IN THE EYES OF THE LAW: SURVIVOR EXPERIENCES AND IMAGE CONSTRUCTION WITHIN SEXUAL ASSAULT CASES

by

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A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
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Abstract

Research has clearly documented the challenges that sexual assault survivors face within the legal system, yet little attention has been devoted to the ways in which survivors demonstrate agency during this process. The present study explored the ways in which sexual assault survivors navigate the power structures and stereotypes present within the Canadian criminal justice system, particularly during pre-trial preparatory activities and testifying experiences. Semi-structured qualitative interviews were conducted with eight adult female sexual assault survivors who testified against their assailant at a preliminary hearing or trial, as well as four service providers responsible for assisting survivors within the legal system. Data collection and analysis was informed by constructivist grounded theory (Charmaz, 2006). Findings showed that survivors’ experiences testifying and interacting with defense attorneys were predominantly negative, while experiences with police and Crown Attorneys were comprised of both supportive and unsupportive aspects depending on the level of belief, support and commitment shown.

Consistent with previous findings on survivor agency (e.g., Greeson & Campbell, 2011), participants expressed agency through purposeful acts of both compliance and defiance with system expectations, depending on which course of action was deemed
most beneficial in meeting personal goals for self-protection, system change or prosecution of the offender. Participants complied with system expectations through cooperation with legal personnel as well as deliberate mental, emotional, psychological and physical strategies to prepare themselves for testifying, including independent legal research, testimony rehearsal, psychological coping strategies, emotion management, and appearance modification. These activities were undertaken to increase personal confidence and comfort, as well as to construct stereotypically consistent images of ideal victimhood, enhance perceived credibility and assist in the prosecution effort. In addition, participants expressed agency through actions such as obtaining their own legal representation, protesting and resisting unfair or inappropriate treatment, and setting boundaries in their interactions with legal personnel. Findings indicate that even in the aftermath of serious trauma, survivors of sexual assault are able to take purposeful action to assess their own needs and shape their legal interactions and experiences in order to best meet their personal goals (Greeson & Campbell, 2011; Konradi, 2007).
Acknowledgments

Heartfelt appreciation and thanks are owed to my supervisor, Dr. Lana Stermac, for her guidance and support during this research project, as well as her unwavering understanding and flexibility as circumstances, geographical locations, and timelines shifted. Thank you as well to my committee members, Dr. Catherine Classen and Dr. Marg Schneider, for contributing their time and knowledge to this project. Thank you to the Social Sciences and Humanities Research Council (SSHRC) for the financial support provided for this research. Finally, I have immense gratitude for my partner, daughters, family and friends who were with me during each stage of this process, providing encouragement, guidance, focus, distraction, practical assistance and support – thank you!
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Chapter 1: Introduction and Literature Review

Introduction

The decision to enter and remain involved with the legal system following an incident of sexual victimization can be complicated and difficult for many survivors. Although significant legal reform has occurred within the Canadian criminal justice system over the past several decades, prejudicial treatment persists and can contribute to experiences of re-victimization for many women who choose to engage with the legal system. A review of research conducted over the past decade suggests that myths and stereotypes about sexual assault and “legitimate” or “real” victims continue to affect the ways in which cases are handled and the treatment survivors receive at various levels of the legal process, from filing an initial police report (Campbell, Wasco, Ahrens, Sefl, & Barnes., 2001; DuMont, Miller & Myhr, 2003; Konradi, 2007; Monroe, Kinney, Weist, Dafeamekpor, Dantzler, & Reynolds, 2005; Starzynski, Ullman, Filipas, & Townsend, 2005; Ullman & Filipas, 2001) to the final outcome of the case (Alderden & Ullman, 2012; DuMont & Myhr, 2000; Frazier & Haney, 1996; Hovdestad, 2001; McGregor, Du Mont, & Myhr, 2002; Patterson, 2011; Temkin & Krahe, 2008). Women are often aware of the challenges inherent in the legal system and may act in a purposeful manner to influence the interactions they have (Greeson & Campbell, 2011), as well as shape their preparation efforts and presentation for court appearances to display a particular image consistent with ideas of a credible and legitimate victim (Konradi, 1996a; 1996b; 2007). Through qualitative interviews with female adult sexual assault survivors as well as service providers working within the sexual violence field, the present study explored the experiences that survivors of sexual assault have at multiple levels of the legal system, as
well as the ways in which they personally navigate, prepare for and present themselves during these interactions.

The Treatment of Sexual Assault Cases within the Criminal Justice System

**Historical perspectives and legislative reform.**

The legal system’s treatment of sexual assault cases has historically been grounded in patriarchal and sexist beliefs about women and their appropriate social roles. In colonial times, women were viewed as submissive to men and considered the property of their fathers or husbands. As such, rape was historically considered to be a crime committed against the “property owner” (e.g., a woman’s father or husband) rather than the individual who directly experienced the violation. Within patriarchal systems, a woman’s primary social value was based in her ability to attract a husband and produce heirs. Sexual purity was considered to be of high importance, and rape was of public concern because of the threat it represented to a woman’s purity and the honour of her family (Donat & D’Emilio, 1992; Tang, 1998). Stereotypes regarding women’s inherent purity and morality further led to expectations that women were ultimately responsible for controlling men’s sexuality and “innate lust” (Donat & D’Emilio, 1992). As a result, when sexual activity occurred outside of the bonds of marriage, even when non-consensual, the woman’s role was frequently called into question and she was required to prove that she was not a willing participant through the demonstration of physical and verbal resistance during the attack as well as immediate disclosure and requests for protection following the incident (Donat & D’Emilio, 1992).

The rise of psychology and sexology in the 20th century led to increased speculation regarding the nature of sexual aggression, most of which attributed the
behaviour to mental illness and psychopathology (Matoesian, 1993). These theories
shifted attention to the perpetrator and tended to frame his behaviour as uncontrollable
and deviant more than criminal, with rape framed as an act of sex rather than violence
(Donat & D’Emilio, 1992). Growing recognition of normal female sexuality and sexual
desire in the 20th century placed women, who were already attributed with the
responsibility of controlling male sexual impulses, under increasing scrutiny regarding
their role in precipitating sexual assault (Donat & D’Emilio, 1992). Inaccurate beliefs that
women - consciously or unconsciously - invite sexual assault through seductive
behaviour or dress resulted in laws which deemed a woman’s sexual history, reputation
and perceived character as admissible in determining both her credibility and her
likelihood of consenting to sex with the accused. In addition, the belief that women were
inherently untrustworthy, deceitful and vindictive was reflected in requirements that, in
order for an allegation to be considered valid, a report had to be made immediately after
the assault and required corroboration beyond the woman’s word alone (Konradi, 2007;
Tang, 1998). Further, jurors in legal trials were encouraged to be cautious in accepting
the testimony of the survivor and routinely instructed that an accusation of rape “is one
which is easily made and, once made, difficult to defend against, even if the person
accused is innocent” (Berger, 1977, p. 10, as cited in Donat & D’Emilio, 1992).

As awareness of the prevalence and impact of sexual violence, as well as the
sexist nature of North American rape legislation, reached the mainstream in the 1960s
and 1970s, women began to challenge these biases. The reconceptualization of rape
became an important focus of the second wave feminist movement, with sexual violence
recognized as a form of patriarchal control which reinforced traditional gender roles and
maintained male-dominated hierarchical power structures (Donat & D’Emilio, 1992; Matoesian, 1993). The prevailing view of rape as a psychopathology was challenged by feminists aware of the reality of victimization, including its prevalence and the vast number of acts committed by known assailants (Matoesian, 1993). Prominent theorists such as Susan Brownmiller (1975) were influential in redefining rape as an act of violence, domination and control, rather than behaviour resulting from uncontrollable sexual impulses. With this knowledge, women began to challenge the myths and stereotypes that blame women for their victimization (Donat & D’Emilio, 1992) and expand definitions of rape to be more comprehensive and reflective of women’s experiences in terms of the circumstances and situations in which victimization occurs (Larcombe, 2011). Advocacy efforts focused on the creation of rape crisis services; more sensitive treatment for survivors in legal, medical, and mental health spheres; and legal reform (Ullman, 2010). To this end, feminist activists engaged in a number of social change efforts, organizing awareness events such as Take Back the Night marches, developing rape crisis lines and counselling services, drawing attention to problematic aspects of rape legislation and forming partnerships with legal professionals and groups (Konradi, 2007).

Partly in response to these efforts, as well as the introduction of the Canadian Charter of Rights and Freedom in 1982, significant reform occurred in Canadian rape law legislation in the early 1980s. Prior to reform, vaginal penetration was long considered the only form of violation to constitute rape. Amendments made to the Canadian Criminal Code in 1983 replaced “rape” with the more inclusive term “sexual assault” in an attempt to encompass the range of non-consensual sexual activities that are
experienced and recognize sexual violence as a form of assault (Clay-Warner & Burt, 2005; Tang, 1998). The offense was further defined into three categories: sexual assault; sexual assault with a weapon, threats to a third party, or causing bodily harm; and aggravated sexual assault, each with corresponding differences in allowable prison sentences.

Little more than three decades ago, the idea that men were entitled to engage in unrestricted sexual conduct with their wives was upheld by laws that did not recognize the existence of sexual assault within marriage (Konradi, 2007; Tang, 1998). As a result of reform, sexual violence within the context of marriage was recognized. In addition, complaints were no longer required to be made immediately nor accompanied by external corroboration in order to be accepted (Tang, 1998).

Further changes occurred following the supreme court ruling on the R. v. Ewanchuk (1999) case, which ruled that an offender’s belief in “implied consent” could not be used as a defence in sexual assault cases (Tang, 2000). In addition, although introducing the sexual history of the complainant as evidence is still possible, it has been significantly limited. Section 276(1) in the Canadian Criminal Code states that prior sexual activity, with the accused or another person, should not be used to imply that the victim was likely to have consented to the assault or is less worthy of being believed. While Section 276(2) states that judges may admit evidence if it is “of specific instance of sexual activity; relevant to the trial at hand; and has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice” (Criminal Code, 1985, p.314), section 276(3) outlines a number of factors that must be considered when determining whether sexual history is admissible, including the
rights of the complainant, the impact of the decision on future sexual assault reporting patterns, probative value, and any potential discriminatory bias or risk of prejudicing the jury (Criminal Code, 1985).

Over the past few decades, efforts have also been made to address issues of insensitivity within the legal system by providing specialized training to police and creating specialized response units for investigating sexual assault (Larcombe, 2011; Tang, 1998). Victim impact statements have been introduced as a potential way to provide survivors more influence in the sentencing process (Regehr & Alaggia, 2006; Tang, 1998); victim advocates and witness assistance programs have been developed to better address the needs and rights of survivors (Regehr & Alaggia, 2006); communication between legal personnel and survivors has been improved (Larcombe, 2011); and provincial governments have passed bills outlining the rights of victims of crime (Regehr, Alaggia, Lambert, & Saini, 2008). In Ontario, the Victims’ Bill of Rights came into effect in 1995 and outlines a series of treatment principles for victims of crime. Although a largely symbolic act, this bill states that all crime victims should have the right to be treated with compassion and respect; informed about available services and protections; notified of the whereabouts of the accused in situations of escape or release from custody; informed of legal processes and procedures (including charges laid, dates and times of proceedings, and outcomes of all significant proceedings); and made aware of their role in the prosecution effort, including their right to present a Victim Impact Statement to the court. In cases of sexual assault, the Bill further states that victims have the right to be interviewed by police officers and officials of their gender, if this is their preference (Ontario Ministry of the Attorney General, 1995; Regehr et al., 2008).
Overall, the above mentioned changes in legislation and service provision represent a positive development in the social and legal response to sexual violence. However, the overall success of these changes remains a matter of debate.

**Current status and treatment of Canadian sexual assault cases and survivors.**

Over the past three and a half decades, significant legislative changes have taken place in Canada, leading to a more inclusive redefinition of the crime of sexual assault, fairer evidentiary requirements and limits, and numerous efforts to improve the services provided to survivors by legal personnel. Despite this, sexual violence remains highly prevalent, suggesting that legislative changes have not acted as a significant deterrent to the commission of sexual violence (Larcombe, 2011). Improvements in the reporting, prosecution and conviction of sexual assault cases also appear limited, and legal reform is argued to have had relatively little impact in improving the overall experiences of survivors.

Although one of the goals of legal reform was to encourage more women to report their assaults to the police, research indicates that despite an initial increase following reform, reporting rates remain low (Tang, 1998) and vary based on the circumstances of the incident (Clay-Warner & Burt, 2005). Legislative change is thought to have had little impact on increasing the amount of reports deemed “founded” by the police, with sexual assault cases continuing to be declared unfounded at higher rates than any other violent crime (Tang, 1998). Attrition rates remain high, even relative to other violent crimes, as of the already low proportion of sexual assaults reported to police, only a small percentage of cases progress through the system. One American study in the mid-1990s reported that only approximately 16% of cases reported to police ended in a criminal
charge being laid against the offender (Frazier & Haney, 1996). A more recent study found that less than 10% of the 465 cases analyzed resulted in felony charges being approved by the prosecutor’s office (Alderden & Ullman, 2012).

Although certain Canadian studies have reported somewhat higher rates of charging, with charges laid in approximately 33% (McGregor et al., 1999; McGregor et al., 2002) to 47% of reported cases (DuMont & Myhr, 2000), this data still suggests that a significant amount of survivors continue to be denied the opportunity to see their assailant held legally accountable through a criminal trial. Furthermore, research suggests that the majority of cases tried do not result in a conviction. For example, across a number of Canadian studies, conviction rates ranged from 11% to 17% (DuMont & Myhr, 2000; McGregor et al., 2002; McGregor, Le, Marion, & Wiebe, 1999). As a whole, these findings suggest that a “justice gap” persists in the realm of sexual violence (Temkin & Krahe, 2008) and that acts of sexual violence remain “effectively crimes of impunity” (Herman, 2005, p. 574).

Not only is there a lack of substantive justice resulting from sexual assault trials, research suggests that the process of pursuing legal action is immensely difficult and marred by insensitive treatment at many levels of the system. Although survivors are frequently urged to come forward by the public as well as legal professionals in order to receive assistance and punish the offender, there are many reasons why women may be reluctant to report their assaults to the police, including concerns about personal safety and retribution from the perpetrator, worry that the incident is not serious enough to warrant legal attention, feelings of self-blame or shame (Thompson, Sitterle, Clay, & Kingree, 2007), concerns about being blamed or treated badly, and fears that they will not
be believed (Patterson & Campbell, 2010). Many report that when they do seek help the response is often unsatisfying and re-victimizing, as survivors often find themselves under scrutiny (Ullman, 2010).

In Canada as well as other western nations, sexual assault survivors commonly report that their disclosures of assault are met with disbelief or denial and that others often minimize the impact of the event, discourage them from speaking about it, treat them in a stigmatizing manner and/or provide a lack of support, validation and aid (Ullman, 2010). While these negative reactions can come from a wide range of individuals and institutions, police and legal professionals have been identified as a significant source of unhelpful or unsupportive responses. For example, 56% of rape victim advocates interviewed in one study identified the police as a source of re-victimization (Maier, 2008). Ullman and Filipas (2001) found that survivors who reported their assault to formal sources of support (e.g., police or physicians) reported experiencing more negative responses, including blaming and controlling treatment, than those who reported to informal supports such as friends or family members. Further, nearly half of these survivors identified the police as unhelpful sources of support (Ullman & Filipas, 2001). Similarly, in a sample of over 1000 survivors, those who reported their assault to formal as well as informal sources of support tended to experience more negative reactions (Starzynski et al., 2005). In another study, nearly half (46.2%) of survivors who filed charges expressed dissatisfaction with the way they were treated during the police interview (Monroe et al., 2005).

The police have an influential role in determining the legitimacy of a case and providing the survivor with the opportunity for legal resolution. However, police officers
may contribute to re-victimization through a number of actions, such as subjecting the survivor to repeated questioning and requests for disclosure to multiple detectives (Maier, 2008). The police have also been criticized for having poor communication skills and a lack of sensitivity and appropriate training in the area of sexual violence, all of which can contribute to a perceived loss of control and personal power among survivors (Maier, 2008). An insistence for detailed and linear descriptions of the assault – identified by officers as necessary in order to build a strong case – may be perceived as intrusive and leave women feeling interrogated as well as humiliated and ashamed at having to provide certain details (McMillan & Thomas, 2009). This can have serious implications for how survivors engage with police. For example, in one study, a woman explained that she was so embarrassed and ashamed by some of the questions asked by the police that she pretended she could not remember the assault details (McMillan & Thomas, 2009).

Survivors also frequently report being asked invasive and victim-blaming questions (Campbell, 2005; Maier, 2008). For example, in a 2005 study, over half of the participants (56%) reported that the police asked them questions about the potential contributions of their own actions prior to or during the assault. In addition, 71 per cent were questioned about their relationship with the perpetrator, 40 per cent were asked about their sexual history, and 20 per cent were asked whether they experienced any sexual response or pleasure associated with the assault. As a result of these interactions with police, the survivors reported experiencing a number of distressing feelings such as feeling bad about themselves (87%), blaming themselves for the abuse (73%), feeling depressed (71%), violated (89%), and disappointed (91%) (Campbell, 2005).
However, some recent research suggests that police contact may not be uniformly negative. In a recent Canadian study of sexual violence survivors’ interactions within the criminal justice system, survivors described receiving mixed treatment from police. Consistent with other studies, the participants described a number of negative interactions with police, including experiences of feeling belittled, disrespected, dismissed, disbelieved, abused and discriminated against (Regehr et al., 2008). However, despite these negative experiences, less than one-quarter of the women in this study rated the police as insensitive, with the rest reporting that the police were either sensitive or somewhat sensitive. The majority felt that the police were either available or somewhat available to them, with only twenty percent reporting that the police were unavailable. In addition, some described their experience with the police as “empowering”, while others felt that officers were professional and well trained (Regehr et al., 2008). Others studies have also reported accounts of survivors receiving respectful, encouraging and informative treatment from police that helps build confidence and motivation to continue with the legal process (Frazier & Haney, 1996; Patterson & Campbell, 2010).

Patterson (2011) suggests that the quality of treatment received from police may depend on detectives’ perceptions of survivor credibility. Based on interviews with 20 rape victims in the Midwestern United States, she found notable differences in the manner of police questioning between cases deemed fit or unfit for prosecution following the police statement. Among those whose cases were subsequently forwarded on for prosecution, survivors reported that the detectives took time to build rapport and console them prior to beginning the interview. The pacing of the interview was described as appropriately slow; sensitivity was shown to emotional distress; breaks were given as
needed; and gentle requests were made for information rather than demands. These women also described feeling believed by the detectives, with many noting that explicit statements were made conveying belief and support of the survivor. They also perceived that significant effort was being expended in the investigation, which contributed to a sense of being believed as well. These positive experiences allowed survivors to feel comfortable, safe and calm, which facilitated their remembering and disclosing of details. As a result, not only did these survivors feel better about their interactions with police, they were also able to provide more information and therefore strengthen the case.

Those whose cases were not forwarded on for prosecution reported significantly different interactions with the detectives assigned to their case. These women described a lack of rapport building, “rapid and forceful” questioning, and questions focused on their own character and reaction to the assault rather than factual details about what took place. Some reported feeling disbelieved due to detectives questioning their stories or threatening the survivor with consequences if she was found to be lying. These interactions left the women feeling guarded, uncomfortable, attacked, and reluctant to disclose further, with many participants speculating that they would have been willing to share more details had the detective created a more supportive atmosphere. As a result, the detectives not only left the survivors feeling re-victimized but also compromised the quality of their statements and the ultimate ability to prosecute the case (Patterson, 2011).

According to Patterson (2011), it seems likely that the detectives came into each interview with preconceived notions of the victim or case. In situations where the victim was perceived as credible and the case easier to prosecute, more attention was paid to creating an atmosphere that encouraged survivor participation in case building. This
ultimately resulted in a case that was more likely to be successfully prosecuted. However, in situations where the victim was deemed less credible, perhaps due to personal or situational characteristics, and the case was thought to be more difficult to win, the detectives appeared to have little concern for creating a supportive experience, instead interrogating and blaming the survivor. This then created an intimidating environment in which the survivor was less willing to disclose and therefore statements were incomplete and the chances of prosecution subsequently weakened (Patterson, 2011). This pattern is problematic, both in terms of the unequal opportunities for justice afforded to certain survivors as well as the personal negative emotional impact of unsupportive interactions. Those who seek contact with the legal system only to have their cases denied prosecution have been found to be more likely to rate their overall legal experience as hurtful and experience higher levels of psychological and physical distress (Campbell et al., 2001).

Unfortunately, it is not just the police who contribute to negative experiences within the legal system. If and when they do reach trial, survivors may be inadequately prepared for what they will encounter. While some survivors report feeling appropriately informed and involved with the legal process, others feel excluded by the unfamiliar customs and language of the court (Regehr et al., 2008). Although prosecuting attorneys have been identified as often sensitive to survivor needs, concerns have been expressed regarding the availability of the Crown Attorney (Regehr et al., 2008) and the amount of preparation provided by prosecutors prior to trial (Konradi, 2001; 2007). Women have reported receiving only limited preparatory information prior to appearing in court for the first time, particularly when attending preliminary and grand jury hearings, with general orienting information often conveyed quickly on the way to court rather than as part of a
formal orientation. Although more information is typically provided prior to the full trial, including instructions on how to prepare for court appearances and cross-examination, prosecutors still often neglect to provide specific information about the logic of the case or the specific role and responsibilities of the survivor. As a result, survivors have reported feeling unsupported by the prosecutor as well as anxious and unprepared for how to perform their courtroom role and answer the questions asked by the defense (Konradi, 2001).

This lack of pre-trial preparation is highly problematic, as the provision of information about the witness role, expectations for interacting in the courtroom, how to best respond to questions and ways in which to influence the audience can be important in helping survivors feel a sense of control and reducing their risk of re-victimization (Hovdestad, 2001; Konradi, 2001; Menaker & Cramer, 2012). In cases of sexual assault in particular, where corroborating evidence is typically limited or unavailable, the survivor’s testimony is a key piece of evidence regarding their experience. The ability to successfully convey their description of the incident and its impact is often critical to the successful prosecution of the case (Menaker & Cramer, 2012). In addition, comprehensive preparation allows survivors to better prepare themselves emotionally for the task of testifying and find ways to manage their emotions while on the stand (Konradi, 1999). This is important, as survivors who appear nervous or uncertain may be mistakenly perceived as untruthful or deceptive. As such, appropriate preparation which increases survivor confidence and efficacy is important not only for protecting survivors from harm but also for increasing their believability in the eyes of jurors or judges (Menaker & Cramer, 2012).
Testifying is an emotional experience for survivors, often associated with intense feelings of fear, anxiety, anger, frustration, pain, grief, betrayal, shame, humiliation and loss of control. The testifying role requires facing one’s assailant; recalling their victimization and publicly retelling their story within the unfamiliar context of the legal system; having their story (and often character and credibility) challenged by the defense; as well as having to witness the impact of testimony on any support people who may be present (Konradi, 1999). Throughout this process, the very nature of courtroom talk can misrepresent the survivors’ experience and the legitimacy of her victimization. A power hierarchy exists between the defense attorney and survivor, as the survivor is not able to answer freely or tell her story in her preferred manner, but is instead constrained to answer questions in a circumscribed fashion. By virtue of his status within the courtroom, the defense attorney has the power to control the direction of conversation, choosing which topics are worthy of consideration and using his authority and legal techniques to shape responses in a way that supports the argument s/he is trying to construct (Matoesian, 1993).

