

What's working with regards to seeking justice for sexual assault?

'the silence has been broken'

'women are supporting women - within agencies and online'

'action on sexual violence will not stop'

'crisis lines'

'the new sex ed curriculum is a positive step'

'court support workers'

'groups like SAIL, support services'

'programs in schools for support and education'

'no statute of limitations for sexual assault – we can take our time to seek justice'

'law firms specializing in sexual assault'

'government funded sexual assault service agencies, new transitions'

'Criminal Injuries Compensation – support through Legal Clinic to obtain a settlement'

*Moving Forward from Survivor to Thrive
Participants, May 25, 2016*



Justice and Sexual Violence: Survivors Speak

By Lauren Power

The year 2016 marks a watershed moment in Canadian society, a year in which many people began to discuss sexual assault on almost daily basis. For advocates like us at MPSSAS and our sister agencies, the public spotlight brought a dizzying spin of inquiries, referrals, disclosures, and 'teachable moments'. Some of the discussion brought validation, but the number of myths about sexual assault that needed challenging – yet again- was truly disheartening. Where are our trauma informed partners? Where is the 20+ years of trauma research on memory and all the public education of 'it's never okay' – barely a speck of it on the journalistic or judicial landscape – while myths blow freely in the wind? My facebook litany became 'do your homework' to columnists pronouncing the justice system 'worked as it should'.

To clarify – Holly Johnson's sad 2012 summary of Canadian justice; for every 1000 sexual assaults, 33 are reported to police, 29 are reported as a crime, 12 have charges laid, 6 are prosecuted and 3 convictions are obtained while 997 assailants walk free. With 460,000 sexual assaults yearly, if that isn't impunity, what is? (Source: 'Limits of a Criminal Justice Response: Trends in Police and Court Processing of Sexual Assault' in Sheehy: Sexual Assault in Canada: Law, Legal Practice and Women's Activism)

For survivors of sexual assault, the widespread discussions were frequently also triggering, as the multiple repetitions of myths about sexual violence and the cacophony of disbelief swelled in widespread social media mantras of 'she lied'. Most survivors know at least one loved one who didn't believe or friend who believed him. Triggered too, as women's motives for seeking justice were continually questioned and their relationships with men who abuse them dismissed if they didn't immediately end the relationship with the first instance of abuse. Dad? Brother? Boyfriend? Husband? Uncle? Teacher? Boss? Sister's fiancé? Landlord? Huh?

What's working with regards to seeking justice for sexual assault?

'The SAIL program' (MPSSAS long term therapy group program)

'Using the internet to look for help more privately in our homes – social media'

'Police presence in the schools'

'shelters – Chrysalis'

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Amidst the braying of myths by trolls spoiling for a facebook fight with us 'feminazis' who dared to speak out were spots of inspiration, moments of clarity, unseen allies verbalizing the trauma informed realities of women's experiences of sexual violence in a porn stoked society that seeks to minimize the impact, reduce the numbers and hide from the realities. ...And of course, the strength and determination of the women themselves. Thanks Lucy DeCoutere and Linda Redgrave. Thanks Witness #3. Thanks Kathryn Borel. You did just fine. The system ...well not so much. And an overall media fail despite **#usetherightwords**, **#beenrapedneverreported** and **#webelievesurvivors**. On now to Johnny Depp...'she lied'.

MPSSAS offers a conference/ retreat twice a year for 40-50 present and past women users of agency services. During this year's spring conference, our outrage bubbling, we convened a panel to discuss questions related to our experiences of justice for the crimes related to sexual violence. On the panel were Barb Swartz-Biscaro, a peer mentor of MPSSAS, Jodi Golding, manager of Muskoka's Victim Witness Assistance Program, Samantha Bigley, OPP officer from the Bracebridge detachment, Nancy Stirling, Muskoka Women's Advocacy Group court support worker, Jo-Anne Boulding, Executive Director of Lake Country Community Legal Clinic, and me, Lauren Power, Executive Director of MPSSAS. We greatly appreciated the presence of our justice partners, but the following discussion reflects little of their input, which was restricted. We asked the panel to discuss:

- **What is your definition of 'justice'?**
- **What legal/justice/other options do women presently have in Canada if they have experienced sexual assault?**
 - **In what ways do the myths about sexual assault impact on the justice system from your perspective?**
 - **Are there alternative options to justice which are not frequently used, beyond the criminal trial/civil actions we are presently discussing?**
 - **What barriers do women experience in accessing these justice options?**
 - **What are some typical outcomes when women go to a criminal trial? A civil hearing? Pursuing a complaint with and employer or a professional college?**
 - **Are there other consequences when a survivor comes forward?**

What's not working in the justice system with regards to sexual violence?

