

# JUSTICE

## RESEARCH NOTES

### Sexual Assault Legislation in Canada: An Evaluation

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#### Background

On August 4, 1982, Bill C-127, *An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person*, was passed by the House of Commons. On January 4, 1983, it became Canadian law. The sexual assault provisions of Bill C-127 made fundamental amendments to the *Criminal Code* with respect to the substantive, procedural and evidentiary aspects of Canada's rape and indecent assault laws.

The laws relating to the offences of rape, attempted rape and indecent assault were expunged from the *Criminal Code* and replaced with a trilogy of sexual assault offences: sexual assault (s. 271, Level I); sexual assault with a weapon, threats to a third party or bodily harm (s. 272, Level II); and aggravated sexual assault (s. 273, Level III). The definition of a sexual assault was left for the courts to resolve. The new maximum penalties are, respectively: 10 years, 14 years, and life imprisonment.

The Bill attempted to address concerns expressed by advocacy groups and criminal justice practitioners. The new law changed the rules governing the kinds of evidence that could be used in a trial, and emphasized fair treatment for the victim.

#### The Research Initiative

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

The objectives of this evaluation were:

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

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### SPECIAL ISSUE

**This issue of *Justice Research Notes* is devoted to the Department's evaluation of the 1983 sexual assault legislation. Ten of the reports resulting from the evaluation are now available to the public; the remaining two reports will be available in the summer of 1991.**

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## Research Approach

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

The research program included six site studies, a survey of front-line agency personnel to ascertain how victims were treated before and after the legal changes, an analysis of national reporting, founding and charging data (1977-1988), an analysis of sentencing patterns, a review of selected court cases from May 1985 to April 1988, and a study of homicide in the course of sexual assault.

The first four components of this comprehensive evaluation of Bill C-127 are encapsulated in an overview report prepared by the Research Section, Department of Justice.

*Justice Research Notes* is produced by the Research and Development Directorate of the Department of Justice. Its purpose is to provide, in summary form, results of projects carried out under the Department's program of research into various areas of justice policy, as well as information and articles on other socio-legal matters.

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## Research Findings - the Site Studies and the Front-line Agency Report

The six site studies were conducted in Vancouver, British Columbia; Lethbridge, Alberta; Winnipeg, Manitoba; Hamilton-Wentworth, Ontario; Montreal, Quebec; and Fredericton and Saint John, New Brunswick. These sites were selected to reflect the country's regional character. The individual site researchers analyzed reported sexual offences both before and after the legislation came into force. The findings listed below include some comparison with national-level analyses contained in reports described elsewhere in this issue.

- ▶ There has been an increase in numbers of reports of sexual assault across the country. While the site studies indicate that there were contrasts between cities of comparable size, national data confirm that there has been a general trend to higher rates of reporting sexual crimes since the proclamation of Bill C-127.
- ▶ There was some consensus among key respondents that sexual assault remains underreported and that victims' reasons for not reporting include fear of the assailant, shame, dread of the criminal justice process, and a sense that the incident was not worthy of reporting. These interviews were, however, undertaken before 1988; perceptions regarding reporting rates and reasons for underreporting may have changed since then.
- ▶ All sites indicated little overall change in the characteristics of complainants and assailants. There were very few spouses and few males reporting incidents to police. There were virtually no female assailants identified by complainants. The spousal exemption and the gender-neutral language of the offence had



therefore made only a small contribution to the increasing numbers of reports made to police.

- ▶ Founding rates (i.e., reports that are deemed by police, after preliminary investigation, to be supported by sufficient evidence to lay a charge) have not changed dramatically in the last 10 years. Furthermore, the founding rates across the provinces continue to vary. These findings suggest that the changes in requirements of proof and the offence classifications have not affected this aspect of police work.
- ▶ National-level analysis of charging data indicates that the clearance rate for sexual assault is similar to that for other crimes involving violence. There has been little change in the aggregate charging rate since the 1983 legislation. Thus, it does not appear that the legislation has had an effect on the likelihood that a charge will be laid in a sexual assault case.
- ▶ Corroborating evidence did not play a consistent role across the sites in relation to charging; however, there was some sense among key respondents that corroboration is still an important consideration in the charging decision.
- ▶ The site studies addressed three aspects of the criminal justice system: plea bargaining, conviction and sentencing. Firstly, the investigation into plea bargaining dealt with how changes in offence classification might affect the day-to-day work of the crown attorney and defence counsel in court. Counsel were divided on this issue. Some felt the new legislation made negotiation easier; however, there was no indication that negotiation is more prevalent under the new law. It would appear that crown attorneys

approach plea bargaining with extreme caution in sexual assault cases.