Commonly reported defense tactics which limit the types of responses provided include speaking rapidly, interrupting the survivor, attempting to confuse the survivor, limiting her to one word responses, asking questions that are closed or leading (Smith & Skinner, 2012) or perceived to be “illogical” or inappropriate (Konradi, 1999; 2001), focusing on irrelevant extralegal factors such as survivor characteristics or history (Konradi, 1999; Smith & Skinner, 2012) or distorting the true nature of sexual assault through the use of sexualized or romantic language (Bavelas & Coates, 2001). In an attempt to prove that the assault was consensual (and thus that the defendant is innocent),
the defense often attempts to undermine the survivor by questioning her credibility and moral integrity, often through questions about her behaviour and character (Krahe & Berger, 2009). In addition, the defense attorney may further attempt to discredit the survivor by questioning her motives for legal action, the reliability of her memory, or introducing private documents such as medical, psychological or employment records (Larcombe, 2011). When certain questions are off limits, defense attorneys frequently use tone, irony, innuendos and other rhetorical practices to imply disbelief and blame toward victims (Matoesian, 1993). These experiences can all leave survivors feeling blamed, frustrated, anxious, confused and angry.

Given the challenges associated with testifying, it is vital that survivors are appropriately prepared for the challenges of cross-examination and testifying duties. As part of this preparation, some researchers have argued that survivors must be informed of the potentially negative impacts of legal participation, as they may have unrealistic expectations that the process will be therapeutic (Regehr & Alaggia, 2006) or that it is guaranteed to provide a sense of recognition, justice, or security (Orth, 2002). Unfortunately, the structure of the legal system is often in conflict with the needs of survivors following a traumatic experience, in particular their needs for acknowledgement, support and the ability to re-establish their sense of autonomy and control (Herman, 2005). This is partly due to the fact that in sexual assault trials, the legal process is designed to seek justice for injury committed against the “social body”, rather than the individual person. As such, raped women lose ownership of their trauma once they enter the legal system and instead become a witness to the event (Herman, 2005; Konradi, 2001). This lack of power and authority afforded to survivors in the legal
system can lead to a reinforcing of dynamics of domination and control present in assault (Konradi, 2010), leaving survivors “powerfully reminded of their marginal and dishonored status” (Herman, 2005, p. 574).

Women seeking legal action are forced to participate in a system which is guided by rules that may be foreign, confusing and closed (Herman, 2005). Decisions regarding whether or not a case proceeds beyond the reporting stage are often outside of survivor control as, although survivors can and do decide to discontinue the process, decisions regarding the charging and prosecution of offenders typically rest with the police or Crown Attorneys. Survivors are given limited input into the case and assigned a role typically restricted to (at most) providing testimony and, in the event of a guilty verdict, preparing a victim impact statement (Regehr & Alaggia, 2006). Frazier and Haney (1996) found that when rating their overall experiences with the legal system survivors reported that – regardless of their case outcome – they did not receive enough information and had insufficient control over the handling of their cases. They felt that victims have fewer rights than rapists, that these rights are not protected, and that the system is ultimately unfair (Frazier & Haney, 1996).

Indeed, rather than being supported and treated with respect, survivors are typically forced to face their assailant and asked to relive their traumatic experiences while having their credibility publicly undermined through invasive questions about their victimization and personal history. Even after enduring all of this, justice is often lacking as conviction rates are notoriously low and, even when the perpetrator is found guilty, sentences are often inconsistent with survivors’ hopes and wishes (Herman, 2005). One study found that even when offenders were convicted and received a prison sentence,
over three-quarters (82.6%) of survivors were dissatisfied with the severity of the sentence assigned. This dissatisfaction with sentencing was significantly associated with perceptions of the legal system as destructive or harmful. Two-thirds (67%) of the overall sample found the process unsatisfying and 70% felt it was “destructive or impeded their recovery” (Regehr et al., 2008).

Given the immense personal impact of their victimization, survivors are often shocked to discover “how little they matter” in the eyes of the criminal justice system, and report experiencing their marginal status within the legal process as reproducing the dynamics of powerlessness, betrayal, mistrust and humiliation present in their initial victimization (Herman, 2005; Regehr et al., 2008). Although some women do report positive psychological outcomes associated with legal involvement, participation in legal processes has been associated with a number of psychological difficulties in addition to those associated with the assault itself, as well as decreased self-esteem, hope, faith in the future and existence of justice, and trust in the legal system (Orth, 2002), leading prominent theorist and clinician Judith Herman (2005) to state that “if one set out intentionally to design a system for provoking symptoms of traumatic stress, it might look very much like a court of law” (Herman, 2005, p. 574). Thus, despite legislative reform and more specialized service provision, many survivors continue to experience their involvement with the legal system as negative and even harmful.

**The Role of Myths and Stereotypes in Understanding and Responding to Sexual Assault**

A further limitation of previous legislative reform is that it is argued to have had little impact on the continued influence of myths and stereotypes about sexual assault. In
addition to deterring and punishing sexual assault, justice reforms were also designed to address stereotypes and myths that prevent survivors from being believed and treated respectfully (Larcombe, 2011). Yet despite the modest nature of these aims, it appears that they have yet to be realized within current legal systems. Rape myths, defined as “attitudes and beliefs that are generally false but are widely and persistently held, and that serve to deny and justify male sexual aggression against women” (Lonsway & Fitzgerald, 1994, p. 134) are entrenched in all areas of society, including the justice system. These myths are often tied to patriarchal ideologies and gender stereotypes and include such misconceptions as the idea that only certain kinds of women experience sexual assault (Larcombe, 2011; Lonsway & Fitzgerald, 1994; Ullman, 2010), that women invite sexual assault by failing to protect themselves and/or arousing a man’s sexual urges to an uncontrollable level through their appearance or behaviour (Canadian Women’s Foundation, 2013; Shen, 2003; Workman & Freeburg, 1999), and that sexual assault is not truly harmful as it is a sexual - not violent - act (Konradi, 2007). As a whole, these myths serve to legitimate and excuse male violence toward women by restricting views of acceptable sexual interaction as well as the characteristics of “real” rape (Matoesian, 1993).

**Myths about “real rape” and “real rape victims”**.

Despite feminist efforts over the past four decades to educate the public and legal professionals on the true reality of sexual violence, the situations in which it occurs and the people that it involves, the belief that certain kinds of sexual assault - and certain kinds of victims - are more legitimate or “real” than others continues to be upheld in current society. According to this myth, “real rape” is a violent assault committed by an
unknown stranger in a dark public space, such as a back alley or deserted location (Krahe & Berger, 2009; Temkin & Krahe, 2008; Ullman, 2010). Furthermore, a “real victim” is a (typically White and middle-class) woman who was conservatively dressed, sexually inexperienced, and sober at the time of the assault, with no history of mental illness, disability or previous victimization, and who physically fought back, reported the assault immediately and expressed visible emotional distress afterwards (Larcombe, 2011; Ullman, 2010). Despite widespread belief in these ideas, data from academic research, victimization surveys and police reports confirm that these “real rape” stereotypes are not the norm. For example, the majority of perpetrators are known by the victim and many assaults do not involve the use of weapons or infliction of significant physical injury beyond the sexual victimization itself. When violence is involved, research has shown that assaults involving intimate partners may involve a greater severity of violence and coercion than those involving strangers or acquaintances (Stermac, Del Bove, & Addison, 2001; Stermac, Del Bove, Brazeau, & Bainbridge, 2006). In addition, although characteristics such as mental health issues, physical and cognitive disabilities, and homelessness are often at odds with stereotypical definitions of “legitimate” victimhood, it is routinely demonstrated that women and men with such vulnerabilities are at increased risk of victimization (Stermac, Del Bove, & Addison, 2004; Stermac et al., 2006; Stermac & Paradis, 2001).

Despite this reality, belief in stereotypical rape myths persist and thereby limit cultural understandings of sexual violence as well as negate the experiences of those who do not conform to this narrow expectation (Larcombe, 2011). While those whose trauma and personal characteristics meets the ideal of “real rape” may be supported, validated
and even honoured for coming forward, those who do not meet these expectations are typically viewed as less legitimate and met with greater suspicion, disbelief, blame, and decreased support (Jordan, 2004; Krahe & Berger, 2009; Temkin & Krahe, 2008; Ullman, 2010). As a result, many women may experience inappropriately blaming responses either explicitly (e.g., being directly told that they are to blame or were “asking for it”) or implicitly through questions which imply that their behaviour (e.g., drinking or clothing) or character (e.g., judgment) somehow contributed to their assault (Ullman, 2010).

Vignette studies with members of the general public as well as undergraduate and graduate law students have shown that participants are more likely to blame the victim and less likely to hold the perpetrator responsible when evaluating an acquaintance or ex-partner-perpetrated sexual assault compared to a stranger-perpetrated assault, even when the victims in all scenarios are described as clearly expressing non-consent (Temkin & Krahe, 2008). Similarly, graduate students who hold a law degree have been found to be more likely to blame the victim and less likely to hold the perpetrator liable and recommend a lengthy sentence as the relationship between the victim and perpetrator gets closer (Krahe, Temkin, Bieneck, & Berger, 2008). When participants also hold stereotypical beliefs about sexual assault in general (e.g., endorse high levels of rape myth acceptance), they have been found to be more influenced by the relationship between the two parties (Temkin & Krahe, 2008), attribute more blame to the victim and less blame to the defendant (Krahe et al., 2008; Temkin & Krahe, 2008), and recommend less punitive sentences than those with lower rape myth acceptance (Krahe et al., 2008).
Expectations regarding “appropriate” behaviour leading up to and during a sexual assault can also lead to prejudicial judgments. For example, in a 2013 Canadian study conducted by the Canadian Women’s Foundation, nearly one-fifth (19%) of the 1008 respondents expressed belief in the idea that women provoke or encourage sexual assault when they are drunk. The perceived level of victim resistance against the perpetrator during the assault can also affect judgments, with survivors less likely to be believed in situations where they do not physically resist, even if verbal resistance is shown (Schuller et al., 2010).

Physical appearance characteristics such as style of dress, physical attractiveness, sexual desirability, and demeanour may also influence whether or not survivors are perceived as stereotypically legitimate victims. Indeed, one of the most common rape myths is the idea that judgments about a woman’s character, vulnerability, consent and culpability may be inferred by the clothing she wears (Workman & Freeburg, 1999; Shen, 2003). Although in fact a woman may dress a certain way merely to be fashionable or feel comfortable, others may perceive her clothing as intended to attract sexual attention or invite sexual interaction (Shen, 2003). Although feminist scholars and activists have worked to advance an understanding of sexual assault as motivated by a desire for power and control, myths that inaccurately conceptualize sexual assault as a crime motivated by the offender’s sexual desire or need for sex continue to be widely held (Anderson & Swainson, 2001). An analysis of British Columbia trial judgments found that language which characterized the incident in erotic or affectionate terms was used more frequently than language acknowledging the violent nature of the assault or factual physical descriptions. These judgements thus tended to conceptualize sexual
assault as a sexual act rather than a violent assault, thereby distorting and minimizing the violation and violence involved in these non-consensual abuses (Bavelas & Coates, 2001).

Not only is a belief in sexual assault as a “crime of passion” inaccurate, but it may lead individuals to mistakenly view the victim as playing a role in arousing the assailant and thus provoking the assault. Consistent with this idea, those who understand sexual assault as sexually motivated have been found to be less certain in labelling the event as rape, assign more blame to the victim, and recommend shorter prison sentences to the offender than those who believed the perpetrator was acting based on violent motives (Mitchell, Angelone, Kohlberger, & Hirschman, 2009). This stereotypical belief may place women who are perceived to be more sexually desirable due either to their choice of clothing, level of physical attractiveness, or another appearance cue, at a particular disadvantage. For example, participants in vignette-based studies have been found to perceive a woman wearing moderate to heavy makeup as more likely to provoke sexual harassment (Workman & Johnson, 1991) and attribute greater responsibility to a victim of date rape when she was depicted in a short skirt versus a moderate or long skirt (Workman & Freeburg, 1999). In addition to finding a provocatively dressed woman more responsible for sexual assault, adolescents have also been found to be less likely to define the incident as rape and more likely to deem the offender’s behaviour as justifiable in situations where the victim was provocatively attired compared to when she was dressed conservatively or when no information about appearance was provided (Cassidy & Hurrell, 1995).
Unfortunately, these biases persist outside of vignette-based studies as well. A 2005 report commissioned by Amnesty International UK found that over one-quarter (26%) of respondents reported believing that a woman who wore sexy or revealing clothing was totally or partially responsible for her victimization in situations of sexual assault (ICM, 2005). In a recent Canadian study, 15 percent of respondents reported believing that women invite sexual assault by flirting with a man, while 11 percent felt that wearing a short skirt was a way of encouraging or provoking sexual assault (Canadian Women’s Foundation, 2013).

These beliefs are also held by those in positions of legal authority. In Toronto, a police officer made headlines in February 2011 after stating that “women should avoid dressing like sluts in order not to be victimized” at a safety forum held at York University (Rush, 2011). These myths often enter the courtroom as well as, in cases where the defense can convince the judge of its relevance, clothing worn at the time of the assault may be entered as evidence by the defense in attempt to discredit the victim and prove that she was willing to engage in sexual activity (Shen, 2003). The implications of this can be seen in a February 2011 ruling in Winnipeg, Manitoba. In this controversial case, a Queen’s Bench Justice ruled that a convicted rapist should receive a two-year conditional sentence rather than jail time because the victim allegedly signalled that “sex was in the air” by flirting with the offender (who the judge described as a “clumsy Don Juan”) and wearing a “tube top” without a bra, high heeled shoes and noticeable makeup (McIntyre, 2011). Clearly, it appears that even updated rape shield laws have not eliminated the possibility that appearance information will be used as evidence to form judgements about the victim’s intentions and character (Shen, 2003).
Physical characteristics beyond clothing have also been found to influence evaluations about sexual assault survivors, albeit with somewhat inconsistent results. Some studies suggest that stereotypically physically attractive survivors of sexual assault may receive better treatment, as they may be assigned less personal responsibility for the assault (Seligman, Brickman, & Koulack, 1977; Thornton & Ryckman, 1983; Vrij & Firmin, 2001), deemed more honest and credible (Vrij & Firmin, 2001), have the evidence against their perpetrator viewed as stronger (Vrij & Firmin, 2001) and have their cases result in more punitive prison sentences for the offender compared to stereotypically unattractive survivors (Erian, Lin, Patel, Neal, & Geiselman, 1998; Feild, 1979, Thornton, 1977). However, other studies suggest that, consistent with “crime of passion” myths, an attractive woman may be viewed as a more likely target for sexual assault due to her potentially arousing appearance (Deitz, Littman, & Bentley, 1984; DeJong, 1999; Jacobson & Popovich, 1983; Seligman et al., 1977; Thornton & Ryckman, 1983) and, as a result, may be judged as more careless, provocative and responsible for her victimization than an unattractive woman (Calhoun, Selby, Cann, & Keller, 1978; Jacobson & Popovich, 1983).

Physical size may also influence perceptions of sexual assault cases, as one study found that a woman who was described as larger than her assailant was held more responsible and met with more negative feelings than a smaller woman, presumably because participants questioned why she did not use her supposedly greater physical capacity to fight off her offender (Ryckman, Graham, Thornton, Gold, & Lindner, 1998). Survivor body weight has also been found to influence perceptions of responsibility and affect, as a vignette study by Clarke and Lawson (2009) found that university students
held a sexual assault survivor more responsible for her assault when she was depicted as thin than when she was overweight. Similarly, Clarke & Stermac (2011) found that a thin survivor was assigned more personal responsibility and met with greater feelings of disgust and anger from a community sample of adults than an overweight survivor. Further, the perpetrator was held less responsible and met with less anger and disgust when accused of victimizing a thin versus an overweight woman. The authors of these studies speculate that, since thin women tend to be considered more stereotypically attractive and sexually experienced than overweight women (Bess, 1997; Regan, 1996; Sobal, 2005), a thin woman may have been judged to have precipitated the assault through some perceived provocative or careless behaviour, and therefore assigned more responsibility and met with greater negative affect than an overweight woman (Clarke & Lawson, 2009; Clarke & Stermac, 2011).

Myths and stereotypes inform not only expectations regarding the circumstances leading up to and during a rape but also the expected behaviour demonstrated by the survivor following an assault. Despite the wide range of natural emotions and expressions that exist following trauma, from controlled and seemingly numb states to displays of heightened emotion and visible distress, lay people and legal professionals often have assumptions regarding the expected or “normal” emotional response following assault. Studies show that survivors are typically expected to be tearful and upset, both immediately after their assault and when recalling the event at trial (Klippenstine & Schuller, 2012; Konradi, 1999; Menaker & Cramer, 2012; Schuller, McKimmie, Masser, & Klippenstine, 2010). In addition, recent research suggests that expectations about emotional demeanour may be influenced by other expectations related to sexual assault
and gender. For example, Schuller and colleagues (2010) found that although a survivor was more likely to be believed when she was depicted as tearful and upset, rather than calm and non-emotional, this pattern held only when she was also depicted as meeting certain feminine gender stereotypes. Another study found that the perceived consistency of a survivor’s emotional state over time may be of greater importance than the quality of emotions displayed. Survivors who were perceived to display similar emotions in the immediate aftermath of their victimization and during their later testimony were considered more believable and were more likely to have their perpetrators perceived as less credible and found guilty, regardless of whether they were visibly distressed or calm at these points in time (Klippenstine & Schuller, 2012).

As these studies indicate, survivors of sexual assault face complicated expectations regarding their post-traumatic emotional states. To further complicate things, survivors who seek legal action are expected to behave according to cultural expectations for victims as well as witnesses. As a result, women are required to strike a difficult balance between the distressed and wounded victim who struggles to discuss the details of her assault due to fear and embarrassment, and the polite, composed and rational witness who clearly and confidently provides testimony without intense emotion (Konradi, 1999). The narrow and often contradictory rules of “acceptable” emotional expression are further complicated by the fact that emotion management can serve valuable functions for survivors beyond image concerns. Maintaining emotional control may allow some women to provide their testimony clearly and limit their likelihood of re-traumatization, while for others appearing calm in front of their assailant is a way of reasserting power and showing the perpetrator that he can no longer dominate them.
Similarly, although expressions of anger are typically discouraged by legal personnel, feelings of righteous anger can help a survivor overcome anxiety, fear or embarrassment and provide a sense of power. Despite these benefits, however, women face a number of risks to their credibility if they allow the expression of these emotions, forcing them to navigate a difficult paradox regarding emotional demeanour (Konradi, 1999).

As a whole, common stereotypes and myths about sexual assault limit the definition of “real” or “legitimate” victims to include only the subset of women who meet certain criteria in terms of their appearance, demeanour, behaviour and assault characteristics. Despite clear evidence that women (and men) of all backgrounds experience sexual assault in many varied circumstances, these myths continue to inform understandings of sexual violence, often with serious consequences in terms of survivor treatment and justice within the legal system.

**Impact of “real rape” stereotypes on case outcomes.**

Considering the prevalence and implications of “real rape” stereotypes, it comes as little surprise that those who experience victimization that is less consistent with stereotypical ideals are often less likely to label their own experiences as sexual assault (Konradi, 2007; Krahe & Berger, 2009; Temkin & Krahe, 2008; Ullman, 2010) and/or label their assailant as a “rapist” (Konradi, 2007). They are also less likely to contact formal support services and file a police report (Campbell et al., 2001; DuMont et al., 2003; Konradi, 2007; Monroe et al., 2005; Starzynski et al., 2005; Ullman & Filipas, 2001). A study in Ontario found that those who were physically coerced during their assault were approximately three times more likely to report the event to the police, while
those who sustained physical injury were approximately 3.5 times more likely to report
the event (Du Mont et al., 2003).

When cases do reach the criminal justice system, data indicates that outcomes are
routinely affected by stereotypes regarding “legitimate” rape. When deciding whether to
take a case to trial, police and prosecutors consider the evidence available. However, as
objective corroborating evidence is often limited or not available in sexual assault cases,
decision makers are often forced to rely on their own stereotypical ideas of how the
victim will be perceived and the likelihood of conviction. Research indicates that cases
which meet stereotypical conceptualizations, such as those committed by strangers,
involving physical violence and injuries, reported promptly and/or with some form of
witness corroboration are more likely to be referred for prosecution (DuMont & Myhr,
2000; Frazier & Haney, 1996; Krahe & Berger, 2009; McGregor et al., 1999; McGregor
et al., 2002; Patterson, 2011). Based on examination of 465 case files involving adult
female victims, Alderden and Ullman (2012) found that a number of extralegal factors
that should not influence decision making had a significant impact on police and
prosecutor determinations. For example, an arrest was more likely if the victim reported
actively resisting the attack and charges were more likely to be approved if the victim
sustained physical injury, suggesting that physical struggle and injury was considered
indicative of the seriousness and severity of the crime, as well as the credibility of the
victim. In addition, charges were more likely to be laid if the perpetrator was a stranger.
Further, marginally significant results indicated that when the victim was considered to
have “questionable moral character” (e.g., having a history of prostitution, promiscuity,
substance abuse, or prior arrests) or had been involved in behaviour deemed to be risky at
the time of the assault (e.g., willingly entering a stranger perpetrator’s vehicle, using substances, engaged in prostitution), felony charges were less likely to be laid (Alderden & Ullman, 2012).

Similarly, Patterson (2011) found that cases were more likely to be prosecuted when victims were older, White, experienced physical injury, and reported their assault within two hours of the incident. In addition, cases in which the perpetrator belonged to a racial minority group were more likely to be prosecuted than cases involving White perpetrators (Patterson, 2011). Based on observations of sexual assault trials in England and Wales, Smith & Skinner (2012) also found that the immediacy of reporting was considered important in establishing survivor credibility. In addition, they found that perceived motives for seeking legal action as well as emotional demeanour were often used by prosecutors to bolster survivor credibility and defense attorneys to undermine it. Across the trials observed, 50 per cent of judges instructed jurors to consider the survivor’s emotional demeanour in their deliberations, implying that this was somehow relevant to determining the validity of the claims made. In addition, characteristics such as survivor social class, history of unemployment, and history of prostitution were used by the defense in order to present the survivor as undeserving of justice (Smith & Skinner, 2012).

Cases which meet stereotypical conceptualizations are also more likely to result in a guilty verdict (DuMont & Myhr, 2000; Hovdestad, 2001; McGregor et al., 2002; Temkin & Krahe, 2008). For example, one Canadian study found that cases in which physical force was used were nearly 3.5 times more likely to result in conviction (Du Mont & Myhr, 2000). Frazier and Haney (1996) found that convicted perpetrators in
acquaintance sexual assault cases were more likely to receive probation and treatment and less likely to be sentenced to a prison sentence and, when it did happen, received sentences that were an average of four years shorter than perpetrators in stranger rape cases.