Women's testimony is not seen as 'reliable' – women are shut down, laughed out of court, or have buried memories that do surface later so judges and lawyers need education

Having her own lawyer there shouldn't be based on ability to pay

Court system is geared to support the accused

Need closed circuit tv to assist with giving evidence, triggered with accused sitting there

Need education on trauma that is mandatory

More women in the justice system

Have the victim as more of a priority

No accountability now

Accused don't have to speak

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- What changes to the justice system would you like to see to create greater opportunities for justice for sexual assault survivors?

We also asked our audience of 45 women survivors to discuss their own observations and record them.

- What is working with regards to seeking justice for sexual assault?
- What is not working?
- What changes do you want to see?

Here are some of the discussion points, with some expansion by the author.

Like the wider society, the justice system is made up of some people who, lacking training in gender analysis and/or in trauma neurobiology, (or for personal reasons holding on to bias) may perpetuate myths about sexual violence, myths about survivors and myths about offenders. The 'justice' system is a part of an unequal society which reflects colonial, racist, heterosexist, paternalistic and ableist bias and the isms that are reflected in the wider society are reflected there too. Myths abound about women lying about gender based violence... while men tell the truth (he said - she said). We continually watch media coverage in which women are routinely disbelieved while men are routinely defended. So 'justice' in an unequal society is very challenging to obtain. Justice may also be a subjective state of mind – many survivors speak of feeling a sense of justice in feeling believed, supported and living a good life, without further contact with their offenders. This lived sense of freedom and sense of well being achieved however does not 'balance' the harm done or provide incentive for it to end.

We discussed the myths: In a criminal trial, HE doesn't have to speak at all, so SHE becomes the focal point at uncovering 'truth' and 'whacking' or discrediting her becomes a valid defense strategy.

The myths about sexual assault are still so prevalent. We discussed a recent Alberta judge who asked a witness 'why she didn't keep her legs together' to avoid sexual assault, and his subsequent transfer to a federal bench.

What's not working in the justice system with regards to sexual violence?

'lack of preparation of victims'

'accused not put on the stand'

'myths are rampant in the justice
system'

'court is a male dominated system
like everywhere else, it should be
equal'

'the woman is often more on trial
than the man'

'need a cone of silence'

'lack of judicial education on
neurobiology and effects of abuse'

'no justice for women'

'court system is not trauma
informed'

'women's sexual history on display
but men's isn't'

'system set up so victims are
considered to be 'liars''

'the victim needs to be more of a
priority'

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Myths about memory – that it is linear and clear, that gaps in memory or alterations may mean she lied in the first place – not so – we know that trauma activates different systems for memory and trauma memory is often stored in a compartmentalized and fragmented way (protective) but the recall of traumatic events often reflects this – with some material affected by partial or full amnesia due to the dissociation (parasympathetic nervous system response). Her fragmented traumatized memory is often a useful tool for his defense, particularly in the absence of any expert testimony about trauma memory. We have been told that 'judges don't want to hear expert testimony' and yet these myths are reflected in judgments. And in the nature of traumatic memory – details will come and go, and the version on the stand may not always match exactly with the version in the police statement. That is characteristic of trauma memory, but this fragmentation means that survivors of violence can't always provide the linear account which seems to be required – and so offenders walk free in the absence of a trauma informed judiciary.

