Sexual Assault Ruling.” Retrieved March 27th, 2019. (https://www.theglobeandmail.com/news/toronto/decision-expected-in-trial-of-three-toronto-officers-accused-of-sexual-assault/article35918734/)

Felson, Richard B. and Paul-Philippe Pare. 2007. “Does the Criminal Justice System Treat Domestic Violence and Sexual Assault Offenders Leniently?” *Justice Quarterly* 24(3): 435-459.

Fernandez-Rouco, Noelia, Andres A. Fernandez-Fuertes, Rodrigo J. Carcedo, Susana Lazaro-Visa, and Eva Gomez-Perez. 2017. “Sexual Violence History and Welfare in Transgender People.” *Journal of Interpersonal Violence* 32(19): 2885-2907.

Franklin, Cortney A. and Noelle E. Fearn. 2008. “Gender, Race, and Formal Court Decision-Making Outcomes: Chivalry/Paternalism, Conflict Theory or Gender Conflict?” *Journal of Criminal Justice* 36:279-290.

Frohmann, Lisa. 1991. “Discrediting Victims’ Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections.” *Social Problems* 38(2):213-226.

Gearty, Conor A. 2002. “What are Judges For?” Pp. 245-253 in *Law, Politics and the Judicial Process in Canada Third Edition* Edited by F.L. Morton. Calgary, AB: University of Calgary Press.

Government of Canada. 2018. “Sexual Misconduct Myths and Facts.” Retrieved May 2, 2019. (https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/operation-honour/understand-prevent-respond/supporting-tools-resources/myths-facts.html)

Grubb, Amy, and Emily Turner. 2012. “Attribution of Blame in Rape Cases: A Review of the Impact of Rape Myth Acceptance, Gender Role Conformity and Substance Use on Victim Blaming.” *Aggression and Violent Behaviour* 17:443-452.

Gunn, Rita and Rick Linden. 1997. "The Impact of Law Reform on the Processing of Sexual Assault Cases" *The Canadian Review of Sociology and Anthropology* 34 (2):155-174.

Harris, Andrew J.R., and R. Karl Hanson. 2004. “Sex Offender Recidivism: A Simple Question.” *Public Safety and Emergency Preparedness*. Cat. No. PS3-1/2004-3.

Hinch, Ronald. 1985. "Canada's New Sexual Assault Laws: A Step Forward for Women?" *Contemporary Crises* 9: 33-44.

Hinch, Ronald. 1988. "Inconsistencies and Contradictions in Canada's Sexual Assault Law." *Canadian Public Policy* 14(3):282-294.

Hockett, Jericho M., Sara J. Smith, Cathleen D. Klausing, and Donald A. Saucier. 2016. “Rape Myth Consistency and Gender Differences in Perceiving Rape Victims: A Meta-Analysis.” *Violence Against Women* 22(2):139-167.

Hunter, Rosemary. 2015. “More than Just a Different Face? Judicial Diversity and Decision-Making.” *Current :Legal Problems* 68:119-141.

Johnson, Holly. 2000. "Trends in victim-reported wife assault." In Pottie Bunge, V. and D. Locke (eds.) *Family Violence in Canada: A Statistical Profile, 2000*. Catalogue no. 85-224-XIE. Ottawa: Statistics Canada.

Johnson, Holly. 2012. "Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault." Pp. 613-634 in *Sexual Assault in Canada: Law, Legal Practice, and Women's Activism* edited by Elizabeth A. Sheehy. Ottawa, ON: University of Ottawa Press.

Koren, Marina. 2016. "Why the Stanford Judge Gave Brock Turner Six Months." Retrieved March 8, 2019. (https://www.theatlantic.com/news/archive/2016/06/stanford-rape-case-judge/487415/).

Koshan, Jennifer. 2017. "The Criminalisation of Martial Rape and Law Reform in Canada: A Modest Feminist Success Story in Combating Martial Rape Myths." Pp.139-164 in *The Right to Say No: Martial Rape and Law Reform in Canada, Ghana, Kenya and Malawi*, edited by M. Randall, J. Koshan and P. Nyaundi. Portland, OR: Hart Publishing.

Kritzer, Herbert M. and Thomas M. Uhlman. 1977. "Sisterhood in the Courtroom: Sex of Judge and Defendant in Criminal Case Disposition." *Social Science Journal*, 14: 77-88

Lazar, Ruthy. 2010. "Negotiating Sex: The Legal Construct of Consent in Cases of Wife Rape in Ontario, Canada." *Canadian Journal of Women and the Law*, Volume 22(2): 329-364.

Leiber, Michael J., Maude Beaudry-Cyr, Jennifer H. Peck, and Kristin Y. Mack. 2018. "Sentencing Recommendation by Probation Officers and Judges: An Examination of Adult Offenders Across Gender." *Women and Criminal Justice* 28(2):100-124.

Luban, David. 2007. *Legal Ethics and Human Dignity*. Cambridge, UK: Cambridge University Press.

Lussier, Patrick and Jay Healey. 2009. "Rediscovering Quetelet, Again: The 'Aging' Offender and the Prediction of Reoffending in a Sample of Adult Sex Offenders." *Justice Quarterly* 26(4): 827-856.