This pattern is highly problematic, as the continued acceptance of mythology regarding “real rape” within the criminal justice system leads to judgments based on patriarchal standards of sexual practice rather than fair and objective standards of law (Matoesian, 1993). By expecting that survivors’ experiences fit narrow – and typically unrepresentative – conceptualizations of victimization in order to be valid, the experiences of the majority of women are essentially disqualified (Larcombe, 2011). The underreporting of non-stereotypical assaults, as well as the lack of charges, arrests and convictions that result in these situations, supports the continuance of rape myths by hiding the full range of non-consensual sexual experience from public awareness (Starzynski et al., 2005). In addition, it portrays stereotypical cases as more legitimate and deserving of justice than more common but less myth-consistent cases (Frazier & Haney, 1996; Hovdestad, 2001; Temkin & Krahe, 2008), and effectively decriminalizes a large proportion of acts of sexual violence (Matoesian, 1993). The continued prevalence of rape myths is arguably one of the main reasons why legal reform has not led to significant changes in the handling of sexual assault cases, as changes in legislation have limited influence if police, lawyers, judges and jurors continue to hold sexist and prejudicial beliefs that blame victims while absolving perpetrators of rightful responsibility (Hovdestad, 2001; Seidman & Vickers, 2005; Tang, 1998; Tang, 2000).
Survivor Agency within the Legal System

As a result of the hierarchical power structures and rape mythology at play within the criminal justice system, sexual assault survivors are at risk of re-victimization and oppression at many points in their journey for justice. However, it is important to note that sexual assault survivors are not simply passive observers within the legal system. Prosecution depends heavily on survivor participation, as survivors are needed to lay charges, provide statements, offer evidence when possible, identify suspects, attend meetings and hearings, and testify against their attacker (Konradi, 1996a). At each of these stages, survivors may be viewed as “goal-directed problem solvers” who attempt to shape their interactions with legal personnel and case outcomes according to their understanding of the legal system and the roles they adopt within it (Konradi, 2007).

While research has clearly documented many of the challenges survivors face within the legal system and the ways in which they are routinely marginalized, little attention has been devoted to the ways in which survivors demonstrate agency or “the active processes in which rape survivors engage during their interactions with the legal and medical systems in order to shape their experiences within those systems” (Greeson & Campbell, 2011, p. 584). Work that has been done in this area, however, clearly indicates that many women act in a purposeful and self-directed manner to influence their legal experiences to the greatest extent possible.

Greeson & Campbell (2011) found evidence of survivor agency within interactions with both legal and medical systems. Within the legal system, agency was evident in acts of both compliance and defiance with system expectations. Some survivors chose to follow the instructions or expectations communicated by the system or
personnel they were in contact with by, for example, consciously agreeing to participate in the case investigation or choosing to provide the full range of details requested of them during interviews. While on the surface this may not seem to be an agentic act, the authors note that these women identified their compliance with legal expectations as a strategic act based on their understanding of the system. As such, they consciously agreed to participate in this manner out of a belief that it was the best way to reach their desired outcome of justice and punishment of the offender, not simply because they deferred to the authority of those involved or were “swept up in the system” (Greeson & Campbell, 2011).

In other cases, survivors described exerting agency through acts of defiance, such as refusing to participate in the ways the system expected and/or explicitly challenging the ways in which they or their cases were being treated. For some, this involved placing boundaries on their level of participation, such as limiting their level of disclosure during a police interview or refusing to provide requested evidence. These acts were undertaken as a means of self-protection when women perceived that cooperation with system expectations was likely to lead to emotional or physical harm. These women acted in order to protect themselves emotionally or physically, whether or not their actions were consistent with the system’s goals of prosecution (Greeson & Campbell, 2011).

For others, defiance was expressed through questioning the process or actions of legal personnel, such as challenging the police or prosecutor’s decision not to prosecute the case or demanding more information and involvement in the process. These acts were motivated by dissatisfaction with the handling of one’s case and a desire to create positive change. For these women, the legal system’s aims were perceived to be different
than their own, and they took action in order to try and prioritize their own goals. Thus within this study, survivors purposefully shaped their behaviour through acts of deliberate compliance and/or defiance, based on the situations in which they found themselves, as well as their beliefs about the best way to meet their goals in that particular situation (Greeson & Campbell, 2011).

Similar examples of agency have been found in relation to survivors’ interactions with prosecutors (Frohmann, 1998). Prosecutors have considerably more power than survivors by virtue of their position, knowledge and access to resources within the system, and typically control the topics and structure of their contact with survivors. However, survivors may choose to resist their limited role in these interactions, through acts such as challenging the ways in which their victimization is defined, demanding recognition of their experience, expressing anger and frustration toward the prosecutor and/or system as a whole, and/or questioning prosecutor decisions regarding the laying of charges or acceptance of certain deals. Although typically not successful in changing the situation or outcome, these acts challenge the normal power dynamics in these situations and thus are a means of asserting personal power and agency for survivors (Frohmann, 1998).

Based on indepth interviews conducted with survivors of sexual assault in the early 1990s, Konradi (1996a; 1996b; 2007) found evidence of notable survivor agency in pre-trial interactions and preparatory activities. Leading up to their trial, survivors reported engaging in a number of initiatives to prepare themselves for court appearances and perform their testifying role effectively. For example, some survivors reported conducting their own research on the legal process to gain a better understanding of laws
and their role within the system. Others independently provided corroborating evidence to assist in strengthening their case. Over two-thirds of the survivors described enlisting supportive people to attend proceedings and provide support during the process, as well as to strategically demonstrate to the court that they were believed and supported by a large number of people (Konradi, 1996a; 1996b; 2007).

One-quarter of the survivors reported engaging in rehearsal of their testimony, to make sure they were able to clearly recall important details as well as to ensure that they could maintain an appropriate emotional state. Nearly one-third (29%) described attempting to portray a specific emotional demeanour while testifying. These efforts were guided by the instructions given by prosecutors as well as the participants’ own perceptions of social expectations regarding the emotional presentation of “real rape” survivors and their knowledge of appropriate courtroom decorum. Sexual assault survivors face conflicting expectations regarding emotional presentation, as the stereotypical victim is expected to be tearful and distressed, while the preferred witness presentation is typically composed and in control (Konradi, 1999). The participants in this study reported being encouraged to display emotional distress, fear, and pain to emphasize the impact of the assault, while avoiding overly controlled or flat affect and expressions of anger or frustration that could lead others to question the survivor’s credibility or distress regarding the assault. Therefore, for some the emotional management preparation involved avoiding expressions of hurt or anger and maintaining composure, while for others it involved losing emotional control and expressing tearful distress while recounting their experiences (Konradi, 1996b; 2007).
Some survivors also reported strategically constructing their physical appearance prior to appearing in court. Slightly over half of the sample in this study reported consciously using clothing and make-up to present themselves in a manner consistent with “real rape victims” rather than women who “asked for it.” Specifically, these women reported attempting to present themselves as nonsexual, conservative, and professional. Some reported wearing clothing that concealed their bodies and “toned down” makeup, while others attempted to alternately highlight or downplay certain aspects of their personalities that they felt were consistent or inconsistent with the image they were trying to present. While most wore clothing that they already owned, several devoted time and money to creating an outfit specifically for their court appearance. Some women engaged in acts of appearance management at the urging of their prosecutor, and complied even if they felt that the attire was undesirable or inconsistent with their sense of self. However, even in situations where no instruction was given, many reported independently deciding to modify their appearance to fit the expectations of the court and stereotypical notions of the “real” or “model” victim, as they felt this would make them appear more credible and help strengthen their case and assist in its prosecution (Konradi, 1996a; 1996b; 2007).

As these findings indicate, many survivors were aware – or were made aware by legal personnel – of the existence of myths and stereotypes within the justice system, and they attempted to tailor their preparatory behaviour accordingly. Survivors varied in the amount of preparation activities they engaged in, ranging from no preparatory behaviour to using all six of the identified methods of preparation (enlisting support, role research, providing corroborating evidence, testimony rehearsal, emotional management, and appearance management). The extent to which their victimization was consistent with
stereotypical notions of sexual assault was found to influence the extent of survivors’ preparatory behaviour. Over two-thirds (68%) of those who reported little or no preparation were assaulted by strangers and thus may have felt less need to enhance their credibility through preparatory activities. The majority of those who knew their assailants and delayed their police reports, factors which have been argued to be inconsistent with stereotypical conceptions of “real rape”, were more likely to engage in three or more methods of preparation (Konradi, 2007).

Preparatory efforts reportedly helped survivors feel more confident that they were meeting popular images of a stereotypically credible victim and thus reduced anxiety and allowed them to concentrate on their testifying duties. This increased confidence and capability reportedly helped improve the experience for many and increased motivation to continue through the process. This was true despite the fact that many women rejected and did not personally support the stereotypes which they were striving to meet. While some of the women felt that these stereotypes were valid, others indicated that they found them to be false, oppressive and inconsistent with personal ideologies. These women faced a difficult paradox, as their awareness that these stereotypes may be believed by judges and jurors led them to act in a way that they found personally objectionable. This provides a clear indication of the commitment that women make when prosecuting their offenders as well as the difficult position they find themselves in as they navigate a system full of stereotypes (Konradi, 2007). The choices that women make regarding their testifying responsibilities, including strategies for making the task more manageable and less emotionally distressing as well as attempts to present themselves in a manner consistent with stereotypical expectations to assist in securing convictions, further
supports the idea that survivors of sexual assault seek opportunities for agency during their legal interactions.

**The Current Research**

While there has been a considerable body of research on sexual assault survivors’ overall experiences with the legal system, there have been limited studies focused on the ways in which survivors prepare for and attempt to personally navigate the Canadian criminal justice system and the stereotypes and myths at play within it. Increased understanding of the ways in which survivors engage with the legal process, including a greater exploration of survivor agency and the ways women attempt to manage any perceived obstacles, is necessary as it provides needed information regarding if and how women may resist oppression from their assailants and the systems from which they subsequently seek help (Greeson & Campbell, 2011; Konradi, 1996b). This new focus provides a more indepth understanding of the experiences of women who have been victimized, as well as valuable information useful in resolving problems and increasing satisfaction with the criminal justice system (Konradi, 2007). As such, the present research project explored the ways in which adult sexual assault survivors expressed agency as they navigated the power structures and rape mythology present within the Canadian criminal justice system, with particular attention paid to their pre-trial preparatory activities and testifying experiences.

In addition to hearing directly from sexual assault survivors who sought justice through the Canadian legal system, this study was complemented by input from service providers working within the field. In their respective roles within counselling, medical and victim service organizations, these personnel are responsible for assisting and
supporting sexual assault survivors in the aftermath of their victimization, including their journey preparing for and engaging in legal interactions, and as such have a unique and valuable perspective on survivors’ experiences within the justice system (Maier, 2008).

Within the present study, the following research questions were explored:

- How do survivors of sexual assault understand and experience their interactions within the Canadian criminal justice system?
- How do survivors prepare themselves – emotionally, psychologically, mentally and physically – for their interactions with the legal system, in particular their court appearances? What motivates these efforts?
- Are survivors and service providers within the field aware of any stereotypes or myths operating within the criminal justice system? What impact are these stereotypes perceived to have on a) the ways in which survivors attempt to navigate the system and prepare for court appearances; b) the treatment that survivors receive from legal professionals (e.g., police lawyers, judges); and/or c) case outcomes?
- What image(s), if any, are survivors attempting to present when appearing in court and testifying against their assailant? What motivates these efforts? What impact is this image construction perceived to have on a) the response survivors receive from legal professionals (e.g., police, lawyers, judges); b) survivors’ personal sense of confidence and satisfaction with their court appearance; and/or c) case outcome?
Chapter 2: Study Design and Methodology

Recruitment and Selection of Participants

Phase one: Survivor sample.

This study involved two phases of participant recruitment and data collection. In the first phase, adult female sexual assault survivors in the greater Toronto area were recruited to participate in semi-structured qualitative interviews about their experiences with the legal system. Eligibility criteria for participation in this phase of the study included experiencing a sexual assault in adulthood (age 16 years or older), seeking legal attention for this assault in the year 2000 or later, and participating in a subsequent criminal trial within the greater Toronto area at which the participant testified against their offender during either the preliminary hearing or final trial.

Participants were recruited through a variety of mediums, including online advertisements on social media sites (e.g., Facebook, Kijiji, and Craigslist), newspaper advertisements (print and online), and paper flyers posted in public spaces (e.g., community centres, women’s centres, libraries, coffee shops, grocery stores) as well as services tailored to survivors of sexual violence such as local sexual assault centers, counselling agencies, and victim services offices. Study information, in the form of invitation letters and recruitment flyers, was also mailed and emailed to service providers working in local services including sexual assault and crisis centres, counselling centres, community programs, university services, and victim services agencies, with a request that this information be passed along to their clientele and volunteers. Recruitment materials provided a brief explanation of the study and the eligibility criteria, and directed interested individuals to contact the researcher by telephone or email (see Appendix A).
In addition, in-person visits were made to local sexual assault and domestic violence shelters to speak with staff and, on one occasion, give a presentation to clients regarding the study and the specific participants sought.

Twenty-six women contacted the researcher via telephone or email to inquire about the study. In each case, the researcher responded by email or telephone with a fuller explanation of the study, including the eligibility criteria, requirements placed on participants, compensation, potential risks, and measures in place to minimize distress and protect the rights of those involved. If the woman expressed continued interest in participating, she was contacted by telephone to complete the Initial Screening Interview (see Appendix B). During this conversation, the researcher determined whether she met the following criteria: 1) over age 18; 2) identified as female; 3) experienced a sexual assault at or after age 16; 4) reported said assault to the police within the greater Toronto area (GTA) in the year 2000 or later; 5) subsequently participated in a criminal trial within the GTA, at which she testified against the perpetrator(s) in either a preliminary hearing or trial; 6) was not currently involved in any legal proceedings regarding this case; and 7) was willing to participate in an audiotaped interview regarding this experience.

Following this initial contact, 19 women either chose not to participate or were found to fall outside the eligibility criteria. In each of these cases they were thanked for their interest and offered referrals to support services if desired. The remaining eight women were deemed eligible to participate and included in the study.
Phase two: Service provider sample.

In the second phase of the study, service providers with a minimum of two years of experience supporting and/or preparing survivors of sexual violence for legal action and court proceedings within the greater Toronto area were recruited to participate in semi-structured qualitative interviews about their experiences and perceptions regarding the handling of sexual assault cases within the Canadian criminal justice system.

Invitation letters and flyers were sent by mail and email to service providers working in local sexual assault centres, relevant counselling agencies, and victim service agencies within the greater Toronto area. The recruitment materials provided a brief overview of the study and eligibility criteria, and encouraged interested parties to contact the researcher for more information (see Appendix C). In addition, telephone calls and emails were placed to the directors of relevant centres and offices, during which the researcher introduced herself and described the study in greater detail. Copies of the study interview schedule were also sent to the individual managers of certain victim service agencies in an effort to receive administrative support for participation from their staff; however, these managers ultimately chose to decline formal participation in the study.

Three service providers independently contacted the researcher to express interest in study participation. A telephone conversation was conducted with each service provider, during which study details were reviewed and the Initial Screening Interview completed (see Appendix D). The Interview assessed whether the service providers met the following requirements for participation: 1) over age 18; 2) holding a minimum of two years of experience in assisting and/or supporting survivors of sexual assault during
the legal process within the greater Toronto area; and 3) willing to participate in an audiotaped interview regarding their experiences. All three women were found to meet eligibility criteria and were included in the study.

In addition, one participant in the survivor sample requested the opportunity to share some of her insights as a service provider. She met the eligibility criteria for this phase of the study and therefore her interview included questions related to both her personal interactions with the justice system as well as her experiences supporting and preparing clients to engage in legal action.

Materials and Data Collection

Phase one: Survivor sample.

Participants were provided an overview of the study and its requirements over the telephone prior to consenting to participate in the study. After agreeing to participate, an interview time was scheduled at a confidential office in the researcher’s university department counselling centre. Upon meeting, participants were once again provided with information about the study and their rights as a participant, including their right to control the pace of the interview, take breaks as needed, refuse to answer any question(s), and stop the interview at any time. Confidentiality practices and limits were explained, and participants were assured that their data would be protected and their identity kept anonymous in all transcription, analysis and future reports. Prior to beginning the interview, all participants signed consent documents indicating their agreement to participate in the study and to have the interviews audiotaped.

The methodology for this qualitative study was based on constructivist grounded theory (Charmaz, 2006) and utilized semi-structured interviews to gain an in-depth
understanding of the participants’ experiences navigating the legal system, particularly their experiences preparing for and testifying in court. Certain questions, particularly those asking about interactions with legal professionals and preparatory activities, were informed by the work of Konradi (2007) and adapted for the present study. The interview schedule can be found in Appendix E.

Consistent with grounded theory methodology (e.g., Charmaz, 2006; Strauss, 1987; Strauss & Corbin, 1998), this interview schedule was used flexibly. Although the interview questions were structured in an order that took participants through the legal process more-or-less chronologically, participants were allowed to control the pace and flow of the interview and therefore the order of questions varied somewhat across participants. In addition, the specific questions asked within each category were tailored and modified as the interviews progressed and relevant concepts emerged and evolved. For example, although a specific question concerning the impact of mythology regarding the “ideal victim” within the legal system was not initially included in the interview schedule, this concept emerged as a theme early in the data collection stage and therefore was included in all subsequent interviews.

In general, each interview began with questions regarding basic demographic information (age, gender, race/ethnicity, sexual orientation), followed by a request that the participant briefly tell the story of their assault in their own words. Gentle probing was used to obtain details regarding the perpetrator, time and location of the assault, level of violence involved and use of any substances. Participants were encouraged to provide only as much detail as they were comfortable sharing. All participants were able to tell their story without demonstrating significant distress.
Following this, participants were asked to describe their motivations and preparations for seeking legal action, as well as their interactions with police, lawyers, judges, Victim/Witness Assistance Program workers, and other support workers. Participants then provided information regarding their experiences testifying and the ways in which they prepared themselves for this activity. Open-ended questions regarding methods of preparation were followed by probes regarding the use of specific preparatory strategies identified by other participants in this study as well as previous research by Konradi (2007). The motivations behind all reported preparatory activities were queried, as well as whether the women attempted to construct a particular image(s) while appearing in court and the intentions behind these efforts. Participants’ views regarding the existence and characteristics of an “ideal image” or “ideal victim” were explored, including the potential consequences of not meeting this image. Finally, participants were asked about the outcome of their case and their feelings about this, their overall satisfaction with the process, and any recommendations for improvement within the legal system.

Given the sensitive nature of the topics discussed, the researcher continuously gauged the participants’ comfort level, offering breaks or a change in topic as needed. All eight participants were able to complete the full interview without taking any breaks or experiencing significant distress. Interview length varied, ranging from approximately one and a half to two hours. At the completion of the interview, all participants were given the option to receive a summary of the final study results. Prior to leaving, all participants were provided with contact information for local counselling and crisis services, and compensated with $25 and transit tokens for their participation.
Phase two: Service provider sample.

All participants in the service provider sample received an overview of the study and its requirements over the telephone, prior to consenting to participate in the study. After agreeing to participate, an interview time was scheduled. Two of the interviews were conducted at the participants’ place of employment, and two were conducted at a confidential office in the researcher’s university department counselling centre. Upon meeting, information about the study, their rights as a participant, and confidentiality practices and limits were reviewed with each participant, including the measures in place to protect their data and keep their identity anonymous in all transcription, analysis and future reports. Written consent to participate in the study and have responses audiotaped was obtained prior to beginning the interview.

Constructivist grounded theory guided the development and use of the semi-structured interview schedule (see Appendix F). As with the survivor interviews, this schedule was used flexibly and the questions asked within each category evolved as the interviews progressed. The goal of the interviews was to explore the participants’ perspectives on the Canadian criminal justice system’s treatment of sexual assault cases and survivors. The majority of the interviews began by asking participants about their personal demographic background (age, gender, race/ethnicity, and sexual orientation), their formal education and specialized training, and their relevant job responsibilities (e.g., clients served, services provided, and years of experience).

Participants were then asked about their perceptions of the legal system, including the treatment that survivors receive from police, prosecutors, defense attorneys and judges. The researcher inquired about the participants’ awareness of any myths or
stereotypes operating within the legal system and the potential consequences of these biases for sexual assault survivors in terms of treatment received, case outcomes, and survivor wellbeing. Additional inquiries were made regarding the influence of specific image characteristics, such as survivor appearance and demeanour, on legal proceedings and the treatment received by survivors. The service providers were then asked about the preparation instructions they provide to survivors, including any specific recommendations regarding how the survivor present herself in court. Ratings of overall satisfaction with the legal system as well as recommendations for improvement were also explored.

The one exception to the above-described structure was the woman who participated in both the survivor and service provider phases of the study. In this case, the participant was first asked to describe her personal experiences and beliefs about the legal system, according to the survivor sample interview guide. Following this, she was asked questions from the service provider interview guide regarding the myths and stereotypes about survivors that she encounters in her role as a service provider and the preparatory efforts that she assists her clients to engage in.

All four participants completed the interview in its entirety, with interviews ranging from approximately one to two hours. At the completion of the interview, participants were given the option to request a summary of the final results once the study was concluded, and compensated $25 for their participation.

**Data Analysis**

A constructivist approach to grounded theory methodology based on the work of Charmaz (2006) was used to guide data collection and analysis. Constructivist
approaches incorporate many of the methods of sampling, coding and analysis advanced by traditional grounded theorists while also providing recognition of the ways in which theory is constructed and shaped by the context in which it emerges. Thus, rather than seeing an emerging theory as an objective discovery of fact, these approaches recognize that multiple understandings exist for any phenomena. As such, the researcher is urged to remain mindful of the influence of their own preconceptions and social locations as well as those of their research participants on the ways in which experiences are understood, presented and constructed into theory (Charmaz, 2006; Charmaz & Henwood, 2008). Consistent with this, efforts were made to enter the participants’ personal frame of reference as fully as possible, exploring the assumptions, understandings and meanings which underlie their experiences, while recognizing and attempting to limit the influence of the researcher’s own preconceptions based on personal sociocultural locations in terms of power, professional status, race, class, age, personal background, and beliefs about the legal system and the healing journeys of the participants (Charmaz, 2006).

Each interview was transcribed verbatim and every participant’s data was entered into a spreadsheet for easy reference. The transcripts were then analyzed using a two-phase coding approach consistent with the guidelines outlined by Charmaz (2006). First, each transcript was analyzed line-by-line, in order to increase familiarity with the data and identify initial codes. During this initial coding process, the researcher remained open to all potential emerging themes and possible theoretical directions indicated by the data. The data was organized according to the major themes in the interview schedule (e.g., Interactions with Police, Preparation Activities, Image Construction, etc.), and the specific action or interaction (e.g., actions taken by the police, such as responding
promptly to the survivor’s call) as well as its impact on the participant (e.g., feelings such as being believed or blamed) were analyzed and coded. In some situations, a single statement encompassed several themes (e.g., describing several specific preparatory activities as well as concerns about testifying and image management) and therefore the researcher attributed multiple codes to that statement. At this initial level, codes utilized the participants’ own words as much as possible and, as a result, multiple codes were created within each of the broader themes.

Following this, a process of focused coding was undertaken, during which the initial codes were refined. The most frequent or significant codes identified during initial coding were selected and used to further examine, organize, integrate and explain the data provided across interviews (Charmaz, 2006; Charmaz & Henwood, 2008). For example, initial codes relating to feelings while interacting with the defense attorney such as “Ripped apart”, “Torn to shreds” or “Like I was the one on trial” were subsumed into a larger code of “Feeling attacked”. A master spreadsheet was constructed in which the final codes were organized according to theme (e.g., Image Construction) and subtheme (e.g., Desire to appear unprovocative), and the number of participants endorsing each code was noted. Constant comparative methods were used to make comparisons within and between interviews in order to identify similarities and differences, determine possible relationships between categories, and refine subsequent codes (Charmaz, 2006). Memo-writing, a process of writing informal notes to track the researcher’s thoughts, questions and ideas during the research project was used during data collection and the analysis process (Charmaz, 2006), in order to fully engage with the data and clarify further coding and report writing.
Chapter 3: Participant Demographics

Survivor Participant Demographic Information

All participants in the survivor sample identified as female. Participants ranged in age from 22 to 56 years, with a mean age of 35.8 years. Seven of the eight women identified their racial/ethnic background as Caucasian, while one identified her background as West Indian. The majority identified their sexual orientation as “heterosexual/straight” ($N = 7$), with the remainder identifying as “queer/pansexual”.