Secondly, findings across the sites for convictions were quite contradictory. The conviction rate went up in three sites, down in two, and remained approximately the same in two. Crown attorneys and defence counsel gave mixed responses on the likelihood of obtaining a conviction if: (a) the complainant's past sexual history was introduced into evidence; (b) corroborating evidence was present; and (c) the complaint was recently reported. These factors cannot be consistently related to either the qualitative or quantitative data on conviction rates.

Thirdly, the data on sentencing in the sites were limited; however, respondents from sexual assault centres indicated a continuing belief that sexual assault sentences do not reflect a clear recognition of the victim's trauma. Roberts's sentencing patterns study (see page 6) indicated that, while there is variation across the country, sentences have not become more lenient since 1983.

- ▶ According to information gathered in 1987, very few victims of sexual assault were aware that the law had been amended. They therefore may have taken the decision to report the assault to police on the basis of other factors. The court experience continues to be unpleasant, a feeling that undoubtedly prevails in all cases but especially in sexual assault cases. ◀

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*Overview, Sexual Assault Legislation in Canada: An Evaluation, Report No. 5*, by Research Section, Department of Justice Canada. 1990. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.



## Research Findings: The Analysis of National Reporting, Founding and Charging Data (1977-1988)

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Using national *Unified Crime Reports*,<sup>1</sup> Julian V. Roberts undertook a study to identify trends in the number and rates of cases reported and founded, and charging patterns associated with rape and sexual assault in Canada, over the 11-year period from 1977 to 1988. Similar numbers and rates of reporting, founding and charging for the three levels of assault and manslaughter were also analyzed as a basis for comparison.

Roberts's general findings are as follows.

### Reporting Sexual Assaults to Police

- ▶ Since 1983, there has been a steady increase in the number of sexual assaults reported to police. The number of reports in 1988 (29,111) is 127 per cent higher than the number in 1982 (12,848). This is significantly higher than the increase in the incidence of nonsexual assaults reported to the police. As well, the total number of reports in 1983 represents a substantial increase over the

<sup>1</sup> *Unified Crime Reports* are collected from police forces across Canada by the Canadian Centre for Justice Statistics, Statistics Canada.

number of reports of incidents of sexual aggression (i.e., rape and indecent assault) prior to 1983. There was little change in the number of reports made in the five years preceding the reform legislation.

- ▶ Although it is likely that the reform legislation is in part responsible for the increase in reporting rates, other factors may have had an effect. There has been an increase in the number of sexual assault crisis centres and special units within police forces to handle cases of sexual assault. As well, the general social climate has changed, perhaps making it less traumatic for victims to come forward and report assaults to the criminal justice system.
- ▶ The vast majority (95 per cent) of sexual assault reports to police in 1988 were classified as Level I (the "least serious" category). Moreover, the percentage of all sexual assault reports classified at Level I has steadily risen over the past five years. In 1983, Level I accounted for 88 per cent of all sexual assault reports.
- ▶ The increase in sexual assault reporting has not been uniform across all three levels. In fact, there has been a substantial reduction in reports classified at the most serious level (aggravated sexual assault – Level III) since 1983. There has been a slight (13 per cent) increase in reports of Level II (sexual assault with a weapon).
- ▶ It is important to note that the increase in reporting is not consistent across the country. The patterns of sexual assault reporting vary greatly in different provinces/territories. In some jurisdictions the pattern of increase matches the national trend, while in others it assumes a very different form.
- ▶ It is not just the rate of increase in reporting that varies across the country. The number of



actual reports compared with population varies considerably as well. Analysis of reporting rates reveals substantial variation across jurisdictions in Canada.

### **Incidents that are Deemed Founded or Unfounded**

After a preliminary investigation, incidents that are reported to police are designated as being founded or unfounded. This does not relate in any way to guilt or innocence, but to whether there is sufficient evidence to proceed. When tracked over time, the following results were evident.