Lussier, Patrick, Martin Bouchard, and Eric Beauregard. 2011. "Patterns of Criminal Achievement in Sexual Offending: Unravelling the 'Successful' Sex Offender." *Journal of Criminal Justice* 39: 433-444.

McCormick, Peter and Ian Greene. 1990. *Inside the Canadian Judicial System Judges and Judging*. Toronto, ON: James Lorimer & Company, Publishers.

MacDonald, Gayle. 2005. "In Absentia: Women and the Sexual as a Social Construct in Law". Pp. 50-69. *Feminism, Law, Inclusion: Intersectionality in Action,* edited by C. Smith, R. Osborne, and G. MacDonald. Toronto: Sumach Press.

MacKinnon, Catharine A. *Toward a Feminist Theory of State*. 1989. Cambridge, Massachusetts: Harvard University Press.

Maxfield, Michael G. and Earl Babbie. 1995. *Research Methods for Criminal Justice and Criminology*. Belmont, United States of America: Wadsworth Publishing Company.

Messman-Moore, Terri L., Kate L. Walsh, and David DiLillo. 2010. "Emotion Dysregulation and Risky Sexual Behavior in Revictimization." *Child Abuse and Neglect* 34:967-976.

Nishii, Lisa. 2013. "The Benefits of Climate for Inclusion for Gender-Diverse Groups. *The Academy of Management Journal* 56(6):1754-1774

O'Barr, William. 2001. "Language and Patriarchy." Pp. 106-113 in *Gender Mosaics: Social Perspectives: Original Readings* edited by Dana Vannoy. Los Angeles, CA: Roxbury Publishing.

Office of the Commissioner for Federal Judicial Affairs Canada 2019. *"Number of Federally Appointed Judges in Canada, as of April 1st, 2019."* Ottawa: Statistics Canada. Retrieved April 26th, 2019. (http://www.fja.gc.ca/appointments-nominations/judges-juges-eng.aspx).

Moore, Timothy and Julianna Greenspan. 2017. "Alcohol, Memory, and Reasonable Doubt" Retrieved March 26th, 2019. (https://www.thelawyersdaily.ca/articles/3938/alcohol-memory-and-reasonable-doubt-timothy-moore-and-julianna-greenspan)

Perreault, Samuel and Shannon Brennan. 2010. *Criminal Victimization in Canada, 2009*. Cat No. 85-002-X. Ottawa, ON: Statistics Canada.

Price, Morgan. 1894b. *A Decade of Change: Submissions and Reforms of Canadian Sexual Assault Legislation. 1970-1983.* Calgary: Alberta Law Foundation and The Calgary Sexual Assault Centre.

Price, Morgan. 1984a. *Canadian Sexual Offence Laws: A History*. Calgary: Alberta Law Foundation and The Calgary Sexual Assault Centre.

Randall, Melanie. 2010. "Sexual Assault Law, Credibility, and 'Ideal Victims': Consent, Resistence, and Victim Blaming." *Canadian Journal of Women and the Law* 22(2):397-434.

Reinharz, Shulamit and Rachel Kulick. 2007. “Reading Between the Lines: Feminist Content Analysis into the Second Millennium.” Pp. 257-276 in *Handbook of Feminist Research Theory and Praxis First Edition* Edited by Sharlene Nagy Hesse-Biber. Thousand Oaks, CA: Sage Publications.

Reitanto, Julie. 2017. *Adult Correctional Statistics in Canada, 2015/2016.* Cat. No. 85-002-X. Ottawa, ON: Statistics Canada.

Research and Statistics Division. 2017. “Just Facts.” Ottawa, ON: Department of Justice Canada.

Rotenberg, Cristine. 2017. *From Arrest to Conviction: Court Outcomes of Police-Reported Sexual Assaults in Canada, 2009 to 2014.* Cat. No. 85-002-X. Ottawa, ON: Statistics Canada.

Sampert, Shannon. “Let Me Tell You a Story: English-Canadian Newspapers and Sexual Assault Myths.” *Canadian Journal of Women and the Law* 22(2):301-328.

Savage, Laura. 2019. *Female Offenders in Canada, 2017*. Cat. No. 85-002-X. Ottawa, ON: Statistics Canada.

Schissel, Bernard. 1996. "Law Reform and Social Change: A Time-Series Analysis of Sexual Assault in Canada." *Journal of Criminal Justice* 24(2):123-138.

Spector, Paul E. 2019. “Do Not Cross Me: Optimizing the Use of Cross-Sectional Designs.” *Journal of Business and Psychology* 34:125-137.

Steffensmeier, Darrell and Chris Herbert. 1999. “Women and Policymakers: Does the Judge’s Gender Affect Sentencing of Criminal Defendants?” *Social Forces* 77(3):1163-1196.

Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016013

Tang, Kwong-lenug. 1998. “Rape Law Reform in Canada: The Success and Limits of Legislation.” *International Journal of Offender Therapy and Comparative Criminology* 42(3): 258-270.

Vaillancourt, Roxan. 2010. *Gender Differences in Police-reported Violent Crime in Canada, 2008*. Cat. No. 85F0033M, no.24. Ottawa, ON: Statistics Canada.