Half of the participants described experiencing multiple sexual victimizations throughout their lifetime. However, the following data pertains only to those assaults experienced after age 16 for which they sought legal attention and testified against their perpetrator. A total of 10 cases were considered in this study, as two women reported testifying in two separate criminal cases for assaults experienced in adulthood.

The age at which participants were sexually assaulted ranged from 16 to 42 years of age, with half reporting sexual assaults prior to the age of 20 years. The assaults occurred as a single incident for five of the eight women, while three reported experiencing repeated sexual assaults within the context of an ongoing relationship with either an intimate partner or health service provider. Participants’ relationships with the perpetrator varied but the perpetrator was known to the survivor in all but one of the cases, as an acquaintance, friend, former or current intimate partner, or health service provider. The perpetrator was male in all cases, and all assaults were committed by a single perpetrator. Victimization took place in a variety of locations, including the survivor’s home ($N = 4$), the perpetrator’s home ($N = 3$), the perpetrator’s place of employment ($N = 2$), and a public/outside place ($N = 1$).
Four participants reported being tied up or confined during their assault(s), one reported being threatened with a weapon, and three reported being assaulted with a weapon other than the perpetrator’s body. Two women reported being threatened with non-physical consequences (e.g., loss of resources, status, or employment) during their assault. Half of the participants reported experiencing physical injury in addition to sexual violation. In terms of substance use, one participant reported that both she and her attacker were using alcohol and illegal drugs during the assault. Two participants reported that their perpetrator was intoxicated by illegal drugs during the assault and one reported that he was intoxicated by alcohol. One participant reported being forced to consume alcohol during the assault.

Nearly two-thirds \((N = 5)\) of the participants reported completing a medical examination and forensic exam (“rape kit”) following their sexual assault. One woman reported seeking this exam on her own volition, while the remaining four women reported that they were taken to the hospital by the police either before or after giving their statement. Three-quarters of the participants \((N = 6)\) reported seeking services from a rape crisis centre or counselling service following their assault. In addition to providing emotional support and/or counselling in many cases \((N = 6)\), these professionals assisted the survivors by providing general information about the legal system \((N = 1)\) or dynamics of abuse \((N = 1)\), as well as other resources such as professional clothing for court appearances \((N = 1)\), childcare \((N = 1)\), and assistance with other non-criminal trials \((N = 1)\). They were often also involved as an advocate in the legal process, providing assistance and accompaniment during the initial police report \((N = 2)\), meetings with the Crown Attorney \((N = 1)\), and at the trial \((N = 2)\).
All participants sought legal attention following their victimization. The majority (N = 5) reported initiating legal action within days or weeks of their assault. Of the remaining three participants, one reported waiting to engage with the criminal justice system until after ending her relationship with her assailant (approximately two years from when the abuse first began), one reported waiting approximately five years, and one reported waiting approximately 25 years to contact police.

Each of the eight participants described testifying in a preliminary hearing. In four cases, this is where their legal involvement ended. In three of these cases, the perpetrator accepted a plea bargain following the preliminary hearing. In one case, the charges were dismissed following the preliminary hearing. In the remaining six cases, the participants were involved in testifying at both a preliminary hearing and a trial.

Of the 10 trials in which the eight women participated, two were dismissed prematurely. One was dismissed following the survivor’s testimony at the preliminary hearing as a result of, according to the survivor, the Crown Attorney’s alleged (and unfounded) concerns regarding the survivor’s ability to handle the emotional impact of proceeding with the trial. The other prematurely dismissed case concluded during the middle of the trial as the survivor withdrew from the process partway through giving her testimony. Of the remaining eight cases, four participants reported that the perpetrator was acquitted at the end of the trial, and four reported that the perpetrator took a plea bargain. All of the trials were overseen by a judge only, with no jury. Sentences included a suspended sentence for sexual assault along with 10 months of probation for physical abuse (N = 1), 6 – 12 months of house arrest (N = 1), three years of probation (N = 1), a three year prison sentence (N = 1) and a four year sentence prison sentence (N = 1). Three
of the perpetrators were required to register on the Sex Offender Registry as a result of the trial and two received restrictions on their work.

In addition to participating in a criminal trial against their assailant, three participants also sought justice through a Criminal Injuries Compensation Board hearing and one participated in an internal hearing initiated by the perpetrator’s professional legislative body.

**Survivor Participant Biographies**

Participant 1 (P1) was in her early 30s at the time of the interview. She reported testifying in two separate sexual assault cases that met criteria for the present study. The perpetrators in these assaults were acquaintances of P1: in one case, the relative of a close friend and, in the second, a friend of her intimate partner at the time. Both assaults occurred in the perpetrator’s respective homes and did not involve the use of any weapons or substances.

Participant 2 (P2), a woman in her mid-30s, described being sexually assaulted by an acquaintance. She reported being assaulted in the perpetrator’s home and reported that no substances or weapons were used.

Participant 3 (P3) is also in her mid-30s. She reported being sexually assaulted by an ex-partner in his home, and was physically assaulted with a weapon and injured during the assault. She stated that no substances were used during the incident.

Participant 4 (P4) is a woman in her mid-20s. She reported being sexually assaulted by a stranger in the perpetrator’s place of employment and described experiencing lasting physical injury as a result of the assault. She reported that no substances were involved in the incident.
Participant 5 (P5) is in her early 20s. She described testifying in two separate cases that met the study criteria. The first incident involved repeated sexual victimization committed by P5’s intimate partner at the time, occurring in their home as well as public areas. She reported that both she and the perpetrator were using drugs and alcohol at this time and that the assaults sometimes involved the use of a weapon besides the perpetrator’s body and caused physical injury. The second assault was committed by an acquaintance of P5, at his home. No substances or weapons were involved in this incident.

Participant 6 (P6) is a woman in her mid-50s. She reported being repeatedly sexually assaulted by her intimate partner at the time. She stated that the abuse occurred in the home they shared, and frequently involved the use of weapons causing physical injury. She reported that the perpetrator frequently used alcohol and drugs and, on occasion, forced her to consume alcohol as part of the abuse.

Participant 7 (P7), a woman in her mid-40s, reported being sexually assaulted by an acquaintance. The assault occurred in her home and did not involve the use of any weapons. She reported that the perpetrator was using drugs at the time of the incident.

Participant 8 (P8) is a woman in her mid-30s. She described being repeatedly sexually assaulted by a health service provider. The assaults occurred at the perpetrator’s place of employment and home, and did not involve any weapons or substances.

**Service Provider Participant Demographic Information**

All participants in the service provider sample identified as female. The participants ranged in age from 30 to 56 years, with a mean age of 43.3 years. They
described their racial/ethnic background as Caucasian \( (N = 3) \) and South Asian \( (N = 1) \), and all identified their sexual orientation as “heterosexual/straight”.

Educational backgrounds varied across participants, although all reported completing an undergraduate university degree. In addition to their undergraduate degrees, three of the participants reported holding some form of graduate degree and one reported having a college diploma. The primary fields of study for these degrees included psychology, sociology, social work, nursing, and counselling. In addition to the completion of relevant post-secondary degrees, the participants also reported completing a range of specialized training and work experience that prepared them for their current positions. This additional experience included specialized certification training in the area of trauma and sexual victimization \( (N = 3) \), as well as previous work experience with related services (e.g., rape crisis centres, domestic violence courts) that provided skills in crisis intervention \( (N = 1) \), counselling \( (N = 2) \), public education/outreach \( (N = 3) \), and volunteer coordination \( (N = 1) \). Two of the women were currently employed with local victim service organizations, one was employed as a nurse in a sexual assault care centre, and one worked as a therapist. Years of employment in their current position ranged from two to 20 years.

All of the participants reported that their services were available to victims of sexual assault, as well as other violent crimes such as domestic abuse. When asked about the demographics of their client base, three women reported working with survivors of all ages and one reported working with those over age 14 only. While all service providers reported serving clients of all genders, the majority of their clientele was noted to be female. In addition, two service providers made a point of noting that they more
commonly see victims of acquaintance sexual assault versus sexual assaults committed by strangers. The clients served were also noted to be diverse in terms of their race/ethnicity, socioeconomic status, and educational level, with all service providers agreeing that they served survivors of all backgrounds.

The specific services provided to sexual assault survivors varied according to the specific employment role of the service provider, with some commonalities. All service providers reported providing emotional support and crisis intervention to clients, as well as liaising with police. Formal counselling was part of the job description for only one of the service providers; with the remaining three reporting that they would offer referrals to counselling/support services as needed. Three of the participants reported providing advocacy on behalf of the survivor, and three reported liaising with the Crown Attorney. Three reported providing survivors with general information regarding the legal process, while two service providers were able to additionally offer information regarding their specific case (e.g., court dates, motions, etc.). Three of the service providers reported offering preparatory information and recommendations for the preliminary hearing and/or trial, including the provision of information regarding the survivor’s role within the legal process, the structure of the legal system as a whole, as well as a discussion of the survivor’s concerns and expectations regarding their participation in the trial. The latter discussion often included education regarding the range of potential outcomes that could result from the trial.

The service providers also reported providing survivors of sexual assault with a tour of the courtroom \( (N = 2) \), assisting them with reviewing their police statement \( (N = 3) \), role-playing testimony \( (N = 1) \), and providing instructions regarding how the survivor
should present themselves in court ($N = 3$). Other usual preparatory activities included arranging meetings with the Crown Attorney, detective and survivor ($N = 2$); assisting survivors with securing testimonial needs (e.g., interpreters, privacy screens; $N = 2$); and arranging trial accompaniment from support people ($N = 2$).

Half of the participants reported personally providing accompaniment at the preliminary hearing or trial when requested. Two reported providing assistance with the completion of the Victim Impact Statement. One participant described providing medical treatment and forensic evidence collection, as well as occasional testimony regarding her findings during preliminary hearings and trials. Three of the participants reported engaging in some form of public education and outreach as part of their role.
Chapter 4: Results

The participants in the present study were asked to reflect upon their experiences with the Canadian criminal justice system, in terms of either their personal involvement in the prosecution of their assailant or based on their observations as a professional working to assist sexual assault survivors within the legal system. For the survivor participants, the interviews involved a number of questions related to their decision to seek legal action, the types of interactions they had with various legal personnel, their efforts to prepare themselves and construct a particular image throughout this process, and their evaluation and recommendations for the justice system overall. For the service providers, the interviews focused on the participants’ perceptions of the types of interactions that survivors of sexual assault commonly have within the legal system, including the impact of stereotypical beliefs held by legal personnel, recommended preparatory actions and image management efforts, as well as their personal evaluations and recommendations for the system overall. The responses provided to these questions were carefully analyzed and coded and the major themes emerging from the data are presented below.

Survivor Motivations and Concerns about Initiating Legal Action

Survivors are faced with a number of decisions in the wake of sexual assault, including choices about seeking and participating in legal processes. When asked what contributed to their decision to take legal action against their assailants, the participants in this study identified a number of motivations as well as concerns regarding their decision to contact the police. The most commonly described reason for seeking legal involvement was protection from the perpetrator, as three women described being motivated by a need
for personal protection while six spoke of a sense of responsibility to protect other
(typically unknown) women and/or children from the perpetrator. Several women also
reported that their decision making was influenced by ideological concerns, such as being
motivated by the knowledge that what happened to them was wrong (N = 6); having a
desire to see the perpetrator held accountable and punished for his actions (N = 4); or
having a general sense of responsibility to society as a whole to speak out against the
abuse (N = 2).

Many participants described more than one motivation for taking legal action. For
example, P3 spoke of a desire to protect other victims as well as a broader sense of social
responsibility:

_I don’t think I could have lived with myself if I hadn’t, because I have a greater
responsibility in life than just to me. I have a greater responsibility to society. And
also because it may have taken a day or two for me to realize the extent of what
happened but, once I did, I had no doubt that it had happened before and nobody
else had spoken up. And I also felt that it was going to happen again to somebody
else and I had a responsibility to stop it._

For some, the motivations were more personal, such as a sense of regret for
deciding to take legal action after previous experiences of victimization (N = 3) or a
belief that legal action was important for personal healing and recovery (N = 4). For
some, taking legal action was, among other things, a way of moving forward:
P8: I was suicidal. Um, I wanted to just deal with it because it had bothered me for a very long time and mixed with me being suicidal and angry, um, I didn’t want it continuing.

Although most participants were unfamiliar with the exact procedure of laying charges and engaging in a criminal trial, their responses indicate that they were not naïve to the potential costs and implications of legal action. For many, their decision making process involved carefully weighing the potential perceived costs with the possible benefits. Several specific concerns were identified which made participants initially hesitant to press charges, the most common of which was fear of being disbelieved by police (\(N = 5\)). In addition, one participant reported worrying that she would be blamed for the assault. Two participants were initially hesitant to take legal action for fear of retribution from the perpetrator, while one was unsure whether she was comfortable trying to send her perpetrator to prison. Several participants also described an initial reluctance to press charges due to their awareness of the heavy toll that a criminal trial can take, noting that they worried that the legal process would be too emotionally or psychologically difficult for them (\(N = 3\)) or that they were concerned about the time commitment involved in the many stages of the process (\(N = 2\)).

Despite these concerns, all participants ultimately contacted the police. However, the specific motivation(s) held by each woman, as well as her concerns about engaging with police and the justice system, appeared to influence the timing of reporting. The decision to contact the police and initiate legal action was made instantaneously for some, while for others it followed a period of contemplation. For example, those who wanted
personal protection from the perpetrator reported contacting the police within hours of the assault or, in one case, covertly calling police while the assault was taking place. Alternatively, one woman who reported initiating a criminal trial as a way of securing leverage for other non-criminal trials delayed taking legal action for several years after the assault, waiting until other trials through the perpetrator’s regulatory body and the Criminal Injuries Compensation Board were underway.

The level of preparation women completed prior to reporting their assault also varied. For some women \((N = 3)\), a report was made promptly and without any form of conscious preparation. The other five women interviewed reported taking steps to prepare themselves physically, emotionally, and/or mentally prior to contacting the police. Some of the strategies described indicate a desire to protect evidence. For example, one participant reported recording the details of the assault in a personal electronic device immediately after the incident, to ensure that she would remember the details and, she hoped, reduce her need to speak about what happened by presenting a written account to the police. Others reported avoiding showering until after completing a forensic rape kit.

Other strategies appeared designed to increase perceived credibility. One participant obtained documents from previous non-criminal trials related to the incident and presented these to police when making her statement. Another described cleaning her house prior to giving an interview, in the hopes that this would help her appear professional to the police. A number of the other preparatory activities identified were focused more on strengthening the individual psychologically. Two women described consulting with family or friends, three reported seeking the guidance of a professional counsellor or legal professional, and three described taking time to personally assess their
emotional and psychological readiness for legal action. One woman described researching literature on abuse and sexual violence, while another described engaging in independent research on the criminal code and legal process prior to deciding to make a formal police report.

**Police Interactions**

**Survivor perspectives on personal interactions with police.**

Police officers and detectives are the first contact as survivors of sexual assault begin their interactions with the legal system and, as such, the interactions experienced at this stage can have a significant impact. The women in this study described having a number of positive and negative interactions with police, often experiencing a complex mix of both experiences.

The most commonly described positive experience involved police officers and detectives demonstrating belief in the survivor’s story. Three-quarters of the participants ($N = 6$) reported that the police made them feel believed at some point during their interactions, through actions such as listening carefully to their story, explicitly acknowledging the survivor’s experience and stating their belief in it, taking prompt action in arresting the offender, and/or laying multiple charges against the perpetrator. This sense of being believed came as a relief to many, particularly those who feared that they would be met with disbelief, and helped the participants feel comfortable and increase their trust in the police. For example, P6 described a number of positive interactions that allowed her to build trust in the detective assigned to her case:

Researcher: *What did [the detective] do specifically that helped you be able to trust him?*
P6: I think reassuring me and believing me constantly, you know, all the time. He would start his conversations by saying that he believed me.

Researcher: Ok, so being very explicit then?

P6: Yeah. You know, and at one time he said to me “I believe you. I have to ask you these questions because this is my job as a police officer, so I have to ask you”. But he would tell me up front. He would say “I have to ask you these questions”, right? And I could understand it then. When he was reasonable I could understand that, and then I could say “Oh, ok. Yeah, that makes sense. I get that. This is your job and it doesn’t necessarily mean that you believe it but you have to ask the questions anyway. That’s fine.” So I was fine with it.

As the above quote illustrates, many survivors described appreciating interactions in which the police officer or detective provided information and/or resources about the process (N = 5) as well as an explanation for their actions (N = 4). Several women in this study stated that having the detective or officer explain the rationale behind their questioning helped increase their understanding of the process and reduce perceptions of being blamed and disbelieved.

Other behaviours that were appreciated included acts in which the detectives or police officers demonstrated support and/or care toward the survivor (N = 4), showed sensitivity to their needs (N = 2), and provided the opportunity for the survivor to make choices and have some control over the process (N = 3). For example, one participant who found the process of completing a videotaped police interview re-traumatizing because her assailant had videotaped her abuse was relieved when the detective showed
sensitivity to her distress and allowed her to write out her statement rather than be videotaped. Another positive example of sensitivity and sharing control involved a detective who, after discussion with the participant, introduced triggering evidentiary material in a gradual manner so that she could slowly work her way up to reviewing the most traumatic material and thereby limit emotional distress. In her view, this allowed her to have some power over her exposure to a situation in which her control had been taken away, thereby helping to foster a small sense of empowerment and avoiding a reproduction of the dynamics of domination and victimization within her police interactions.

Another notable theme which emerged in the data analysis was the importance of perceived police commitment. Five participants spoke about their appreciation of the fact that the police demonstrated commitment to their case. Specific examples of this included actions such as responding promptly to the complaint \((N = 4)\), working efficiently during the investigation \((N = 3)\), and providing regular follow-up and a sense of continuity throughout the trial \((N = 5)\). For example, P7, who was initially concerned about the time commitment involved in taking legal action, was very pleased with the efficiency demonstrated by the police in her case:

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P7: \text{It was like these guys are right on it. They came and they took photographs immediately. Like, they were like top job, pro ace, 100% perfect, the police. They really were. And I told them “Thank you so much”. Because they came in, they took the shots, they didn’t take too much time. They didn’t make any insinuations. They came in, they got the information, they took the pictures and left. The detective interviewed me right away... I mean, like, efficient. These guys deserve}
\]
a, like, ribbon or something. You know what I mean? They really were good. I felt like “Oh thank God, these guys believe me and they got the evidence”. Obviously, I don’t have time for this kind of thing, you know what I mean?

Of note, three of the five women who believed that the police demonstrated commitment to their case stated that they believed that the police had a vested personal interest in apprehending their assailant, due to the perpetrator having a history of previous sex offenses or other criminal behaviour or, in one case, because he held a position of political power. For example, P5 was certain that the dedication the police showed in the handling of her case was due in large part to the reputation of her assailant:

P5: And he was pretty well known as well because he sold drugs. So the police were truly happy to nab him at any cost. The police were really supportive too because they really just wanted to put him away for their own reasons. Plus, as a youth he had a lot of convictions around like sex offense and things. He was actually a registered sex offender but I didn’t know. So, um, so they really wanted to put him away for that reason too. So it was really like working together...

All three of these women attributed at least some of the positive treatment that they received from the police to the fact that the police, as well as the Crown Attorney, had their own motivations for apprehending the perpetrator. P3, whose case attracted significant media attention as a result of the perpetrator’s high social status, attributed some of the enthusiasm for prosecution to the possibilities the case held for advancing the careers of those involved:
P3: *People were oddly excited about this!* Um, it was, the atmosphere almost felt like “AH! This person has eluded capture until the age of [perpetrator’s age], but we can smell that there is horribleness here”. There was, uh, I think there was an element of that in that.

Researcher: *Mmhmm, ok, so excitement on the law side?*

P3: *A big fish! Not just, like, “Oh we’re going to take down some low-life scum”, it’s like “Oh this has got real potential to be huge!”*

P5 had sought legal attention for several separate sexual assaults, the majority of which resulted in a lack of prosecution as well as unsupportive treatment from police and lawyers. She attributed the differences between these cases and the one in which she received a conviction to the perceived dangerousness of the perpetrator:

P5: *Yeah, like my corroded opinion, because I’m really biased obviously, is that the reason that it was so fair and open and caring - my experience with court and [perpetrator] and things - was because they were also interested in nabbing [perpetrator] because he had such a history and they really just wanted him behind bars.*

However, while these participants were aware of the unfairness and injustice of this preferential treatment, all were still appreciative of the positive response and relative privilege it afforded them.
Researcher: So in some ways maybe your case against [perpetrator] almost sounds like it was convenient for them. I don’t know if that’s the right word, but that it sort of served their interests as well as your interests?

P5: Yeah, but to be fair, it didn’t feel that way. It felt like they really cared. Like, they did a really good job, you know. And they really did go to bat to make sure that not only was he in jail but that I felt really comfortable. Which now, looking back, it’s probably because, you know, they needed my testimony to put him away probably, so they needed to make me as comfortable as possible. But I’m ok with that because I’m just glad that it happened that way.

Taken together, the examples of positive interactions with police described by these participants suggest that the first contact that survivors have with the legal system can be a positive one. Considering that many of the participants were apprehensive about contacting the police due to fear of being disbelieved, worry about the emotional/psychological impact, or concern about the time commitment involved, being met with belief, support, sensitivity, and commitment appeared to have a significant positive impact, as many participants reported that these interactions left them feeling believed (N = 5), validated (N = 5), satisfied (N = 3), protected (N = 3), and relieved (N = 3). P6 stated that she had been afraid to report her abuse for many years as her assailant had always threatened that the police would not believe her. As such, she reported that being met with belief was not only a relief but also a healing experience:

P6: And so, I mean, even just having somebody spend that much time and tell you that they believe you and, you know, getting the charges laid. Again, that helped
me free up some of that brainwashing, you know, because [perpetrator] would torture, right. So every day he told me if I ever went to the police, that they would believe him and not me because they’re police officers and blah blah blah. So those are the kinds of things that really helped me along, you know.

