



A Former Crown's Vision for Empowering Survivors of Sexual Violence

New research by **Karen Bellehumeur** raises concerns over low reporting rates of sexual violence in Canada. In response she proposes a fully-funded, confidential, trauma-informed model of victim representation for survivors of sexual violence to better protect their rights and facilitate equal access to justice.

CONTEXT

The criminal justice system is failing in its efforts to combat sexual violence, a fact reflected by the extremely low reporting rates of sexual violence to the police. Consequently, the majority of perpetrators act with impunity because the criminal justice system is not holding them accountable. The fact that most survivors of sexual violence are unwilling to engage the criminal justice system is highly problematic. It is equally concerning that those who do report to police risk the harm of re-traumatization. My experience conducting criminal prosecutions as Crown counsel for over two decades and my current practice as a lawyer representing survivors of sexual violence lead me to conclude that in order to improve reporting rates and reduce the incidence of sexual violence in Canada, it's crucial that we radically improve the treatment of complainants. The cost of engaging the criminal justice system, including the risk of re-traumatization, must be reduced so that it can be genuinely accessible to survivors. If we fail to do so, maintaining the status quo will only enable perpetrators of sexual violence to continue their conduct with impunity, and the few victims that report will continue to be harmed by the process.

OVERVIEW

The unwarranted shame experienced by many survivors of sexual violence is aggravated by their interactions with lawyers and judges whose treatment of survivors is shaped by gender stereotypes and rape myths. This treatment and other experiences in the justice system add new trauma to pre-existing trauma. Survivors are understandably reluctant to trust a system that has a reputation for harming them and built-in risks of re-traumatization.

The most effective way to empower survivors of sexual violence and to mitigate the risks of harm in the justice system is to allow them fully funded legal counsel with training in trauma to represent their interests. This article demonstrates that other countries have clearly benefitted from allowing survivors legal representation. It finds that legal representation provides survivors more control and agency in the aftermath of sexual violence, increases the respect and compassion shown to survivors, improves attention to their needs, and engages them more meaningfully in the process. Most importantly, legal representation helps mitigate harm and re-traumatization by giving survivors a legal voice through a representative who understands trauma and advocates for their rights and interests.

KEY FINDINGS

- Survivors of sexual violence are re-traumatized by negative experiences in the criminal justice system, some of which result from the lack of a trauma-informed approach. Justice officials must recognize the complex effects of trauma on the brain and survivors' responses to these effects. There is also a need for someone to hold the justice system accountable to implement best practices for a trauma-informed approach.
- Studies show that trauma and secondary victimization caused by the legal process can be reduced by fully informing complainants about their cases and their role, and by allowing their participation in the proceedings as much as possible. Complainants who have a lawyer are also typically more satisfied with the trial process.
- The International Criminal Court (ICC) and the U.S. Military both employ models of victim representation. The ICC does not see victim participation as interfering with the rights of the accused. The U.S. Military's use of Special Victims' Counsel for victims of sexual violence has increased both reporting of sexual abuse and victims' satisfaction with the process.
- Canadian jurisprudence supports the need for protection of the privacy and dignity of complainants of sexual violence. However, there is dispute over the role played by complainants' counsel in upholding those rights in applications under sections 276 and 278 of the *Criminal Code*.
- The due process and trial fairness afforded to accused individuals is not compromised by allowing legal representation to complainants of sexual violence. Instead, it protects victims' interests, including their right to equal protection and benefit of the law, and bolsters the integrity of the justice system.

QUESTIONS AND IMPLICATIONS

These findings demonstrate the benefits of allowing state-funded legal representation to survivors of sexual violence when engaging the criminal justice system. They also identify the need for law reform to address the consistently low reporting rates of sexual violence and the harm caused to survivors who engage the criminal justice system.

AUTHOR

Karen Bellehumeur was an Assistant Crown Attorney for 23 years and now represents survivors in criminal cases (involving sections 276 and 278) and in human rights claims for sexual assault and harassment, among other matters.

FOR MORE INFORMATION

The authors and CCLISAR welcome enquiries about this research.

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Bellehumeur, Karen. (2020). A Former Crown's Vision for Empowering Survivors of Sexual Violence. *Windsor Yearbook of Access to Justice*, 37, 1-20.

ABOUT CCLISAR

The Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR) is a non-profit, non-partisan organization working to realize law's potential to respond to sexualized violence. www.cclisar.ca