We talked of the myths about women consenting and then regretting – 'regret sex' and 'crying rape' the next day. Except that only 1 in 100 date rapes are reported (surely the other 99 do regret ever laying eyes on him) and research on false reporting consistently reveals the same levels of 2-8% of false reports in all serious crimes. This myth comes into play for police and Crowns, media, and the general public. It forms part of the reason why so many reported sexual assaults don't see charges laid – there is belief the prosecution will not be able to *prove she did not consent* (as if her report to police and willingness to go to court is not enough). Many Canadians, don't understand the nature of sexual consent, 1 in 3 according to the Canadian Women's Foundation.

Myths about trauma – why she didn't fight back, yell or run – the freeze response. Does that mean she liked it? This forms part of the myths about the issue of consent, so frequently brought up in court where the defense argues she consented. For many survivors of child sexual abuse, past trauma is triggered sometimes with a man's sexual advance, and what happens after may well be experienced as assault, although frozen, she was unable to speak. Many sexual assault educators now talk about consent as needing to be active and ongoing, but rarely are men held accountable for not obtaining a verbal ongoing consent. This legislation is being brought in in other jurisdictions.

What changes do you want to see?

'Equal access to properly trained free legal services'

'Mandatory education for anyone involved – judges, lawyers, paralegals , etc.)

'Education that includes experiential experiences so they know what it feels like'

'Colour film production videos as teaching tools'

'Postcard and awareness raising campaigns and petitions to change the justice system'

'Accused needs to be mandated to testify'

'Dispel the myths in public forums'

'Therapy – support groups develop courage to speak out, mentors who have 'been there' and 1:1 therapy at no cost and more than 6 sessions'

'Education more specialized for sexual trauma and related issues'

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Myths about relationships between men and women – women are socialized to minimize and deny sexual assault like all forms of gender based violence, protect men and safeguard relationships – women often will seek to normalize a relationship which has had sexual assault, contacting him, maybe seeking conflict resolution over criminal court justice. And when the offender's relationship is one in which he holds power over her, or is connected to her loved ones, *it's complicated*. Often if a woman doesn't immediately end a relationship in which sexual assault has occurred, her consent is suspect.

There is a lack of recognition of the harm of sexual assault generally within the system – the lifelong struggles with physical health, with anxiety, with depression, with trust in relationships, with distress tolerance, with maintaining healthy coping strategies when the unhealthy ones (including addictions) were so ingrained, with just having the will to keep going sometimes. There seems to be a form of silence which hangs on this – evidenced by the lack of resources made available to survivors. Some advocates acknowledge that women's Charter rights in Canada are not upheld in their widespread exposure to gender based sexual violence. For example, a woman's biography along with the incident elements must show conclusively from a male centered viewpoint she could not have provoked the attack or attacks in any way. If she is a sex worker her likelihood of seeing her offender prosecuted successfully only rises with her murder.

Social and economic inequalities structure what is considered criminal and non-criminal harm and these inequalities are reproduced in the justice process (so those with fewer economic resources or who are otherwise marginalized face more criminalization) allowing some offenders to consistently evade charges or convictions.

There is risk of further harm, escalated violence and increased stress during criminal trials, which the Victim Witness Assistance program attempts to monitor. Women may experience harassment by the accused's family and friends, and often experience further stigma in their social circles during a trial. VWAP provides referrals for the woman's support, however authorities cannot fully contain this damage for her and this is another societal barrier.

There are real variations in the way people in the system view sexual assault – in policing, in the crowns, and in the judges. Their varied responses mean variations in what can be expected by women coming

What changes do you want to see?

More awareness of sexual violence in all of society – events such as ‘Take Back the Night’ and Postcard campaigns

Programs that teach boys to treat girls well, and parenting programs for fathers to help them learn a different way

Equality training for men and women

More rapists on trial

Mandated trauma training across the board in the justice system

Better balance of gender equality in the justice system

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forward to tell their stories – they risk not being believed, validated, respected, or vindicated. They risk being re-traumatized in the context of telling what happened. And they speak to each other, and they viewed the recent publicity. We can expect in Canada that many women will NOT report in coming months and years.