However, despite these examples of excellent police behaviour, the data revealed that negative treatment was also common and experienced by the majority of the survivors ($N = 6$). The behaviours defined as problematic by the participants were often the opposite of those described as positive. For example, three of the participants reported that the police officer or detective with whom they had contact showed a lack of support toward them, through actions such as demonstrating disbelief regarding their complaint and/or questioning their actions or role in the assault. As P4 describes, the police misunderstood her need to secure social support in the aftermath of her assault as evidence of suspicious behaviour that compromised her credibility. Their scrutiny of her actions left her feeling blamed and as though she was the one under investigation:

P4: Um, they treated me like I was a criminal. For example, like, I was in the car, in the police car on my way to the station, and I obviously made a phone call, um, to tell someone what had happened and, you know, that I wasn’t going to be home and that I needed support. And the police thought that I was calling and giving people information. They went over my cell phone records and they checked my call history and all my text messages to make sure that I wasn’t lying, which was horrible.
While for P4 the police implied disbelief through their actions, in some cases participants reported experiencing explicit vocalizations of disbelief. For example, when giving her statement to the police, P8 describes the following response from the detective:

P8: *And she told me “There was nothing wrong. He did nothing wrong. Go away”.*

To her credit, P8 refused to accept the detective’s dismissal of her report and, with the help of advocacy from a local rape crisis centre and a personally hired lawyer, charges were eventually laid. However, although she was able to obtain assistance and mobilize herself to act against this injustice, the experience left P8 feeling angry and re-victimized:

P8: *[The detective’s behaviour] was very much of a protective nature, not of the victim but of the accused. That’s how it was set up. Like, it was a very, she was not there for the victim. She was not there for me to feel comfortable to go and say “This is what’s happening”. It was almost like more of a second assault, or more of a “Screw you” from the system.*

Researcher: *So you felt in some sense assaulted again by her?*

P8: *[Nods] And worse so in a sense because she knew what was right. She was put in a position to enforce that when someone realized what’s going on and she abused that power. So it was more of that position of power, abusing it in that sense and using it and then giving special treatment because of positions of authority or positions of status or whatnot.*
P8 reported being so upset by the treatment received from this detective that she filed a complaint to the detective’s supervisor, requesting that she be removed from her case. When this did not happen, P8 enlisted her personal lawyer to send a letter to the detective requesting that she have no further contact with P8. When the detective appeared at a later meeting, P8 insisted she leave, explaining:

*I didn’t want her there. I just could not deal with how she had treated me through the process, like from the onset. I just didn’t trust her. I had no trust in what she would do.*

The participants in this study also described a number of other negative interactions with police. Three women reported feeling pressured to provide a formal police report immediately upon contacting police, without being given a chance to fully consider their options and preferences regarding legal action, and one participant reported that she felt pressured by police to complete the trial when she preferred to withdraw prematurely. Participants further reported that the police showed insensitivity to their medical/mental health issues ($N = 2$) and/or disrespected their wishes in other areas ($N = 3$), such as attending meetings at which they were not wanted or refusing to take the participant where they wished to go. As an example, P4 reported that her request to be taken home after the assault was denied. Against her wishes, she was taken to the police station directly after completing a forensic examination and, as her clothes had been taken as evidence, was forced to give her statement wearing a hospital gown that did not close. Rather than providing her with the ability to make choices in the immediate
aftermath of her victimization, she noted that this disrespectful and insensitive police action left her feeling powerless and vulnerable.

Perceived level of commitment was also a significant theme in terms of negative police treatment, as participants expressed concerns about a series of behaviours that they believed demonstrated a lack of commitment on the police’s part. Two women reported that the police discouraged them from taking legal action, while one participant expressed anger that the police did not respond promptly to her call for assistance. Three participants complained that the police did not work efficiently when conducting the investigation or gathering evidence, while three reported that the police did not provide adequate follow-up or continuity. One participant believed that the police withheld important information from her, while one felt that the police demonstrated explicit bias toward the perpetrator.

As a result of these unpleasant interactions, participants described feeling unsupported \((N = 4)\), disbelieved \((N = 3)\), blamed and/or judged \((N = 2)\), re-victimized \((N = 3)\), ashamed \((N = 2)\), and distrustful of the police \((N = 3)\). Many women were angry \((N = 5)\), and some powerless \((N = 2)\) and viewed as unimportant \((N = 2)\). One woman reported that her encounters with the police were so traumatic that she was subsequently hospitalized for mental health reasons.

**Service provider perspectives on survivor interactions with police.**

When asked about their observations regarding the treatment that survivors of sexual assault commonly receive from police, the service providers interviewed in this study described a mix of positive and negative impressions. Themes of positive police treatment emerging from the data included interactions in which police were supportive
of survivors ($N = 2$), displayed sensitivity toward them and the impact of their trauma ($N = 3$), made themselves available to the survivor and provided a sense of continuity and regular follow-up ($N = 1$), and were collaborative with other professionals, such as the service provider ($N = 3$).

In terms of negative impressions, the police were also described as being insensitive to survivors ($N = 1$), demonstrating disbelief ($N = 2$) and blame ($N = 1$) regarding their experiences, and pressuring survivors to make a police report before they were ready ($N = 1$). In addition, one service provider reported feeling that the police are often distrustful of the influence she has on survivors and, on one occasion, filed a complaint against her for refusing to support their attempts to pressure a survivor.

SP2: [Speaking about interactions between survivors and police] But just like you have, you know, bad nurses and bad doctors, you have, I don’t want to say “bad” police officers but you have not the most sensitive police officers. And they may be very good at what they do and their mandate is different – they’re out to get the bad guy and they’re out to, um, you know, get someone to make a report, and some people or some officers will go to the extreme to be able to, um, to be able to do that.

Researcher: Ok. And when you say “the extreme”, what do you mean?

SP2: Badgering. I want to be nice and yet, yeah, they will say, I’ve heard them say things like “This will happen to somebody else. You’re just letting him go so he can do this to somebody else”. And even with my own experience, um, a detective told me “Well, what if it was your mother walking through that park?” I’m like “It’s got nothing to do with my mother and, in fact, my mother does walk
through that park”. But I’m still not going to pressure [the survivor], because it’s about her. It’s not about anybody else. It’s what she can do at the time, what she can cope with at the time. And at the time we were able to talk about freezing the kit, which I thought was a major coup but they weren’t happy about that. And in the end they pressured her and, um, they reported me for interfering and all that kind of stuff. So they were very upset about all of this. But luckily I had the support of the centre. Um, I had the support of the centre, which meant a lot of me that they didn’t hang me out to dry.

One service provider reported noticing an improvement in police sensitivity and the treatment provided to survivors over her years of employment, while two reported noticing no changes. For one participant, this perceived consistency in police behaviour meant continued problematic treatment. For another, this lack of change meant consistent positive treatment from police.

Researcher: And have you noticed any changes in sort of the sensitivity of the police in the time that you’ve been here?

SP3: Um, I don’t know that I’ve seen any changes. They’re pretty on the ball, the police that we work with on these particular cases. Like I said, they’re trained specifically on these issues. So I don’t think there’s been any changes, they’re just, they know what they’re doing in this area.

The service providers’ perspectives on survivor interactions with police appeared to depend on the proximity of their professional relationship to police. The two
participants who work most closely with police and see clients only after charges have been laid described witnessing mainly positive treatment. However, the two participants who work more independently from police and often see clients prior to charges being laid described some examples of positive treatment but tended to report more negative interactions.

**Interactions with Crown Attorneys**

*Survivor perspectives on personal interactions with Crown Attorneys.*

Following successful police contact, charges are laid and a case is forwarded on for prosecution. Within the Canadian criminal justice system, a Crown Attorney is assigned to handle the prosecution of sexual assault cases. Contrary to personally hired lawyers, the Crown Attorney represents the interests of the Crown rather than working directly for or with the survivor. As a result, the Crown Attorney’s office controls the assignment of specific attorneys to certain cases, as well as the frequency of meetings and the level of involvement between the Crown Attorney and the survivor.

Of the eight participants interviewed in this study, only five reported meeting with the Crown Attorney assigned to their case in advance of the day of their preliminary hearing. Of these five women, only one described having regular pre-trial meetings with the Crown, with the other four describing single or very few interactions. Of those who did not have advance contact with the Crown Attorney, two women reported meeting briefly with him/her on the day of the preliminary hearing, immediately before it began. One woman said that, although she later had a meeting with the Crown Attorney before the trial, she did not meet with him at all prior to beginning the preliminary hearing.
Perhaps unsurprisingly given the limited contact reported between the participants and the Crown Attorneys assigned to prosecute their cases, concerns regarding insufficient preparation and commitment emerged as significant themes in this study. Three women felt that the Crown Attorney was personally underprepared for the trial, while half of the participants ($N = 4$) reported that s/he did not provide them with adequate preparation and explanation of the process. Two women specifically commented that the Crown Attorney did not meet with them enough prior to the trial.

Researcher: And did you meet with the Crown Attorney prior to the trial?

P7: No. Only, actually about 10 minutes before, she came and introduced herself. They took me into the witness room. They showed me a replay of the video statement that I had given to the police. They sat me down, and then I went straight to the courtroom. And this is notwithstanding the fact that I had gone in there of my own volition and asked around “Do you have any information on how to prepare oneself to bear witness in court?” And they sort of sent me around to all different kinds of offices and said “Oh, well no. We don’t have that kind of service here”.

Interestingly, while the four women who expressed dissatisfaction with the amount of preparation provided to them included the three women who had very limited or no contact with the Crown Attorney prior to trial, it also included the one participant who met regularly with the Crown Attorney, suggesting that quantity of contact did not automatically ensure quality preparation. This latter participant described feeling frustrated that, despite regular meetings with the Crown Attorney, she had a sense that
information was being withheld from her and thus felt the need to engage in independent research to ensure that she fully understood the legal process:

P3: It frustrated me that I had to find this information, that it wasn’t coming to me, that I wasn’t, [pause] I would have liked to have someone who held my hand and led me through the process, as opposed to I felt like I was always knocking on somebody’s door or calling someone and saying “How is this working? How is this working? What’s going on?” Because I would get information but I would be like “Well, that’s not it. I want more. I want better information”… I would have liked to have trusted that every time I talked to either the police or the Crown Attorney that they would have given me full and complete information and given me absolutely everything that they could. But I never really felt like that. I always felt like there was something they weren’t telling me, and sometimes I would get those answers and sometimes I wouldn’t.

Three participants also lamented what they perceived to be a lack of dedication and accountability shown to them and their case by the Crown Attorney. For P8, this was evident in the lack of contact and preparation she received from the Crown, as well as the implied blame and dismissal that she perceived in their interactions:

P8: I had a sense that [the Crown Attorney] didn’t care. And I had a sense that “You knew what was going on and you should have just got out earlier”, that kind of judgment. And yeah, you know what, that would have been a good idea. But I didn’t realize the consequences and the extent of [the abuse] probably until even during the trial. I realized it was wrong but, um, there was aspects of blame and
aspects of that. It was very much of a, like, the meeting with the Crown Attorney was probably half an hour. There wasn’t much prep. There wasn’t much of anything. There was much more of “This is what’s going on. This is what he’s agreed to. This is what we’re looking for”.... It was much more of “You’re a number. There’s lots of us. There’s lots of victims. This happens all the time. We can’t really stop this so let’s just get through this”.

Several participants also described perceiving a lack of dedication and accountability on the Crown Attorney’s part during the trial proceedings. Specifically, three women were unhappy with the absence of intervention and lack of objections raised by the Crown during the defense attorney’s cross-examination. Feeling abandoned by the Crown Attorney, one participant attempted to appeal to the judge for assistance:

P7: And the thing was [the defense attorney] came right up to me while I was sitting there in the witness box and took the letter out and shoved it in my face, which he can’t do. I mean, you can’t go anywhere near the witness at all. That’s when I looked at the judge and I said “Can he do that?” and he says “Well, I can’t do anything unless she [the Crown Attorney] stops him”.

Four participants described taking it upon themselves to object to the defense’s behaviour during the cross-examination when they realized that the Crown Attorney was not going to intervene. For example, P8 describes making the following statement:

P8: The [defense attorney] was asking me the same question over and over and over again. Like, I think I was on the stand for the whole day. And I was asked the
same thing over and over again and at one point I was like “You asked me that five times, what more do you want?” But the Crown just sat there.

Furthermore, four women felt that the Crown Attorney made an unsatisfactory plea bargain with the defense. One participant reported attempting to protest what she perceived to be an inappropriate plea bargain by fully describing her experiences in her Victim Impact Statement. However, this participant reported that because her statement included details that differed from the official agreed-upon statement of fact used in the plea bargain, the Crown Attorney edited her Victim Impact Statement against her will and did not allow her to present it in its original form. This participant and one other attributed the unsatisfactory sentences assigned to their perpetrator largely to a lack of commitment shown by the Crown Attorney.

As a result of these problematic interactions, participants reported lacking confidence in the Crown Attorney’s abilities ($N = 3$) and feeling angry ($N = 3$), frustrated ($N = 4$), confused ($N = 2$), and distrustful ($N = 2$). These experiences further left many feeling unsupported ($N = 3$), disbelieved ($N = 3$), and blamed ($N = 2$).

Despite the problems highlighted above, the interview data also suggests that the experience of working with a Crown Attorney was not entirely negative. Although seven of the eight participants described some form of negative treatment, six participants also described receiving at least one form of positive treatment from the Crown Attorney. Contrary to the inadequate level of preparation reported by the four women described above, three participants reported receiving helpful information and preparation about the court process from the Crown Attorney. In addition, while several participants were
critical of the level of dedication shown by their Crown Attorneys, P5 described several experiences that she felt provided evidence of commitment and support from her Crown Attorney. In particular, she described appreciating her Crown Attorney’s efforts to secure special accommodations for her while testifying:

P5: And they made so many accommodations for testifying, like, they had a screen and stuff, you know, so he could see me but I couldn’t see him. Like, she really went to bat for me, the Crown, because [perpetrator] was trying to say all how like I shouldn’t be allowed to have that because “If I really mean it then I’ll look him the face and say it” and all this stuff. But she really went to bat for me. She’s really good.

For P4, the Crown Attorney’s ability to make helpful interventions during the cross-examination allowed her to manage emotional distress and feel validated and supported:

P4: When the defense was asking me the questions and then cut me right off and wouldn’t let me finish, and you could see I was getting flustered and like “What the hell?!”, the Crown would be like “[P4], what were you just trying to tell the court?” And I loved that because then I was able to actually say what I needed and I felt more validated, like I hadn’t just been shut in a corner with no chance to defend myself. So I thought that was a really great, um, technique on their part, to be able to tell emotionally that I am struggling right now and they better let me say something.
Additionally, several participants spoke favourably of experiences in which Crown Attorneys were diplomatic, professional, respectful, prepared, knowledgeable of sexual violence issues, and expressed belief in the survivor’s story.

**Service provider perspectives on survivor interactions with Crown Attorneys.**

The service provider participants also reported observing a mix of positive and negative interactions between Crown Attorneys and survivors. Examples of good treatment witnessed by the service providers included displaying sensitivity and skill in dealing with trauma survivors \((N = 2)\), making themselves available for pre-trial preparation as well as support before and during the trial \((N = 2)\), and intervening during cross-examinations when the defense attorney was being abusive or inappropriate \((N = 2)\). Incidents of poor treatment noted by the service providers often involved the opposite of those characteristics that they rated as good treatment, such as the Crown Attorney being insensitive to the survivor’s emotional needs \((N = 1)\), demonstrating a lack of commitment in terms of the time and energy devoted to the case \((N = 1)\), or a tendency to not intervene during cross-examinations that become abusive \((N = 1)\).

**Interactions with Additional Legal Support Personnel**

**Survivor perspectives on interactions with Victim/Witness Assistance Program workers.**

In Ontario, vulnerable individuals such as victims of violence have the opportunity to receive support from the Victim/Witness Assistance Program (V/WAP) in the period leading up to their trial. This program is designed to provide information regarding the court process, support the survivor emotionally, and provide coordinated
referrals as needed (Ontario Ministry of the Attorney General, 2013). Within the present study, all survivor participants reported being referred to and meeting with a V/WAP staff person at least once prior to beginning their court involvement. The main purpose of this contact was to receive preparation for their court appearance(s). The majority ($N = 5$) reported receiving an explanation of the court process from this person, and four received a physical tour of the courtroom ($N = 4$). Two women reported that their V/WAP contact liaised with other services and/or the Crown Attorney on their behalf, and two reported receiving accompaniment from this person during the trial. In addition to legal-related services, two women reported that their worker arranged referrals to other services (e.g., counselling), two reported receiving emotional support directly from the worker, and two received additional resources such as pamphlets and written information related to abuse.

The majority of the participants ($N = 6$) described their V/WAP worker as supportive. Specifically, two women reported that their worker was non-judgmental and objective; one reported that her worker made her feel comfortable; and one stated that her worker helped her to build a sense of personal confidence. Two women reported appreciating that their worker was available to provide assistance as much as they needed. However, three women reported believing that their worker did not provide adequate support and/or advocacy to them. Further, two felt that they did not receive adequate preparation from this person, and one woman felt that her worker was impolite, unprofessional and disrespectful.

**Researcher:** What would you have liked to have seen them do differently, the Victim Witness people?
P7: *Um, be polite and be respectful to the police’s witnesses. And actually prepare the person with what is to be expected. Do you know what I mean? Not “Here’s a box of Kleenex, now go sit down and watch the video. And, like don’t bug us before then either”.*

**Survivor perspectives on interactions with personally hired lawyers**

In addition to working with the court appointed Crown Attorney, three women reported hiring their own legal representation to assist them during their interactions with the criminal justice system. Two participants reported hiring a personal lawyer in order to get information on what to expect from the legal process, while one reported doing so as a means of placing additional pressure on the perpetrator. One woman hired a personal lawyer solely for the criminal trial, while two also enlisted their lawyer’s services for their Criminal Injuries Compensation Board hearings.

Although unable to have any standing within the criminal trial itself, these lawyers assisted the survivors by providing an explanation of and advice on the legal process (*N* = 3), which two women identified as critical in helping them decide to pursue legal action. One woman reported that her lawyer accompanied her while she made her police report, and all three reported having accompaniment from their lawyer during meetings with the Crown Attorney and Victim/Witness Assistance Program staff. By virtue of their presence at meetings with the Crown Attorney, two participants reported believing that their lawyer helped influence the charges laid and one reported that her lawyer was helpful in negotiating satisfactory bail conditions for the perpetrator.
Two women reported receiving emotional support from their personal lawyer and one reported that, after a negative interaction with the detective assigned to her case, her lawyer took action to ensure that the survivor did not need to have further contact with this detective. All three women described receiving preparation instructions and information from their lawyer, and two reported receiving accompaniment and support from the lawyer during the trial itself. All three women identified their interactions with their personal lawyer as positive and beneficial in helping them feel prepared and supported as they engaged with the legal system.

**Interactions with Defense Attorneys and Experiences While Testifying**

**Survivor perspectives on testifying and interacting with defense attorneys.**

The participants in the survivor sample were asked to describe and reflect upon their experiences testifying against their assailant and interacting with the defense attorney during the cross-examination. Coding of the responses revealed that of all the experiences that a survivor of sexual assault must navigate throughout the legal process, testifying in court and interacting with the defense attorney are the most difficult. The women interviewed in this study described experiencing a number of strong emotions and feelings while testifying. While a few of the emotions described were relatively positive, such as experiencing a sense of self-confidence \((N=3)\) and feeling powerful or in control \((N=3)\), the most commonly described feelings were unpleasant.

Three-quarters of the participants \((N=6)\) described feeling scared or worried about seeing their assailant in the courtroom, while some participants recalled feeling worried about being disbelieved \((N=2)\) or blamed \((N=1)\). Many participants recalled feeling confused \((N=4)\), analyzed or judged \((N=4)\) and/or overwhelmed \((N=4)\) by the
experience, particularly the cross-examination. Some described becoming tearful \((N = 3)\), while an equal number described feeling emotionally removed while on the stand \((N = 3)\). Half of the participants \((N = 4)\) reported feeling angry with either the perpetrator, defense attorney, Crown Attorney or some combination of the three. Two participants described feeling unsupported by either the Crown Attorney or personal support people while on the stand. In addition, two participants described feeling embarrassed discussing intimate details of the assault or their personal lives, and two reported feeling hurt by the questions and implications made by the defense attorney. Two participants stated that by the time their case reached trial, they were reluctant to testify but were forced to do so by the police or Crown Attorney.

Researcher: *And what made you stay with the court process, to decide to go through that trial when you were having such a hard time and didn’t want to?*

P1: *Well, you see, even though I was a victim, sometimes when you’re a victim you’re subpoenaed to finish it. So, because of that, I had no choice. I had no choice. I had to finish it.*

Researcher: *It wasn’t possible to quit?*

P1: *No.*

Researcher: *If it had been, would you have?*

P1: *Hell yeah I would. I would have dropped out like you wouldn’t believe.*

*Because nobody deserves that. To hear those questions or to see the offender.*

The main reasons given for the participants’ unpleasant feelings while testifying, aside from having to face their assailant, were negative interactions with the defense
attorney. Of the eight women interviewed, only one described any form of positive interaction with the defense attorney, stating that she found him to be polite and respectful in his questioning. However, this woman also reported experiencing a number of negative interactions with this same attorney, noting that at some points in his cross-examination she felt he was attempting to confuse her and manipulate her testimony.

The remaining seven women reported solely negative interactions with the defense attorney. Common themes involved the defense attorney’s use of tactics that were unfamiliar and, in many cases, restrictive. Five women reported feeling that the defense attorney was attempting to confuse or trick them. Reported techniques included forcing the survivor to answer questions in a restricted manner (e.g., “yes” or “no” only) or asking the same question repeatedly, apparently in an attempt to trick the survivor into changing her answer.

P8: I was scared, nervous. Um, yeah, I was scared and nervous mainly. The defense, it wasn’t that he was, um, he was more antagonizing and more repetitious, if that’s the right word. Almost trying to get you to tell a lie because you’re confused. So it was almost like “Did you say this?” and then five minutes later the same question. It would just be like that. But I was just straight so he wasn’t getting anywhere. But it was just like “Oh God, does this guy have memory loss?” It was a just a very long, drawn out kind of thing. Drawn out and almost the assumption that “You’re lying and I’m going to catch you” but I’m not and you’re going to get the same answer.
Three-quarters of the participants \((N = 6)\) reported that the defense attorney implied that they were lying, while three reported that the defense attorney misrepresented untrue information as facts. One woman reported that the defense attorney invaded her personal space while she was on the stand.

The inappropriate introduction of extralegal information was a significant theme across interviews. Nearly two thirds of the participants \((N = 5)\) reported that the defense attorney called their personal background into question, interrogating them on characteristics such as sexual history, previous victimization history, disability and mental health status, substance use, criminal record, current living situation, and available social supports. In some situations, the characteristics under consideration were true but unfairly used to attack credibility. For example, one participant had a history of previous victimization that had not been successfully prosecuted, which the defense misleadingly argued meant that she was lying about the current incident. In other situations, the defense attorney attempted to undermine the survivor’s credibility by directing attention to characteristics that were not true, such as falsely accusing the survivor of drug use or prostitution. In addition, two participants reported that their previous relationship with the perpetrator was used against them, one reported that she was challenged about her level of resistance during the assault, and another reported that her dress and actions immediately prior to the assault were called into question.

P4: [Describing how the defense attorney treated her] Brutal and aggressive and horrible. Horrible. He told me I deserved it, why was I out at three in the morning? I must have been a crack head. Going on about all kinds of things, you know, “Well, what were you wearing?” All kinds of things.
An unexpected theme which emerged in the present study involved the actions taken by survivors to counter the introduction of this extralegal information. Half of the women interviewed ($N = 4$) reported directly challenging the defense attorney about his/her behaviour or line of questioning while they were on the stand, and one additional woman reported wishing that she had. For example, when the defense attorney would attempt to question P4 about personal characteristics, she would challenge the implication that these characteristics were relevant to determinations of her perpetrator’s guilt:

P4: *But I mean I just kept going back to the fact that, like, when he would ask me questions, I just kept saying “Who cares? He didn’t assault me just because of this or that”. Um, I just kept to my ground on that. I think I did pretty well on that. I definitely did some crying on the stand as well but, um, I just kind of stuck to my guns.*

Researcher: *So you would actually say out loud “Who cares? That shouldn’t make a difference?”*

P4: *Oh yeah, that’s what I kept saying. And he’s like “That’s not answering the question” and I was like “Well, too bad”.*

In addition to challenging the defense attorney’s use of extralegal information based in rape mythology, some survivors resisted the defense attorney’s attempts to dominate them while on the stand. When P6 felt the defense attorney was becoming antagonistic and aggressive toward her, she attempted to set some boundaries on the interaction:
P6: I even - I don’t know if I told you - I even told the defense attorney that he was out of control and that, uh, if he didn’t calm down, um, that I would answer him once he calmed down.