- ▶ The proportion of reports considered unfounded has not changed substantially since 1983. The most recent data reveal an unfounded rate of 15 per cent for all three levels. There is little variation in founding rates across the three levels. However, the unfounded rate for sexual assault is higher than the comparable statistic for nonsexual assaults (7.5 per cent).
- ▶ As with reporting rates, there is substantial cross-jurisdictional variation in the unfounded rate for sexual assault.
- ▶ There has been a significant decline in the unfounded rate of aggravated sexual assault; from 20 per cent in 1983 to 8 per cent in 1989. This fact can be coupled with the decline in the number of reports of sexual assault classified as aggravated (Level III). Together, they suggest police may be classifying difficult cases (i.e., hard for the Crown to prove) of aggravated sexual assault (Level III) as Level I.

### **Incidents Cleared by Charge**

The final statistic examined in this report is the percentage of offences that are cleared by charge (i.e., where an information was laid against a suspect).

- ▶ The most recent data available (1988) reveal that 49 per cent of the reports of sexual assault deemed founded were subsequently cleared by the laying of a charge. This rate has risen steadily since 1980, when it was only 37 per cent. The 1988 clearance rate for nonsexual assault was 47 per cent. However, since the clearance rates for several other offences involving violence increased over the same period, it is unlikely that the change in the clearance rate of sexual assault offences is owing solely to the 1983 reform legislation.
- ▶ At the national level, there is a systematic trend for the clearance rate of sexual assault offences to rise with the seriousness of the crime: in 1988, 60 per cent of aggravated sexual assaults (Level III) were cleared by the laying of a charge, whereas 48 per cent of Level I sexual assault offences were cleared by the laying of a charge.
- ▶ In 1988, 20 per cent of founded offences of sexual assault were cleared "otherwise" (i.e., cleared without the laying of a charge). This is lower than the comparable statistic for nonsexual assault (33 per cent).

In summary, Roberts concludes that Bill C-127 was both a response to and a cause of the change in attitudes that subsequently resulted in a change in the behaviour of victims reporting to police. In contrast to data on the reporting of sexual assault, the founding rates since 1972 suggest that Bill C-127 has had little impact. There has been no change since 1983 in the proportion of reported



cases that are designated by criminal justice personnel as unfounded. Similarly, the rise noted in the percentage of cases cleared by charge may not be owing to the reform legislation, since a similar change has been noted in the proportion of other offences cleared by charge. ◀

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*An Analysis of National Statistics, Sexual Assault Legislation in Canada: An Evaluation, Report No. 4*, by Julian V. Roberts. 1990. Research Section, Department of Justice Canada. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.

## Research Findings: Analysis of Sentencing Patterns

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In the absence of national data on sentencing in Canada, this report by Julian V. Roberts draws upon secondary data sources, including the site study reports and the computerized sentencing information system in British Columbia developed by the LIST Foundation. To the extent possible and where data permit, the report deals with public opinions about sentences given, with actual sentences imposed both before and after the 1983 law reform, and with the apparent variation in current sentences imposed from region to region.

The tracking of public opinion and news media coverage of sexual assault sentencing found the following.

- ▶ Since 1983, there has been a great deal of public and professional concern over the sentences imposed for the new crimes of sexual assault.
- ▶ Much of the criticism from members of the public concerns the perceived leniency of sentencing trends.
- ▶ News media coverage of sexual assault focuses on cases resulting in atypically lenient sentences.
- ▶ There appears to be a discrepancy between the typical case of sexual assault as reported to the police, and public views of what constitutes the average case of sexual assault. To most people,



the new offence of sexual assault is synonymous with the earlier offence of rape. Although the public may regard sexual assault as rape renamed, sexual assault in fact includes a range of behaviours varying in seriousness from acts that used to be classified as indecent assault, to rape.

Based on information contained in the site studies and in the B.C. sentencing information system, the following can be said.

- ▶ For the period covered in this study, between 60 and 80 per cent of convictions for Level I sexual assault resulted in a period of imprisonment.
- ▶ Incarceration was the disposition imposed in more than 90 per cent of convictions for sexual assault with a weapon (Level II). For convictions of aggravated sexual assault (Level III), approximately 50 per cent of convicted offenders were incarcerated.
- ▶ Using the percentages of offenders incarcerated as the index of comparison, sexual assault Levels II and III were punished more severely than other personal injury offences.
- ▶ Sexual assault convictions (especially Level I) generated considerable sentencing variation across the sites studied. This variability probably should be expected, given the vast range of behaviours that can be categorized as sexual assault, but there remains the need for further study to understand fully the factors and dynamics involved in the sentencing process.