We noted that the civil burden of proof, on a ‘balance of probability’, enables more women to experience validation in an official realm, where he could also be required to provide evidence and the criminal burden of proof ‘beyond a reasonable doubt’ does not apply. We talked about civil options, suing an offender, or seeking Criminal Injuries Compensation, which might provide a pain and suffering settlement, validation by the government and assistance with paid therapy.

We discussed women’s need for their own lawyer, as opposed to the crowns, who are to uphold Canadian law but are not tasked with defending the interests of the ‘witness’. In criminal court, women are asked to erase their victimhood and provide ‘witness’ regarding their own traumatic victimization, an act requiring a consistent and objective recounting of intimate details of personal trauma in the physical presence of their assailant. Some argue that sexual assault should be a **criminal charge**, however our consensus was that at present, the criminal system is not working, and this is demonstrated effectively by Holly Johnson’s research.

There was discussion of **expanding civil court options** for women to seek increased justice for sexual violence and that this option is increasingly discussed more widely than our forum. Civil court might bring further a sense of validation; realization of strengths not recognized previously, sense of satisfaction, discovering relationships and people who are supportive and positive with a balance of probability outcome. In a civil court, evidence regarding the personal impacts they experienced as observed by a trained therapist might be entered as evidence, and the accused would have to also give evidence, greater exposure to his behavior and explanations.

Seeking a justice response to sexual assault has many costs for women survivors - physical costs – the added stress and the impacts on physical body, loss of sleep, anxiety/depression, chronic fatigue, cost of health care (medications or need for supplements). For many it means less ability to leave assault in the past, something many women desire to do. There is also increased risk of more abuse if leaving

What changes do you want to see?

“Male judges take female hormones to experience female sensitivity”

One group reached this conclusion after an intense discussion. One of the women knew a friend who identifies as transgender and recently began taking testosterone supplements. He told her of the immense change in thinking he experienced as the dosage increased, and he could no longer think in as multifaceted a way as when he was female. This group was highly critical of the lack of awareness they had witnessed in the justice system of the realities of women's lives. This was their suggestion.

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relationships and the accompanying individual and social pressures, including harassment or more violence.

Women also face financial costs – travel, time off, perhaps loss of job or other penalties, having to move or face difficulty focusing on academics or other mentally challenging material when highly stressed – may lose year, may lose promotions, commissions, etc.

Some of our concluding points

- **Change ‘He /she said’** – require the man charged to also give evidence – perhaps this means **creating a specific court for Sexual Assault** held at the civil burden of proof – with some ability to provide penalty or refer for criminal trial? A separate court could provide for more training and understanding of the related issues.
- **Broaden Civil Courts** – often not used but might prove to be helpful as an expanded option in combination with above.
- **Revamp the criminal system to stop the ‘whacking’ techniques** used against witnesses by defense attorneys – it is really not ‘he said/she said’ when he does not have to discuss the evidence and her credibility becomes what is on trial, not his.
- **Educate judges, juries and defense** about **impacts of trauma** on memory, and on **typical responses of sexual assault survivors** so that they can more accurately assess the credibility of victim witnesses without their own personal biases and belief of sexual assault myths impacting their framing of the case.
- **Explore the controversial idea of restorative justice used with sexual assault** e.g. the work of Professor Kathleen Daly of Queensland Australia and others. It could have a place, now used with youth diversion. The offender must acknowledge harm done – if done in conjunction with Alan Jenkins’ work on ‘invitation to responsibility’ it has enabled offenders to more readily look at harm they have done with less shaming and promoting empathy. This will not work with some offenders who cannot or will not accept responsibility or who cannot develop empathy for those they have harmed and does not replace the criminal system. A Circle can be held – with or without the survivor. Dr. Lori Haskell and others are exploring this option.

As a result many women still avoid seeking redress in the formal justice avenues available to them, instead finding Informal ways in

which to seek justice – healing, speaking out, building advocacy, or using new internet options.

What changes do you want to see?

Videos used in training that enable learning about the real experiences of survivors

Experiential based education to increase empathy

Equal access to properly trained free legal services for survivors

Greater education for everyone starting in public school – okay to speak out

Revise Children's Aid Societies – children not believed

Comedy used to educate broadly about sexual assault – not sexist jokes

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