Researcher: Really?

P6: Oh yes! And I’m standing there going “Ok, [P6 name], the judge is going to say something”. But the judge didn’t say a thing! [laughs] He knew, too, right. I heard him make a sigh or something, because he knew that the guy was being an idiot. So anyway, [the judge] was really good. I thought he was smiling, I thought I could hear him, like, smiling. [laughs]. So anyway, the defense attorney took a couple minutes.

While the experience of challenging the defense attorney directly reportedly left these women feeling a brief surge of power and confidence, the feelings that women described about their interactions with the defense attorney were predominately negative. Of the eight women interviewed, all but one reported feeling attacked by the defense attorney. Four reported feeling blamed, three reported feeling disbelieved, and four reported feeling humiliated.

Researcher: Thinking about the trial, how were you treated by the defense attorney?

P1: Oh, they made me look like, I don’t know how to say it, but not a good person. That’s what defense attorneys do. They make you feel not good. They’re representing the person that did what they did. They’ll make you feel horrible.
Whether it’s a rape or other things, they’ll make you the bad guy, not the other way around.

Participants also described feeling confused (N = 3) and angry (N = 3). One participant had such a negative experience while testifying that she reported leaving the courtroom partway through her testimony and refused to return to complete the trial, despite repeated pleas and threats from the police and Crown Attorney. As a result of her experiences during the cross-examination, she reported experiencing thoughts of suicide, engaging in self-harm, and ultimately admitting herself to the psychiatric department of a local hospital.

**Service provider perspectives on survivor interactions with defense attorneys.**

The service providers were asked to reflect upon their perceptions of the experiences that survivors of sexual assault commonly have with defense attorneys. Of the four participants, one reported that the defense attorneys she sees are typically “nice” and sympathetic toward survivors of sexual assault. However, this participant later noted that some defense attorneys do have a tendency to display aggressive behaviour toward survivors. The other participants reported witnessing primarily negative interactions, noting that they have observed multiple cases in which the defense attorney has verbally attacked the survivor in an attempt to discredit them.

SP3: *I’ve seen defense lawyers who are completely over the top and the victim is completely re-victimized all over by the system. Um, some of the judges allow this behaviour in the courtroom, which is disgusting. Um, and I’ve had plenty of them*
tell me that they would not speak up again to the police if this happened, because they would not want to be put through this again. The system is totally geared for the accused and the defense lawyers, some of them, can be extremely brutal to victims while they’re testifying... And I’ve found that many victims feel that they’re on trial, not the accused. You know, the way defense lawyers ask them questions, I see it almost every day, they’re treated like they’ve done something wrong and that they’re on trial.

Two participants noted that a common defense tactic is to ask very specific questions in an attempt to confuse or discredit the survivor.

SP3: I find in these cases a lot of the times the defense will get into such specifics, like “Were the lights on or off? Was it his right hand or his left hand?” And when they’re being victimized at the time, they’re not really paying attention to whether or not the lights were on, the door was open, how wide was that door open. So when you start to ask enough questions and the victim is saying “I don’t know, I don’t know, I don’t remember, I don’t remember”, it attacks their credibility and their reliability. And that’s why a lot of these cases get off on the charges. Because that’s what it boils down to, these cases are usually he-said/she-said and there aren’t usually witnesses. So if you have a good defense lawyer who can break them down and get them to say that enough times, the judge has reasonable doubt at the end of the day.
As a result of these experiences, the participants noted that survivors are often left feeling disbelieved \((N = 2)\), attacked \((N = 2)\), unsure or unable to provide “right” answers \((N = 2)\), re-victimized \((N = 1)\), and reluctant to take further legal action \((N = 1)\).

**Interactions with Judges**

**Survivor perspectives on personal interactions with judges.**

All eight women in the present study were involved in trials in which the verdict and sentencing was determined by a judge only, with no jury involvement. Despite the important role played by the judge in determining case outcome, the participants typically had little to say about their interactions with the judge, suggesting that they tended to see the judge in more of a peripheral role, supervising the overall process of the courtroom but having little direct interaction with the survivor.

When asked about their experiences with the judge in their case, two participants expressed frustration that the judge did not intervene on their behalf when they were being cross-examined by the defense attorney. One woman was upset that the judge would not allow the trial to be postponed due to illness, and one expressed exasperation that the judge in her case read from the incorrect file during the trial and fell asleep at one point in the proceedings.

Three of the women interviewed were pleasantly surprised that the judge allowed them to challenge the defense attorney while they were on the stand. One survivor was pleased that the judge issued a statement when adjourning the case about the perpetrator’s violent actions representing a violation of societal rules. Three participants reported feeling that the judge was accommodating of their needs and three described the judge as sympathetic and empathetic.
Service provider perspectives on survivor interactions with judges.

In their interviews, the service providers described noticing examples of both positive and negative behaviour from judges. Positive interactions were described as those in which the judge displayed sensitivity to the survivor’s emotional needs while testifying, through actions such as offering breaks when she appeared upset \((N = 2)\), as well as interrupting abusive behaviour from the defense attorney \((N = 1)\). Negative interactions included allowing abusive behaviour to continue unchecked from the defense attorney \((N = 1)\) and displaying insensitivity and a lack of knowledge regarding the victim experience and traumatic aftermath \((N = 1)\). One participant noted that certain judges within her workplace were known to acquit the majority of the time:

SP3: *We’ve got some judges who are notorious at acquitting people, um, so if we know we have a case in front of that judge, we almost feel like “Why should the victim even bother?” because we know what the result is going to be before she even talks. So we’ve got a lot of judges unfortunately like that here, who are known to acquit on cases.*

Survivor Preparatory Strategies in Sexual Assault Cases

In addition to understanding the interactions that sexual assault survivors have with legal personnel, the present study sought to explore the ways in which women perceive the legal system, including any myths and stereotypes that exist within it, and how this perception shapes their preparation activities and presentation strategies for court appearances.
The women in this study described taking a number of actions to prepare themselves for their encounters at various levels of the legal system, in particular their initial decisions to file charges and engage with the police and their subsequent role testifying against their offender at trial. Although some women reported contacting the police without conscious preparation, the majority \((N = 5)\) identified a number of physical, emotional and/or psychological preparatory activities which enabled them to file charges. These strategies, discussed in greater detail in the previous section on motivations and concerns about initiating legal action, included researching the criminal code and legal process, assessing personal emotional/psychological readiness for legal action, and efforts to preserve or obtain physical evidence of the assault. The motivations behind these preparatory activities varied. For some, the goal was to protect evidence, while for others it was to enhance their perceived credibility. For many, preparation was undertaken to build knowledge and confidence in one’s understanding of and ability to undertake the demands of legal action. Whatever the reason, these activities were described as vital in allowing these women to make the decision to initiate legal proceedings.

Half of the participants denied engaging in any specific preparation activities for their contact with the Crown Attorney, possibly because they described very limited contact with this individual. Indeed, two of these women did not meet their Crown Attorney until immediately prior to the trial and therefore any preparatory activities undertaken before that meeting were focused more on their upcoming testifying role rather than preparing for meeting the Crown Attorney per se. Of the remaining four women, all reported engaging in preparatory activities designed to support their case and
increase their perceived credibility. Three reported preparing for their meeting(s) with the Crown Attorney by obtaining materials that would support their statement, such as securing copies of documents from previous non-criminal trials ($N = 2$) or other forms of evidence ($N = 1$), or preparing a detailed affidavit in advance of the meeting ($N = 1$). The fourth woman, who described meeting regularly with the Crown Attorney leading up to her trial, described making an effort to present herself professionally through her dress, grooming and demeanour at all meetings with the Crown Attorney in order to demonstrate that she was credible and committed to the prosecution of her case.

Contrary to the variation seen in the level of preparation undertaken prior to police and Crown Attorney contact, every participant in this study described engaging in multiple preparatory activities leading up to testifying against their offender at the preliminary hearing and/or trial. A number of these preparatory activities were aimed at familiarizing the survivors with the court process and their role within it. Four women reported completing a tour of the courtroom with a Victim/Witness Assistance Program worker, the Crown Attorney, and/or their personal lawyer, in order to provide some familiarity with the physical space in which they would be testifying. Some of the women also engaged in research on the legal system, through reviewing the information and pamphlets provided by the Victim/Witness Assistance Program ($N = 2$) or engaging in independent research and reading of books on the legal process ($N = 1$). Two of the participants reported drawing upon previous academic or professional training that they felt was relevant to the task at hand, while two reported drawing upon previous court experiences for guidance on what to expect and how to present themselves.
Cognitive preparation was a theme commonly endorsed by participants, as many of the participants’ pre-trial preparatory activities involved mental preparation for the act of providing testimony. Review and rehearsal activities were common, including reviewing the survivor’s videotaped or written police statement \((N = 6)\), reviewing personal notes made regarding the assault \((N = 3)\), and rehearsing one’s testimony \((N = 5)\). These activities were reportedly undertaken as a way to refresh the survivors’ memories of the assault and ensure that their story was consistent \((N = 5)\), which was important to the women as a way of ensuring that they would appear credible and be believed:

P6: Um, it was interesting because, um, one of the things I learned from the Crown Attorney was that the less you have to be prompted, the better they believe you in court. Um, so everything was right there so I could testify. One of the things was I had to also be careful and make sure that everything, like, there’s a lot of pressure and I felt intense pressure making sure the information was exactly the same, that there wasn’t any, you know. Because they look for continuity of information. So there was a lot of intense focus on “Ok, so what I wrote was this”. And so I had to review everything and review my notes all the time to make sure that I was saying the same thing, because they’re looking for continuity of information, that it’s always the same. And even if you have a memory that comes forward and you add that in, then all of a sudden they think that you’re changing your story. And you’re not! You’re just having more memories surface, right? So I had to be careful of all that. That was incredibly intense. I had to be really, really focused...
While typically identified as a helpful strategy, for some women conducting this review of the incident felt like a “test” and left them feeling emotionally removed from their experience:

P3: *So the Crown Attorney gave me, um, my statement to the police, both in written form and in the DVD so I could watch it and so that I could know what I was going to be questioned on. So, emotionally though it was a very odd experience because I really just wasn’t there. It almost felt like I was learning what I had to say so that I could say it correctly. It almost didn’t feel like my own experience. I really didn’t pull it out in that I was talking about what was happening to me. Testifying, I was like “Alright, here are the things that I must say. Here are the things that I said happened and I cannot deviate from said script”.*

Psychological readiness was also an important theme across interviews, with six of the participants describing engaging in some form of independent emotional-psychological preparation. Each of these six women described engaging in some form of positive self-talk. P6, when describing her psychological preparation for testifying, noted the high level of commitment involved in this preparation:

P6: *Um, it’s a lot of head work. You always have to be in your head, giving yourself, you know, that self-talk. So I had to work really hard and prepare myself for about three weeks ahead of time, just to give myself a pep talk and know that.*
For P7, her independent psychological preparation was identified as the most helpful strategy she engaged in:

P7: *It was, uh, the best thing I did to prepare to go in there was just “You tell the story from your higher mind for the little girl who’s in there, with the facts. Don’t go crazy zigzagging all over the place. This is not the place for that. You go in there and you tell it like it was and you let the chips fall as they may.*

Many participants also spoke about preparing themselves for court by seeking emotional support from a variety of sources, including counsellors (*N* = 2), personal lawyers (*N* = 1), personal support systems (*N* = 1), and through prayer (*N* = 1). One participant reported taking care to avoid unsupportive people prior to her court appearance, while another reported enlisting supportive people to be in the courtroom as a way of providing distraction and protection from seeing the perpetrator.

Across the interviews, appearance-related concerns were one of the most significant and consistent themes to emerge. Appearance modification was the most commonly reported form of trial preparation, with every participant reporting wearing specifically selected clothing, typically of a professional or conservative nature. In addition, two women reported styling their hair in a specific way and three women reported altering their make-up, with one making a point to wear make-up and two deliberately not wearing make-up. The participants explained these actions as designed to cultivate a certain image – typically as someone who was un-provocative, “appropriate” and believable – in order to make a positive impression on the judge.
P7: So when I prepared myself I made sure I had, like, the straight looking clothing. You know, a nice brown pair of proper not flashy pants. Nice proper, you know, shoes. Ok, they cost $300. So what? I only buy one pair of shoes a year. And I had a jacket on.

Researcher: So why was it important to you to wear expensive shoes and those clothes?

P7: Um, to be looking nice and normal and, um, not one way or the other. Like, I didn’t put on any make-up. Like, court dress. Right? There’s court dress. Nothing flashy, nothing fancy, nothing sparkly, nothing shiny.

For some, these efforts at appearance modification also impacted their personal sense of confidence:

P5: I dressed really nice too, which made me feel good even though it sounds like a small thing. Because, like, I don’t usually dress professionally, I don’t. It made me feel kind of like a different person because, you know, I felt like a more powerful person because I had gel in my hair, and then dress pants and a jacket, you know, and everything.

Some women reported making decisions about their appearance independently, while others reported receiving very specific instructions regarding how – and why – they should present themselves a certain way. In total, six participants reported receiving specific instructions on how to dress. Two were further instructed on how to wear their make-up, and one was instructed how to wear her hair. For example, P4 described
receiving instructions from her personally hired lawyer on the most advantageous style of
dress and make-up:

   Researcher: *Did you do anything physically to prepare yourself, either physically
   in terms of your body or in terms of your appearance and the clothes you
   selected?*

   P4: *Yeah, I wore a suit. I was told what to wear by my lawyer actually. My lawyer
told me what to wear.*

   Researcher: *And she recommended a suit?*

   P4: *Yeah, she recommended something not a dress. She recommended certain
   things. Um, yeah, no, I dressed up in a suit and I didn’t wear makeup. She told
   me not to because she was like “You’re going to be bawling your eyes out up
   there and you’re going to have stuff everywhere”. And she also said that it makes
   you look more innocent.*

   Researcher: *Oh, to not wear makeup?*

   P4: *To not wear makeup.*

   Researcher: *Oh, ok. And why not a dress?*

   P4: *I think, she didn’t say anything but I’m assuming so that I won’t look like a
   slut. I’m assuming that’s what it was.*

   Researcher: *So pants would be less provocative or something?*

   P4: *Yeah, yeah, that was exactly right.*

   As P5 further explains, instructions regarding appearance were often quite
detailed and designed with the creation of a specific image in mind:
P5: Actually the Victim Witness lady gave me some tips on that. You know, she said like “No earrings, no makeup”. You know, she said “Wear your hair back and not loose”. And just stuff like that. I asked her because I didn’t know how you dress for court, right.

Researcher: Why no earrings or makeup?

P5: Um, because it might make them think that maybe I was dressing like a whore and deserved it or something. Like, if you have no jewellery and no makeup, you know, then you probably didn’t ask for it. And she was saying that in a very nice way. She was like “Honestly this is what people think and it’s just not going to help”.

Every survivor in the present study described engaging in multiple preparatory activities, many of which were initiated under their own volition. However, in a number of cases, the strategies undertaken were also informed by instructions received from the Victim/Witness Assistance Program (N = 6), the Crown Attorney (N = 4), their personal lawyer (N = 3), and/or the detective assigned to their case (N = 1). Some of these instructions consisted of practical information, such as taking the survivor on a tour of the courtroom (N = 4), encouraging a review of information about the legal process (N = 5), and recommendations such as encouragement to take breaks as needed during their testimony (N = 3).

Three-quarters of the participants (N = 6) also reported receiving instructions on how to present themselves in court. In addition to recommendations regarding their dress and appearance, two women described receiving instructions on how to sit while
testifying (e.g., not to fidget) and three were instructed to make eye contact with the lawyers and judge. Four were instructed on the appropriate types of emotion to display, with two women told not to show any anger and two instructed not to feel – or at least not to show – any guilt or doubt on the stand.

Preparation also sometimes included detailed instructions on how to respond to questions asked by the defense or Crown Attorney. Six women were instructed to prepare themselves to answer questions in a specific way (e.g., directly, without prompting), and three received specific instructions on how to speak (e.g., clearly, slowly, without "um", etc.). As P4 describes, these instructions were aimed at ensuring that survivors appeared honest and credible:

P4: And [personally hired lawyer] told me not to say “Um” a lot. She said that then it looks like you’re thinking and that you’re making things up as you go.

In addition, one woman was instructed on whom to include – and not include – in her support system in the courtroom. Another was instructed not to take public transportation to the trial, due to concern that this may present her as having limited financial resources.

The participants described engaging in these various preparatory activities as a way of ensuring they appeared honest (N = 3) and “appropriate” (i.e., neutral or unremarkable; N = 4). Half of the participants (N = 4) reported that their preparatory efforts were an attempt to feel and/or appear “strong”. In addition, the majority of participants (N = 6) described being motivated at least in part by a desire to feel more comfortable and less anxious during their testifying duties.
Three-quarters of the women \((N = 6)\) reported finding at least some of these activities helpful in preparing them for their testifying role, particularly in terms of increasing their comfort and confidence testifying. However, all but one of the women interviewed reported feeling that, as a whole, the preparation received from legal professionals was inadequate for preparing them for the difficult task that lay ahead. One woman reported feeling that preparation activities such as reviewing details about the assault and rehearsing testimony forced her to relive her victimization and experience associated emotional distress. Others reported that the preparation they received left them unprepared for viewing the evidence at trial \((N = 1)\), being cross-examined \((N = 4)\), and the disappointment of learning the case outcome \((N = 6)\).

**Researcher:** *Do you remember if you felt prepared for the trial? Did they help you feel prepared for what to expect?*

**P2:** *They did, but I guess I wasn’t expecting to be let down so bad like that. After all that waiting! I thought, you know, he’s going to be hopefully put away for at least a good maybe six months or close to a year, whatever it is that the legal system gives somebody for sexual assault. That’s what I had hoped and believed and prayed for. It didn’t happen.*

**Image Construction in Sexual Assault Cases**

**Survivor perspectives on rape myths and image construction.**

As the participants discussed their pre-trial preparatory strategies and the reasons behind them, the importance of crafting a particular image while testifying emerged as a salient theme. Every participant in this study was emphatic that an “ideal” image of
victimhood exists within sexual assault cases, although variation was seen in the particular characteristics which individual participants ascribed to this image. When asked to define their conceptualization of the “ideal victim”, the participants identified a number of personal and assault-related traits and characteristics that they believed influence the ways in which a survivor of sexual assault is evaluated. For example, P4 described the importance of socially desirable behaviours (e.g., virginity, sobriety) as well as physical characteristics (e.g., small stature, youth) in enhancing a sexual assault survivor’s credibility:

Researcher: Based on your experiences, do you think that there is kind of an idea within the legal system of sort of, I don’t know what the right word is, an ideal victim or sort of a credible victim?

P4: Yes! For sure! And that credible victim has to be like a little innocent tiny girl who, you know, has never had sex and has never done drugs and has never done anything wrong in their life.

P5 expanded upon these ideas in her interview, stating that she believed that in order for a case to be easy to prosecute the victim would have to have an “impossible” array of stereotypically ideal characteristics:

Researcher: Do you think that in the courts there’s a kind of ideal victim that they have in mind?

P5: Yes, very much so. I think for the Crown to be able to think “Oh yes, I’ve got this case wrapped up in a nice little bow”, this is how impossible it would have to be: The victim would probably have to be a virgin. The victim would probably
have to be, like, you know, a nice, White, middle class female who, you know, wears long sleeves and long pants every day. Um, would probably have to, um, you know, have either been in her home with the doors locked or in a very public place where she couldn’t possibly have been accused for wanting it because she was walking down an alley on a shortcut to get home or whatever. Um, probably would have said no with complete certainty and would have somebody else be able to vouch for the fact that they heard her say “No, don’t do this”. Right? [She] would probably have called the police immediately after it happened and then had, you know, no fear and complete faith in our system and everything like that, which would mean that she would probably feel like she had no secrets or anything to hide, such as past abuses, past drug use, past anything else, past mental health issues or anything like that, or even know anybody in her immediate family that might be able to have those issues.

Across the interviews, a rather extensive list of “ideal victim” characteristics was generated. As with the other data collected during this study, the responses to this question were grouped according to theme, compared across interviews, refined and tabulated during the two stages of coding. While a number of responses were very similar across interviews and could be collapsed into a larger code, there were a number of single responses that could not be combined without losing the integrity of the response. Given the importance of capturing the definition(s) of “ideal” victimhood as it was understood by the participants in this study, all responses to this query are presented, even those endorsed by only one participant. Taken together, the women interviewed in this study
identified the “ideal victim” as characterized by some or all of the following attributes: The “ideal victim” is virginal, innocent and naïve ($N = 3$), specifically not a prostitute ($N = 2$), and always conservatively and professionally dressed ($N = 4$). She is “tiny” in stature ($N = 1$), feminine ($N = 1$), heterosexual ($N = 1$) and White ($N = 2$). She belongs to the middle class or higher, with easy access to financial resources ($N = 3$), is not homeless ($N = 2$), is educated and/or holds a professional job ($N = 4$), and has strong English language skills ($N = 4$). The “ideal victim” is sober and substance free ($N = 2$), has no mental health issues ($N = 1$) or physical/mental disabilities ($N = 1$), and has no previous history of victimization ($N = 1$). She does not have a criminal record ($N = 1$) and is not involved with the Children’s Aid Society ($N = 1$).

The participants also emphasized that the “ideal victim” must experience an “ideal assault”. Specifically, she must be assaulted in an "appropriate" location and time (e.g., not while out alone at night; $N = 2$), say "no" with certainty ($N = 1$), be one of multiple victims ($N = 1$), have the assault witnessed by a third party ($N = 1$), and have evidence of physical injury/assault ($N = 1$). She contacts the police immediately after being assaulted ($N = 1$) and is cooperative and has complete faith in the legal system ($N = 1$).

Within the present study, there was some disagreement about the benefits of being knowledgeable. Two women felt that it was ideal for a survivor to understand the legal process and know how to access resources, while one felt that it was better to be uninformed about the legal process and resources. Two women reported that the ideal victim is “damaged” by her trauma, while one stated that she is left “helpless”. The ideal
victim was also described as not angry ($N = 2$), with no ulterior motives for legal action ($N = 1$).

Interestingly, one participant reported believing that two different ideals exist, depending on the particular situation and needs of the survivor. P7 advocated that being conservative and like “cardboard” was the ideal image to portray in front of the courts, but believed that a tougher image would be beneficial in ensuring commitment and better treatment from the Crown Attorney and Victim/Witness Assistance Program staff leading up to the trial:

P7: *There is the ideal way and that would be the cardboard thing. But you know what, I think if I’d walked in there with 600 different colours of red nail polish on, snapping my gum, wearing a lot of makeup and talking like a whore, I would have won and they would have lost. [laughs] You know, if I’d been some kind of snap-my-underwear, g-string wearing bitch who was not all perfect, these girls [the Crown Attorney and Victim/Witness Assistance Program workers] would have been afraid of me in a different way, afraid of me as the authority. You know what I mean? Afraid of me as the fucking bitch who’s not going to take any shit from no fucking lawyers... I think if I’d been scary looking, these girls would have, you know, humped it. You know what I mean? So being prepared to go in, I would say yes there’s an ideal way and the way we’re supposed to do that at the federal level. But also there’s an ideal way to be going in there being kind of like “I’m not taking any shit”.*
Reflected in the comments of all of the participants was an understanding that the perceived ideal, whatever its specific components, was not reflective of the majority of survivors – or women in general – and therefore constituted an ideal that the majority of women would fail to reach, often with serious consequences.