Again, these findings must be viewed as preliminary and tentative, since national data on sexual assault sentencing are not yet available. ◀



*Sentencing Patterns in Cases of Sexual Assault, Sexual Assault Legislation in Canada: An Evaluation, Report No. 3*, by Julian V. Roberts. 1990. Research Section, Department of Justice Canada. For copies, contact: Research Section, Department of Justice Canada, Ottawa K1A 0H8. (613) 957-9632.

**CORRECTION: LAST SENTENCE OF SECOND BULLET SHOULD READ:**

**For convictions of aggravated sexual assault (Level III), almost every offender convicted was incarcerated.**





## Some Final Points

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

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

The evaluation of Bill C-127 has provided us with needed information on a number of topics, ranging from the experiences and needs of sexual assault victims to the factors that influence the handling of sexual assault cases by the criminal justice system and the limits and possibilities of criminal law reforms to prevent or mitigate

personal offences. The research has also raised new and important questions about how to deal with sexual assault, and ideas about directions in which the criminal justice system might look for improvements.

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



## Research Reports from the Sexual Assault Evaluation Program

Stanley, Marilyn G., *The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127, Sexual Assault Legislation in Canada: An Evaluation, Report No. 1*, Department of Justice Canada, Ottawa: July, 1985 (150 pages).

Ruebsaat, Gisela, *The New Sexual Assault Offences: Emerging Legal Issues, Sexual Assault Legislation in Canada: An Evaluation, Report No. 2*, Department of Justice Canada, Ottawa: July, 1985 (110 pages).

Roberts, Julian V., *Sentencing Patterns in Cases of Sexual Assault, Sexual Assault Legislation in Canada: An Evaluation, Report No. 3*, Department of Justice Canada, Ottawa: 1990a (108 pages).

Roberts, Julian V., *An Analysis of National Statistics, Sexual Assault Legislation in Canada: An Evaluation, Report No. 4*, Department of Justice Canada, Ottawa: 1990b (78 pages).

Research Section, Department of Justice Canada, *Overview, Sexual Assault Legislation in Canada: An Evaluation, Report No. 5*, Department of Justice Canada, Ottawa: 1990 (83 pages).

Rowley, Susannah W., *A Review of the Sexual Assault Case Law, 1985-1988, Sexual Assault Legislation in Canada: An Evaluation, Report No. 6*, Department of Justice Canada, Ottawa: 1990 - to be available Summer 1991.

Roberts, Julian V., *Homicide and Sexual Assault, Sexual Assault Legislation in Canada: An Evaluation, Report No. 7*, Department of Justice Canada, Ottawa: 1991 - to be available Summer 1991.

## Working Documents (Limited quantities available)

Baril, Micheline; Bettez, Marie-Josée; Viau, Louise, *Sexual Assault Before and After the 1983 Reform: An Evaluation of Practices in the Judicial District of Montreal, Quebec*, Department of Justice Canada, Ottawa: November, 1988, WD1991-2a (327 pages).

Ekos Research Associates Inc., *Report on the Treatment of Sexual Assault Cases in Vancouver*, Department of Justice Canada, Ottawa: September, 1988a, WD1991-3a (200 pages).

Ekos Research Associates Inc., *Report on the Impacts of the 1983 Sexual Assault Legislation in Hamilton-Wentworth*, Department of Justice Canada, Ottawa: July, 1988b, WD1991-4a (165 pages).

J. and J. Research Associates Ltd., *An Evaluation of the Sexual Assault Provisions of Bill C-127, Fredericton and Saint John, New Brunswick*, Department of Justice Canada, Ottawa: November, 1988, WD1991-5a (115 pages).

University of Manitoba Research Ltd., *Report on the Impact of the 1983 Sexual Assault Legislation in Lettbridge, Alberta*, Department of Justice Canada, Ottawa: August, 1988a, WD1991-6a (126 pages).

University of Manitoba Research Ltd., *Report on the Impact of the 1983 Sexual Assault Legislation in Winnipeg, Manitoba*, Department of Justice Canada, Ottawa: September, 1988b, WD1991-7a (176 pages).

CS/RESORS Consulting Ltd., *The Impact of Legislative Change on Survivors of Sexual Assault: A Survey of Front Line Agencies*, Department of Justice Canada, Ottawa: November, 1988, WD1991-8a (83 pages).