P5: *You know, I think it’s just so absolutely - I’m not saying that it’s impossible or that there aren’t people like that who get assaulted. You know, I think there are. But I think our statistics are so unreflective of the actual prevalence of sexual assault because, you know, 99.9% don’t meet that category, and so I think 99.9% probably don’t get the justice from the justice system or don’t even report because they feel as though they won’t get that justice.*

Despite their awareness of the unrealistic nature of these stereotypical victim ideals, the survivors in this study all reported attempting to shape their own presentation to meet certain of these characteristics. While the specific tactics and goals varied, every participant reported attempting to construct an image that would allow them to present themselves in a stereotypically favourable way while testifying. Many women reported wanting to appear honest \((N = 6)\), innocent \((N = 2)\), “appropriate” (i.e., neutral, unremarkable) \((N = 4)\), and strong and/or assertive \((N = 5)\). They wanted to appear professional in their dress and demeanour \((N = 5)\), as well as unprovocative and/or virginal \((N = 4)\). They wanted to appear serious and committed to the case \((N = 3)\), as well as calm, collected and/or stable \((N = 5)\). They described wanting to appear victimized by the assault \((N = 2)\) and sad and tearful \((N = 2)\), but were cautious of
appearing angry or impatient (N = 4) as well as vindictive or motivated by some ulterior motive such as revenge or money (N = 3).

In addition to their overarching goal of helping ensure the successful conviction of the perpetrator, the women described a number of specific motivations underlying this image construction. Three participants reported wanting to ensure that the lawyers and detectives involved remained committed to their case. Two wanted to increase their personal sense of confidence and comfort. One woman reported that she was simply following the instructions she was given. However, the most common reason given by all of the participants was that they were invested in presenting themselves as someone who would be believed. For some, this involved emphasizing the existing characteristics or privileges that they possessed which were consistent with the “ideal victim” image:

P3: *I think that there are a lot of biases in the justice system and I feel like I got lucky because if there is an unconscious image of who is honest, it is the Caucasian professional woman who is not too young and not too old, and has no reason to lie, and is doing this for the right reasons. And as much as possible, I realized that that was a preconceived notion that was working for me, and to that extent I tried to be that person as much as possible*

In P5’s case, the prosecution attempted to downplay certain potentially damaging aspects of P5’s history and focus the judge’s attention instead on the stereotypically consistent aspects of her experience:

P5: *Yeah, they tried to make me seem, you know, like I was just this completely misdirected, misguided and lost child who had happened upon [perpetrator] and*
he preyed on me. You know, which in a way was exactly what happened but I feel like they used that to win their case, you know, and really avoided all the aspects that were just as real. Like, for example, you know I was using drugs; I was living on the street. And of course, you know, the other side, the defense was trying to use all that stuff but, you know, I felt like they, uh, they weren’t focusing on it.

In addition to drawing the judge’s attention to any pre-existing aspects of their appearance or background that were stereotypically consistent, each of the participants also described engaging in a number of intentional efforts to construct an “ideal” image, through deliberate modification of their dress, emotional presentation and body language. For example, P5 reported paying careful attention to her appearance and body language while testifying.

Researcher: Did you try to do anything to make yourself more believable?

P5: Yeah, for sure. I mean, the dress was a big part of it, right, dressing for it. You know, I wanted to look like the kind of person who would be believed. Not that there really is a kind of person, but you know what I mean. And, um, you know, I was very conscious of it the whole time. Like, “What am I doing with my hands?” Because you always see on like talk shows and stuff, like, if somebody tucks their hair behind their ears, it means they’re lying or whatever. So I wanted to be really still, you know, and stuff like that.

Emotional image construction was another commonly reported theme, with several participants reporting that they were vigilant in their efforts to fall within a
narrow range of “acceptable” emotional expression while testifying. One participant reported becoming very tearful while testifying and, although she reported wishing others hadn’t seen her in that state, was aware of the potential benefits of this emotional display in convincing the judge of the negative impact her victimization had on her:

P2: Well, I suppose it was a good thing, in a sense, right? So maybe that they could understand, you know, what it's like and know that I wasn’t maybe exaggerating things.

For many, a balance was sought between demonstrating that they were significantly emotionally impacted while still maintaining enough composure to convey stability and credibility. For P3, this pressure to appear, as she put it, “sad and devastated but not broken” left her feeling constricted and emotionally removed from the experience:

P3: And I felt like, yes, that I had to be, I could not be angry when I was cross examined because then I would seem out of control. And I had to be sad and, you know. Yes, I felt like very much that I should display certain emotions and should not display others, and it just was not real. The whole thing just never felt real.

For some, striking a balance between assertiveness and anger was perceived to be important but required considerable preparation and effort:

P6: [describing the emotional image management she engaged in while testifying] And trying to be assertive and not come across as being an angry person because if you’re an angry woman then they don’t listen to you. So there was all of those
things. There’s a lot of myths and stereotypes out there, so that was rolling through my head. So I’m thinking “Ok, [P6], you have to be diplomatic here. Step back. Don’t let them suck you in to whatever. You know this is going to happen so don’t get sucked in to all that sort of stuff”.

Several participants described consciously engaging in specific behaviours to ensure that they were not perceived to have an ulterior motive for accusing the perpetrator. For example, P6 made sure that she presented herself as “diplomatic” and verbally clarified her motivations for prosecuting her offender while testifying:

P6: I was somebody who was diplomatic and reasonable and understanding. I couldn’t be vindictive. So I knew that there were things for motive that they would be looking for as well and so I was very careful about all that stuff. I talked about “I just want closure. It’s the last thing for me”... Um, again because there was, um, a lot of the courts think that women come forward because of revenge. And it isn’t about revenge. It’s about holding the offender accountable for his behaviour. But there’s these old myths that exist and part of that, or maybe historically even around sexual abuse, there’s stuff that goes way back that’s really ensconced in the legal system.

P4, on the other hand, was conscious of the impact that her clothing and means of transportation to the trial could have on her perceived motivations for taking legal action:

P4: I had to go out and buy a suit. Like, I didn’t own one. I didn’t own the right shoes. I mean, you know, so it was a whole new experience for me really. Even
things like, I forgot to tell you this, even my lawyer told me she wanted to pick me up and drive me there because she didn’t want me to look like I was taking the subway. Just like little things where when I think about it now I’m like “Because I would look poor if I’m taking the subway! So of course I have to be in a car so I’m not a poor victim who wants money”.

When asked to reflect on the impact of their image construction, six participants indicated that they felt that presenting themselves in a way consistent with stereotypical perceptions of the “ideal victim” helped them appear more credible. In addition, one woman felt that it helped others understand and empathize with her situation; one felt that people judged her more positively than they otherwise would have; and one felt that her image construction efforts helped ensure that legal professionals remained committed to the case. One woman felt that her image construction efforts did not make any difference to the treatment she received or the outcome of her case.

Despite their efforts at image construction, half of the women reported believing that their case was still negatively impacted by “non-ideal” characteristics that they possessed. For example, P8 attributed some of the negative treatment she received from the police to the fact that she did not meet stereotypical visions of victimhood:

P8: Well, one of the things that didn’t fit into the profile was that I wasn’t helpless. I wasn’t like “Oh, help me”. I wasn’t the stereotypical victim of “Poor me”. I was at a point in my life where I was like “I’m dealing with this. I know what the law says. This is what’s going to happen”. And I don’t think that fit well with certain people’s profiles of who I was and what I was saying. And accessing
resources didn’t help with that, because you’re supposed to be helpless... Having knowledge in general isn’t a good thing. I find in general a victim is supposed to be, or at least a profile of a victim is a helpless, feeble, waiting upon people to rescue them, if that makes any sense. And that very much plays into stereotypes of fairy tales and especially women victims. There is very much of a “This is who women are, they need to be rescued”. And if they’re coming in for help and they know their stuff, then she must have done something wrong because she knows this.

When reflecting on the outcome of her case, P7 wondered if the acquittal of her perpetrator was related in part to the level of physical and psychological damage she experienced in her assault:

P7: I think what happened was I wasn’t hurt physically enough. Or my ego, like, my personhood, my feminine, my human being had not been wounded enough.

An awareness of the injustices faced by those who do not meet “ideal victim” standards was an evident theme among all the participants, regardless of their personal compatibility with these standards or case outcomes. For example, P3 reported attributing the relatively successful outcome of her case (a three year prison sentence reached by plea bargain) to the fact that she met stereotypical conceptions of a credible victim by virtue of her skin colour, age, professional and financial status, understanding of the legal system, ability to access community resources and hire her own legal representation for guidance, as well as the fact that additional victims came forward to report abuse by her
perpetrator. Despite expressing gratitude for these advantages, she was cognizant of the improvements needed in the legal system and the barriers faced by those who were less privileged:

P3: Um, I feel like it should be easier, because I had a, I’ve said this through the process many times and like, I’m intelligent, I’m not young, I get this whole process, I’m dedicated to it and I had a really tough time with it. So I’ve got just about every advantage that you could want in this system and I still found it really hard. Like, what about everybody else who’s going through this system? And like yeah, there are a few people who’ve got it better than me but there are very few. I know the majority of people going through this system don’t have the advantages that I do. And I wish it were easier, I wish the whole thing were easier. Um, because, yeah, I found the justice system to be really hard to deal with and I never, I will never feel satisfied with their, with my justice system’s treatment of me. Because it’s mine too. I am part of society; I am part of that process. I feel like it can be done a lot better. I feel like I could have been taken care of more. I feel like I could have been given more information. I feel like [pause] just easier. I just wish it were easier because I had enough stuff going on.

Similarly, P5 spoke about the advantages she had in creating a persuasive Victim Impact Statement as a result of her strong writing ability, and expressed concern about the outcomes for women with limited language skills or substance abuse issues:

P5: You know, I worry about people who are not so good at writing. It’s not for everybody. Everybody has different talents and skills. And, you know, I know for a
fact that if I was not that good at writing, that he would not have gotten the verdict that he did. So it really makes me think, you know, what if I was not literate? Or what if, you know, I had a serious substance abuse issue and I couldn’t stay clean long enough to write one? Or what if, you know, there’s a lot of valid reasons why I may not have been able to contribute such a powerful victim impact statement, you know. If I was anyone else, you know. And I think it’s sad that they need you to give an example of how educated and good at writing you are to be able to say if you’re worth having your offender in prison. I don’t like that very much. Although I’m glad that it worked out in my case, I don’t think it’s very fair.

Overall, whether based on their personal experiences or their understanding of the impact of myths and stereotypes within the justice system, the participants agreed on several consequences that generally affect women who do not meet stereotypical images of ideal victimhood. In their view, “non-ideal” victims are less likely to be believed (N = 3), receive more blame (N = 4), and receive poorer treatment from legal professionals (N = 3). They are more likely to get “lost” in the system (N = 2), and ultimately receive less justice and fewer convictions of their perpetrators (N = 6). As P5 described, there was a shared belief that there is simply less commitment to supporting those survivors who do not meet the criteria of ideal victimhood:

P5: And I feel like, you know, the system is set up to protect people who are otherwise completely innocent and naive in all areas of their life, as I was, but are not committed to protecting people who have, for example, maybe been sexually
assaulted more than once just because they’re afraid that maybe it will look bad in court and then they’ll lose. Or are not committed to protecting people who attend Narcotics Anonymous because, oh, what’s going to happen? They’re going to say “Well, you’re a drug user and you blacked out” or whatever, and it’s going to end up being a trial on me and me having to do hair tests and bloods tests and everything even if I’m not using, you know, just to prove my case, and it’s going to cost time and money and then it’s not worth it. Or, you know, I don’t feel like they’re committed to protecting, um, people who are involved with the Children’s Aid Society, because well [sarcastically] “If you’re being accused of abuse or a terrible parent, which you must be if you’re involved with the Children’s Aid Society, then how could it possibly be that you were innocently raped?” You know? And even though those things aren’t true and even though I don’t think the Crown believes those things are true, it’s just the risk that you take when you open a case that you think you’re destined to lose. They just don’t like to take that risk.

Service provider perspectives on rape myths and image construction.

The data provided by the service providers interviewed within the present study confirmed the perceptions of the survivor participants, as every service provider attested to witnessing stereotypical rape myths operating within various levels of the legal system. A number of specific myths were identified, the most common being the myth that women “ask for it [sexual assault]” by dressing in a provocative manner. Every service provider reported believing that this myth was still present among police, lawyers and/or
judges as a group. Another commonly reported myth that the service providers saw exerting an influence within the justice system was the misconception that women invite sexual assault by behaving in certain ways, such as being out at night or in high risk areas \((N = 2)\), working in the sex trade \((N = 1)\), or consuming alcohol or drugs \((N = 1)\). Additional myths reported included the belief that women commonly lie about sexual assault \((N = 2)\), that an inability to clearly recall all details of the incident means that the survivor is lying \((N = 1)\), that sexual violence is more common in certain religions/cultures \((N = 1)\), and that sexual violence is an inevitable part of arranged marriages \((N = 1)\).

The presence of these myths were believed to have a number of negative impacts on the treatment that survivors receive while interacting with the legal system, as well as case outcomes. The service providers reported feeling that, as a result of these stereotypes, sexual assault survivors as a whole, and particularly those whose experiences were consistent with negative stereotypes, were less likely to be believed \((N = 2)\) and more likely to be blamed \((N = 2)\). Some service providers felt that there was a danger of survivors feeling demeaned and unsupported by legal professionals \((N = 2)\); internalizing blame if they personally believe these myths \((N = 1)\); and that they may be less likely to report their victimization due to fear of receiving a negative, blameful response \((N = 1)\). Cases consistent with stereotypical conceptualizations of sexual assault were considered more likely to proceed to trial, such as those with stranger perpetrators \((N = 2)\), forensic evidence \((N = 1)\) and involving multiple victims \((N = 1)\). Regarding case outcome, the service providers were somewhat unsure of the impact of stereotypes. However, two reported that they felt it was likely that a belief in stereotypes could lead to a greater
chance of acquittals and, overall, the cases more likely to receive guilty verdicts were those with stereotypical characteristics, such as those involving witnesses ($N = 2$), multiple victims ($N = 1$), and cases involving recent rather than historical sexual assaults ($N = 1$).

In addition to their perspectives on general rape myths within the legal system, the service providers were asked to reflect upon any specific survivor characteristics believed to have an influence on legal interactions. In response, the service providers identified a number of characteristics which they believed comprise the most beneficial or “ideal” image that a survivor could have when appearing in court and engaging with legal professionals influenced by stereotypical notions of rape and rape victims. Data analysis revealed that physical appearance characteristics were believed to be of greatest importance, in particular style of dress. All of the service providers agreed that wearing provocative, sexy or otherwise inappropriate clothing would have a negative impact on the survivor’s perceived credibility, leading them to be disbelieved and/or blamed. As such, all participants agreed that it was beneficial for a survivor to present for court in professional attire, specifically “business casual” and conservative clothing, as this would render them more likely to be believed and less likely to be blamed.

Additional physical appearance characteristics were also identified as having an impact, albeit less frequently and with more variation across participants. These characteristics included style of make-up ($N = 1$), sexual orientation ($N = 1$), gender presentation ($N = 1$), and skin colour ($N = 1$). SP4 reported that, based on her interactions with clients engaged with the legal system, she believed that heterosexual women who present in a feminine manner were more likely to be believed. Regarding skin colour,
although SP1 felt that all women of colour were more vulnerable to negative stereotyping, she felt that South Asian and Muslim women were at a particular disadvantage:

SP1: Um, definitely with South Asian women there is an underlying assumption that all these women are dominated by their husband and they’re taught culturally to be very submissive and things like that. So there is already, we’re working at that stage where as soon as she walks in the door, that’s the assumption made about her. Or the assumption is that she’s had an arranged marriage and this is exactly what happens in arranged marriages. So that’s right off the bat what people tend to assume. Then you have, you know, for other communities, in particular when you’re dealing with clients who are Muslim, there’s also the underlying Islamophobia that exists just around “Well, this is part of their religious piece. Women are oppressed. That’s why she’s wearing hijab” or we see those types of pieces.

As a result of these stereotypes, SP1 believed that women belonging to these cultural and religious groups were at risk of having their cases taken less seriously, as well as receiving inappropriate suggestions and referrals from service providers.

Survivor emotional and psychological presentation was also perceived to exert an influence on the response received, in particular characteristics such as tearfulness (N = 2), emotional control (N = 2), mental health status (N = 2), disability status (N = 1) and substance use (N = 1). Those with mental health difficulties and disabilities were believed
to be at greater risk of receiving inappropriate services and being disbelieved, while those actively using substances were thought to be at greater risk of being blamed.

The service providers also described several “ideal” ways for a survivor to present her testimony. Language skills were identified as important by half of the participants, who noted that survivors who are articulate and skilled in the use of “sophisticated” language have an advantage over other survivors.

SP4: [Describing the characteristics of an “ideal victim”] Um, I guess if, you know, if you wear a suit or whatever or you dress nicely. Or you have a professional or working class type of women. If you have some sophistication of language, that sort of thing.

Researcher: Yeah. These are all helpful things to have?

SP4: Yeah, but that doesn’t help women in poverty, right. And I have seen women who have been assaulted and because they have limited skills and limited language development, they don’t get, you know, they get ripped off too.

In terms of emotional presentation, two service providers believed that it is beneficial for survivors to present as distraught, as this display of emotional distress would be an expected and humanizing response and would typically be received with sensitivity from the judge.

Researcher: What about in terms of sadness or teary-ness? Is it helpful to show a bit of tears?

SP3: I think so. I think so because, to me, they’re human and they’re talking about very personal and intimate things that likely traumatized them. So I think that it is
good, um, because it just shows they’re human and that they’ve got feelings and emotions.

On the other hand, however, three service providers (including one who spoke of the benefits of displaying emotional distress) felt that a survivor should attempt to present herself as calm and in control of her emotions while testifying, as this would increase her likelihood of being believed. This was particularly true regarding the expression of anger or irritation.

SP3: Again, it boils down to their credibility, right? So, um, a lot of it’s how they portray themselves, because the judges are watching them too, right? So they’re not just listening and taking notes. I can see judges turning their heads sometimes just to look at the victim and kind of check them out.

Researcher: Yeah, yeah. What do you think, if there was an “ideal” way to present yourself to be as credible as possible, what would that look like?

SP3: Hmm, good question. Um, you know, I guess if they can be articulate and, um, calm while they’re testifying. I try to tell them in these situations not to take what the defense lawyer may be suggesting as a personal attack, because a lot of times they’ll feel that way and they want to react in the courtroom. And a lot of it’s a strategy for the defense too, because they want to get the victim worked up because they want to portray the victim as, like, the aggressor. Right? So I warn them ahead of time that they just want to remain calm with the defence and answer their questions, and the sooner they do that, the sooner they’re out of here. Because, like I said, the defense will try to get them worked up.
In addition, one participant felt that the ability to present testimony without excessive emotion would allow the judge to more easily process the information presented:

Researcher: *In your experience, do you think there are certain emotions that are helpful?*

SP1: *Yeah. I think the most, I know it’s weird to say this, but we usually encourage clients as much as possible to testify in a way where they’re getting their evidence out as clear as possible. And sometimes that does mean trying to disconnect. How do I word this? We recognize the trauma. We’re asking them to relive the trauma but we’re asking them to as much as possible control the emotional memory that’s attached to it, if that makes sense. So we’re asking for the description rather than the emotional memory that’s tied to it. And this of course is so dependent on the client because some clients, depending on where they are, they’re not able to do that and that’s ok. Some clients can and they can provide the actual description of “This is what happened. I went here. This is what he did. Then I called this person”. And that is more helpful only because for the judge, especially in terms of creating a record and taking the notes around the evidence, it’s easier in terms of the flow.*

One service provider also reported believing that having a large support system in the court during the trial was beneficial both in providing support for the survivor and showing that she was believed. She did not, however, believe that this step would ultimately have an influence on case outcome.
In addition to providing a description of the “ideal victim”, the three service providers whose jobs involved actively preparing survivors for court appearances were asked what kind of instructions they personally provide regarding survivor image construction as part of their preparation activities. As noted above, every participant reported recommending that survivors wear professional, “business casual” clothing for court appearances. The reasons given for this recommendation were so that survivors appear “respectful” of the court and, importantly, to increase their likelihood of being believed. Regarding emotional demeanour, although they emphasized that survivors are told that it is acceptable to cry if needed, every participant reported recommending that survivors attempt to remain controlled and calm on the stand, in order to aid the judge in understanding their testimony, as well as ensure that they are believed and not perceived to have an ulterior motive:

**SP4:** *We go into a lot of detail. Um, and here’s where you can, you know, “Here’s the evidence, here’s where you can make things stronger. And don’t lose your cool. As much as you want to say that, don’t say that. And if you do, take a break”.*

Other image-related recommendations designed to help ensure survivors are believed included instructions for survivors to be honest and “themselves” when answering questions (*N* = 1), to familiarize themselves with their testimony so that they are able to answer questions without prompting (*N* = 1), and to use sophisticated language when testifying (*N* = 1).
SP4: [Giving an example of her preparation work with clients] I just spent, um, last week I spent an hour working with our advocate preparing a woman on how to present herself in court. So we do that, right? And how to use your inner power and your inner strength, because that’s what’s important. And this is a woman who, um, and it’s hard, I mean this woman is incredibly knowledgeable and has done a lot. She has a grade nine education and has done a lot in courts and stuff like that but for some reason something goes wrong and part of it is that she was, um, she doesn’t have sophisticated language. So actually helping her be diplomatic and finding a good way to present herself, you know, um, so that she gets a more favourable outcome, right. Like, holy moly, you have to know how to talk. Like, you have to have that sophistication.

As these findings indicate, those who work closely with survivors as they navigate the legal system witness many stereotypes that continue to operate within this institution. These service providers saw it as their role to help prepare survivors to successfully operate within this biased system, often by helping them manage and modify the image that they present when interacting with legal professionals and testifying in court.

Overall Perceptions of Legal Experiences

Survivor perspectives on case outcomes and legal experiences.

Toward the end of their interviews, the participants in the survivor sample were asked to reflect on their experiences with the legal system as a whole and rate the quality of their interactions. Within the present study, only four of the 10 cases examined
resulted in a sentence for the perpetrator. All of these convictions were reached by plea bargain and the sentences in these cases ranged from 10 months’ probation to a four year prison sentence (see Chapter 2 for more detail regarding the case outcomes). Perhaps unsurprisingly given this low conviction rate and the short length of sentences assigned, only two participants reported positive feelings regarding the outcome of their case. One woman, whose assailant was sentenced to three years in prison following a plea bargain, reported that her case outcome left her feeling believed, safer and satisfied. However, she noted that although the sentence her assailant received contributed to these feelings, particularly her sense of safety, it was the social sanctions he received from peers and colleagues that were most responsible for her sense of satisfaction and validation.

The second participant who described positive feelings about her case outcome reported feeling believed and protected when her assailant accepted a plea bargain and was sentenced to four years in prison. However, she noted that these positive impressions were overshadowed by subsequent contact with the justice system. After receiving largely supportive treatment from legal personnel and obtaining a conviction against her perpetrator during her first trial, this woman reported being motivated to seek convictions for several other incidents of sexual assault that she had experienced previously. Unfortunately, these attempts at legal action were largely unsuccessful, with the majority not proceeding beyond the police report. Of the four incidents she reported after her first trial, she stated that only one proceeded to a preliminary hearing, at which point it was ultimately dismissed. As this participant describes, the sense of validation and empowerment provided by her first legal experience dissipated when her subsequent
attempts at legal action were met with a lack of support and suspicion regarding her motives:

P5: I’ve been sexually assaulted several times. And I feel like once I realized I could do it with [perpetrator], you know, I tried with four other people. You know, I tried to have them charged because I realized that it was wrong and, you know, I could do it. And then at that point I feel like the police and all the social systems and stuff really stopped supporting me and lost their faith in me. Because it was almost like they thought that I was just enjoying the attention or something or, I don’t know, I felt like maybe they felt that way. But for me, it was more like “Oh, so you mean this is wrong and now I can charge all these people?” I just wanted to do it because, you know, I felt like it was the right thing to do, but I feel like I really lost all their support, you know.

In addition to leaving her feeling unsupported and disbelieved by the police and other legal personnel, these experiences left this participant feeling disillusioned with the legal system as a whole:

P5: But it really just goes to show that after this experience I had all this faith in the system, thinking “Oh it’s really much better than I ever thought” and then, you know, it was like “Oh, ok, I guess not”. So, yeah. You know, they say “Call the police. It’s the right thing to do. And, you know, it’s never the wrong thing to do if you really feel something is wrong or you’re in danger”. And, you know, I guess my mistake was believing that. And I’m glad that I believed it, you know,
the first time when I called for [perpetrator], but it's really not like that. It's really not like that.

Indeed, for the majority of participants, their case outcome was associated with primarily negative feelings. Themes of disappointment, anger and invalidation were common, as six of the participants described feeling disappointed in the outcome, five described feeling angry, and five reported feeling that the outcome invalidated their experience. The case outcomes further left women feeling blamed ($N = 3$), disbelieved ($N = 3$), betrayed ($N = 1$), and confused ($N = 3$). Half of the participants described feeling that the entire process was a waste of time. Two participants described feeling that the perpetrator had more rights than they did, and three expressed fear that the verdict left the perpetrator free to hurt others. For P7, the acquittal of her assailant was not only disappointing but worrisome as it put other women at risk of potential harm:

P7: Well, it [the acquittal of the perpetrator] meant that the next girl was going to get it, the next girl that looks me. [Perpetrator] is going to be walking down the street and he’s going to see some girl who looks like me from behind and he’s going to go up and he’s going to knife her. This is what it meant to me. I mean, not so much myself because we all think “Well, it’s never going to happen to me. I can defend myself”. But I thought he’s going to go and he’s going to do it over again, right, and this time he’s going to get her.

Half of the women ($N = 4$) reported feeling resigned about their case outcome. Half reported that, regardless of other feelings about the outcome, the process provided a
sense of closure or resolution for them. For example, some women felt that taking legal action was the right thing to do, despite the inherent flaws in the process:

P8: *Um, I went through it to finish it. I went through it because this should be done. But it’s not a system that’s good for victims.*

When asked to think about their satisfaction with their legal experiences overall, half of the participants described the process as “re-victimizing” and overwhelmingly negative. Three participants described feeling particularly surprised and upset by the negative treatment they received from female police, lawyers or Victim/Witness Assistance Program workers, as they held an expectation that female legal personnel should be more supportive, committed, and/or knowledgeable toward survivors and their experience by virtue of their gender.

Six of the women expressed dissatisfaction with the level of justice available to them and/or survivors as a group within the current structure of the criminal justice system. Three were specifically dissatisfied with the lack of accountability shown to victims. For P3, the hierarchical power structure within the legal system was highly problematic:

P3: *It is the power structure that makes me very, very unhappy because I felt like I had no power in the entire system. I also felt like the only power that I had was because I generated it. I pushed it. I got my own lawyer or I pushed an agenda too far. And I wish the system had just handed it to me and said “Here is a system that is accountable to you. You, because you are a victim in the system. Because*
we believe that you should ultimately, you should have some sort of accountability and it shouldn’t all be hidden”.

Three-quarters (N = 6) of the participants were dissatisfied with the price they paid to the justice system in terms of energy and time. This was true even when their efforts led to some form of conviction:

P3: Operating within that system was a battle. I did it as well as I could. I think I probably did it better than most, but I am angry and resentful of the fact that it wasn’t easy and that I felt like it was a battle. And I didn’t feel like I won. On a personal level, yes. Because on a personal level, only considering [perpetrator] and I in this scenario, I feel like I won against him. The life he had before, what’s happening to him in the justice system now, I feel pretty good. But I never was going to have any revenge against the justice system. But I feel like the justice system took something from me. It took my energy and my time, and yes ultimately [perpetrator] got convicted because of that, but there was a price I paid into the justice system and I wish I hadn’t had to pay that.

When asked if, based on their previous experiences, they would hypothetically take legal action if assaulted again, only two participants reported that they would be likely to do so. Of these women, one reported that she would be motivated to take legal action again by the hope for a different (and more successful) outcome, while one reported that she would be motivated by a feeling of responsibility to protect others. The remaining six participants stated that they would be unlikely to take future legal action,
due to beliefs that legal involvement does not lead to satisfactory justice \((N = 4)\); that it results in the survivor being blamed \((N = 3)\) and disbelieved \((N = 1)\); and that it involves too great of a time commitment \((N = 1)\). As P1 states:

But now that I know how it is, whether I’m physically assaulted or any kind of assault, I will not pursue it because at the very end it’s a dead end.

Similarly, although P8 described achieving some sense of resolution from the process, she expressed dissatisfaction with the experience and the outcome and was clear that she would not recommend it as a means of resolution to others.

P8: It’s not a system that’s set up for victims. It really isn’t. Especially when it comes to crimes of any sexual nature towards women. Going through it helps you to think “OK, I did it and it’s done and I’ll have to deal with it I guess”. But would I recommend people go through it again? Not even close. If you can find another way to deal with it, do it. It really doesn’t do anything. And it doesn’t do anything by the time you go through everything. It doesn’t do anything for the guy or whoever. They get a slap. That’s it.

**Service provider perspectives on case outcomes and legal experiences.**

The service providers interviewed in this study were also asked to rate their satisfaction with the way that sexual assault cases are handled within the current structure of the Canadian justice system. In response, one participant reported seeing evidence that police are working to improve their response to survivors, through training and collaboration with service providers, and felt that increased education on violence issues
as well as the creation of specific domestic violence courts have helped to improve the handling of sexual violence cases in recent years. However, although all of the service providers described examples of positive treatment by police, lawyers and judges, they all expressed a number of concerns regarding certain actions commonly taken by these professionals as well as problems with the structure of the legal system as a whole.

All of the participants reported feeling that the current structure of the justice system favours the accused. Two participants reported feeling that certain rights afforded to the accused, such as forcing the survivor to face the perpetrator in court, are a means of intimidation and control. The participants expressed shared dissatisfaction with the ways in which the survivor’s character is regularly attacked by the defense attorney during the cross-examination ($N = 3$), the lack of control given to survivors as they move through the system ($N = 2$), and the belief that survivors are too often re-victimized by the process ($N = 2$). One service provider expressed concern about the length of the process, and one commented that prison sentences are too low. Three of the service providers reported believing that the burden of proving a sexual assault case beyond the standard of a reasonable doubt makes convictions unduly difficult and results in high numbers of acquittals.

Researcher: What percentage - if you are able to kind of estimate - of cases would end in a guilty verdict?

SP3: [Laughs] Sorry to laugh but let’s put it this way, we get excited when there’s a conviction. We don’t see them very often. We’ve got some judges who are notorious at acquitting people, um, so if we know we have a case in front of that judge, we almost feel like “Why should the victim even bother?” because we know
what the result is going to be before she even talks. So we’ve got a lot of judges unfortunately like that here, who are known to acquit on cases.

Researcher: Why do you think that is? What contributes to that decision, do you think?

SP3: All they need is reasonable doubt. That’s all it takes. So they may believe, you know, some of the victim’s story but if you get the accused to testify and they tell their version, well, if he believes their version too, he’s left with two versions. If he’s not sure which is the more right one, by law he has to acquit. It’s the way the law is set up also that in these cases oftentimes they get acquitted. More often than not.

In addition to expressing concern about the impact that this tendency toward acquittals has on the survivors involved, SP3 reported that this also made it difficult for her to fully commit to her work with clients:

SP3: It’s extremely frustrating, especially for me as a worker. When I come in with each new case I want to be hopeful for them and support them, but at the end of the day in the back of my mind I usually know what happens with these cases. So you want to give it your all, but at the same time I’m frustrated with the system. I see how the system lets them down. So it’s very hard in my role, trying to encourage the victim and get through it, when at the end of the day you usually know what’s going to happen. And I hate to be pessimistic but it’s just the reality of what I see on a daily basis.
As a result of their concerns with the structure of the criminal justice system, three of the service providers spontaneously reported that they, as well as their colleagues, would not recommend that their loved ones take legal action if they were sexually assaulted. For SP1, concerns about the potential for re-victimization as well as the way the system is structured made her hesitant to recommend the legal system to others:

Researcher: *Overall, how would you rate your satisfaction with how the legal system seems to handle sexual assault cases?*

SP1: [*sighs*] See, that is a very tough question. And the reason why I say that is because even though I work in the system and I try to do as much as I can to make this process easier, the reality is – and I can also speak to some Crown Attorneys and officers who have been very open about this as well – if it was me or if I had a daughter or if it was my sister, I don’t necessarily think I’d come down this road. Um, just because the additional victimization is something that for me doesn’t necessarily outweigh the positives of what could happen. And as I said, there are a lot of Crowns and officers who have said the same thing: “I would not encourage my daughter to report”. And I think that also speaks to why we see such low rates of reporting for sexual violence, because the system is not as good as it could be. I mean, definitely we’re better than other places, but we’re not there when it comes to really sort of honouring survivors and what they’ve gone through. But that’s also because our system is an accused-based system, so it really doesn’t favour the victim. We try to do as much as we can in terms of the
Victim Bill of Rights, in terms of what she’s able to answer and not answer, but at the end of the day it’s still not that great.

SP2 and SP3 shared a similar point of view and noted that their colleagues in law enforcement and the Crown Attorney’s office were also vocal about their unwillingness to encourage loved ones to become involved with the justice system.

SP3: I have police officers and I have Crown Attorneys tell me the same thing: if God forbid this happened to their child, they would not be coming forward. They would not encourage their child to go forward because of how the system lets people down in these cases.

SP2: Well some of the officers - and of course I don’t talk to all of them, but a few that I’ve seen outside of this – you know, if I ask them, “If you were sexually assaulted, would you go through this?” some of them say “No”. Like, ok! What does that tell you? If you yourself are not going to go through it, you know, what do we need to change so that you would be comfortable?

As these service providers noted, the negative evaluations and distrust in the legal system even from those working at various levels within it is a blatant testament to the need to address problems and remedy the flawed ways in which sexual assault cases are processed.
Participant Suggestions for Improvement within the Legal System

Survivor perspectives on improving the legal system.

The sexual assault survivors interviewed in this study offered a number of suggestions for improving the justice system, centered on themes of training/education, professional standards and systemic changes. Three participants recommended that the training provided to police, lawyers and/or judges be improved and include education on such topics as the “victim experience” (e.g., common responses and needs following trauma), rules of consent, elimination of rape myths, sex offender psychology, and effective techniques for interviewing survivors and collecting evidence.

P8: *I think one of the biggest things is training. If police are there to protect the public, whether they see the victim as a victim or whatever to them, you’re there and your job is to protect. Your job is not to judge. So almost training them not just on victims but on what their job is. You know? Yes, you have to decipher and yes you have to discern as to “Ok, this might be going on or not going” but it’s not your job. You give that to the Crown. You collect the evidence. So almost retraining them as to what their job is.*

Researcher: *What else would you like to see in the training, if you got to design the training?*

P8: *I’d like to train them! No, because I don’t think they realize their impact on victims as to when you come to them and how intimidating going to the station is. How intimidating that room is with the recorder right there and only you are on that videotape and all you’re getting is someone’s voice, and how intimidating that is! How their tone of voice is with the questions and how they phrase their...*
questions. Even if they had a set statement, a set list of questions and they got training on tone. Like, just because they don’t have that.

Nearly two-thirds (N = 5) of the women spoke of the need to improve police treatment and empathy toward survivors. Specific recommendations included ensuring that police tailor the types of questions asked and presentation of evidence to ensure a gradual exposure to traumatic material (N = 1), allowing survivors to work with the same officer/detective throughout the process (N = 1), and reducing wait times (N = 1). One participant recommended that legal personnel should work with trauma professionals more closely, in order to improve sensitivity and understanding of survivors’ needs. Five participants felt that survivors should be provided with more information about the legal system and preparation for their role within it. Other resources were also requested, including financial compensation for victims (N = 1), free access to personal lawyers (N = 1), and having translators readily available (N = 1). Other suggestions targeted the larger social system, such as the request that safety programs be expanded (N = 1) and counselling programs made more available (N = 1).

In addition, half of the participants (N = 4) expressed a desire to make Crown Attorneys more available and accountable to survivors, and three felt that measures should be taken to ensure that the defense attorney is not allowed to unduly harass the survivor during cross-examination. Regarding the perpetrator, two women emphasized that survivors should not be forced to face their perpetrator in court, while two felt that harsher punishments should exist for perpetrators.
Systemic changes were also recommended. Two women emphasized that the burden of proof required to establish guilt beyond a reasonable doubt should be different in gender-based violence cases. As P5 explains, the current standard of proof is unrealistic in most sexual assault cases:

P5: *I mean, how many acts of rape are performed in front of people who can give evidence, who can give testimony that can be proved beyond a reasonable doubt? How many sexual assaults occur like that? Some of them do, I guess in cases of gang rape, but how many of them testify against each other? You know? So I can’t see how offenses that occur without witnesses can be, you know, held to the same proof beyond a reasonable doubt line as, you know, crimes that occur in front of witnesses. Because, just because of the pure numbers, crimes that are not performed in front of witnesses – which are more often crimes of domestic violence or sexual assault – are going to go unpunished and unrealized. You know?*

In addition, one woman called for a completely different criminal code for gender-based violence, and one felt that victims’ rights should be enshrined within the constitution. Three participants felt that survivors should be given more standing and rights during the trial, rather than treated as a witness to the event. In addition, three participants emphasized that background characteristics of the survivor should not be considered relevant or admitted as evidence within the trial.

P5: *I also think one thing that should majorly be different is I don’t think that the background of the victim should be consequential at all to the case. If the victim is*
a drug user, does that mean it’s impossible for her to be raped? If the victim is, you know, someone who has been sexually assaulted 60 times, does that mean it’s impossible that it can happen again? If the victim is someone who is black, white or purple, does that make a difference? No! But I think that by even allowing, you know, facts about the victim to be entered into criminal court, we’re already assuming that it could be the victim’s fault. And, you know, every other message I see always says, even from the police and even from the courts, will say that it’s never the victim’s fault. But I feel like we’re giving mixed messages, because while we say it’s never the victim’s fault, then why on earth would anything about myself as a victim be relevant in a court of law?

Several participants called for myths and stereotypes to be addressed, and one encouraged survivors to personally challenge any gender stereotypes that emerge during trial. Another participant expressed a desire to have civilians/survivors given more opportunity to be involved in legal system development and change.

**Service provider perspectives on improving the legal system.**

The service providers interviewed in this study also offered a range of suggestions for improving the legal system and the experience of sexual assault survivors. Several suggestions focused on the need for attitude change, through specialized training for police on topics such as rape myths and offender psychology ($N = 2$), specialized training for judges on topics such as common responses to trauma and traumatic memory ($N = 2$), an acknowledgement of personal biases among service providers and legal professionals ($N = 1$), and the use of expert testimony (e.g., from trauma professionals) to help support
the prosecution of cases \((N = 1)\). Further collaboration was sought between the service providers interviewed and legal professionals such as police \((N = 1)\), Crown Attorneys \((N = 1)\), and grassroots/front line services \((N = 3)\). Crown Attorneys and judges were urged to intervene during disrespectful and abusive cross-examinations by the defense \((N = 1)\). More punitive consequences were sought for bail violations \((N = 1)\), as well as stronger sentences in cases where the perpetrator is found guilty \((N = 2)\). Anonymous reporting options were described as a positive potential option for allowing survivors to report victimization without being forced to participate in a trial \((N = 1)\). One participant urged survivors and the media to speak more publicly about the injustices within the system, while another wished for change regarding the terminology around “victims”.
Chapter 5: Discussion and Conclusions

The present study explored the experiences that sexual assault survivors have within the Canadian criminal justice system, based on semi-structured qualitative interviews with eight women who sought legal action after experiencing sexual assault as well as four women who provide professional assistance and support to those engaged with the legal system. By examining the treatment that survivors of sexual assault commonly receive from legal personnel, the findings contribute to the larger body of previous work in this area. In addition, this study fills a gap in previous literature on sexual assault by offering additional insight into the ways in which survivors take conscious action to prepare themselves for and navigate through their interactions with the justice system, in particular the experience of testifying against their assailant in court. The following chapter provides a summary and discussion of the findings and their connections with previous research. In addition, it offers a number of suggestions for advancing knowledge in the field of sexual violence, including recommendations for continued academic research and practical intervention.

Survivor Experiences throughout the Legal Process

Following a sexual assault, survivors are faced with a number of important decisions, including choices regarding legal participation. The decision making process, particularly surrounding the initial decision of whether to engage with the legal system, can be influenced by a number of factors, including personal expectations, hopes, and fears about the implications of one’s decision. While legal officials strongly advocate police reporting as a way of achieving justice, a number of potential consequences are associated with legal action, including retaliation from the offender, a loss of support
from family or friends, social stigma, and the emotional hardship associated with a criminal trial (Taylor & Norma, 2012). Within the present study, the participants identified many similar valid concerns associated with contacting the police, including fear of perpetrator retribution, worry about receiving disbelieving or blameful responses, and concern about the emotional, time and energy commitments involved in seeking a conviction against their offender.

Despite these concerns, the women in this study were motivated to move forward with legal action out of a desire for official recognition of the crime, as well as the obtainment of justice, protection of self and others, and personal healing. Similar themes were found in a 2012 Australian study, in which survivors’ decisions to seek legal action were motivated by their belief in the criminality of sexual assault as well as desires to protect other women and girls, raise public awareness regarding the prevalence of sexual violence, and find some sense of personal closure (Taylor & Norma, 2012). These women, as well as those interviewed in the present study, were not ignorant or naïve to the potential personal consequences of reporting, the limitations of the justice system or the fact that legal action may not lead to ideal outcomes. While they hoped for justice and appropriate recourse for the perpetrator, the act of reporting was motivated by more than blind trust in the police or a desire for jail time for the offender. For many participants, it was their conviction that sexual assault is wrong, that they and/or other women deserve protection from violence, and that personal growth would result from legal action that motivated them to move forward even when the outcome was uncertain. In this way, reporting may represent an act of “symbolic protest” against a system that does not
adequately recognize, protect and support women, and a call for the criminal justice system to take appropriate action against sexual violence (Taylor & Norma, 2012).

Once initial legal contact was made, the participants began a lengthy process of interactions with police officers, detectives, Crown Attorneys, defense attorneys, and judges. Qualitative analysis of the interview data revealed that these interactions varied in their level of support and the type of impact they had on the women. Across interviews, several themes emerged as important in determining the quality of survivor interactions with legal personnel. The experience of being believed and supported in the quest for justice was critical and associated with increased trust and comfort as well as, for some, a sense of needed validation and empowerment in one’s interactions with police and Crown Attorneys. A sense of commitment on the part of police and Crown Attorneys was also significant in determining whether an experience was evaluated as positive or negative.

Within the present study, there were a number of examples of positive treatment related to these themes. Three-quarters of the survivors interviewed reported that the police conveyed belief in their story by listening, acknowledging their experience, and taking action to apprehend the offender and lay charges. In addition, participants commonly reported interactions in which the police and/or Crown Attorney displayed support, care, sensitivity, and commitment toward them. Participants spoke highly of individuals and interactions in which they saw dedication to the investigation and prosecution of their case, including efforts to foster and maintain survivor involvement in the process. Among service providers, several participants spoke of witnessing supportive, sensitive and accessible interactions between police and survivors of sexual assault. Thus, consistent with previous work showing evidence of sensitive, respectful,
competent, and supportive police treatment (Frazier & Haney, 1996; Patterson & Campbell, 2010; Regehr et al., 2008), the present study suggests that the first contact survivors have with the legal system has the potential to be positive and validating, particularly if it involves the communication of belief, support and commitment by legal personnel.

Conversely, situations in which survivors felt disbelieved or perceived a lack of support and commitment from legal personnel were identified as highly detrimental to their perceptions of the legal system and their personal wellbeing. The police have been regularly critiqued in the past for their lack of sensitivity, poor communication skills, use of invasive questions and tendency toward victim blaming statements (Campbell, 2005; Maier, 2008; McMillan & Thomas, 2009). Common police practices such as repeatedly asking detailed and invasive questions, often in a tone that may be perceived as brusque and unsupportive, can leave survivors feeling interrogated, blamed and powerless (Campbell, 2005; Maier, 2008; McMillan & Thomas, 2009). Within the present study, numerous examples of unsupportive, blaming, disrespectful, dismissive and insensitive police treatment were reported by the majority of the participants, including several who also reported positive experiences.

Similarly, while several participants reported appreciating the professionalism, respect, belief and preparation provided by the Crown Attorney, the majority of participants were concerned about the lack of dedication and accountability shown to their case, both leading up to and during the trial. Previous research has shown that survivors often feel unsupported by prosecutors as a result of receiving limited preparation prior to trial (Konradi, 2001; 2007). This sentiment was echoed in the present
study through participants’ criticisms of the lack of preparation received from Crown Attorneys, as well as the lack of intervention made in support of the survivor during cross-examination and the unsatisfactory plea bargains that were made with the defendant, typically with little to no input from the survivor. These experiences with the Crown Attorney as well as the various unsupportive and dismissive interactions described with police had a significant impact on the participants, leading to a lack of confidence and trust in the legal personnel assigned to their case and leaving many feeling angry, hurt, disbelieved, blamed, and re-victimized.

Across both groups of participants, there was strong agreement on the kinds of treatment that comprised positive versus negative interactions, with the importance of belief, support and commitment highlighted. Less clear, however, is the reasons why certain survivors appeared to receive more or less of these responses. Within the present study, experiences with the police and Crown Attorneys were varied and comprised of both supportive and unsupportive aspects. Of the eight sexual assault survivors interviewed, two reported solely positive interactions with the police, one reported solely negative experiences and the remaining five described a mix of positive and negative treatment, often experiencing both kinds of treatment within the same interaction or from the same individual at different times. Similarly, although one participant described solely negative treatment from the Crown Attorney assigned to her case, the remaining participants described a mix of both positive and negative interactions.

The reasons for these variations in treatment are not readily apparent from a consideration of the case characteristics. Previous research has suggested that the quality of police treatment may depend upon detective’s preconceived notions of survivor
credibility, with more sensitive and supportive treatment provided to those deemed more credible (Patterson, 2011). Unfortunately, judgments of so-called credibility are often based in stereotypical conceptualizations of “real rape” and “legitimate victims”.

Numerous studies have shown that sexual assaults consistent with stereotypical conceptualizations of “real rape”, such as those perpetrated by strangers, involving physical injury, and with “credible” victims who report immediately are more likely to be believed and prosecuted (Alderden & Ullman, 2012; DuMont & Myhr, 2000; Frazier & Haney, 1996; Krahe & Berger, 2009; McGregor et al., 1999; McGregor et al., 2002; Patterson, 2011; Smith & Skinner, 2012; Temkin & Krahe, 2008). Similarly, survivor characteristics such as substance use and a history of prostitution or promiscuity have been found to decrease the likelihood of charges being laid (Alderden & Ullman, 2012), while characteristics such as older age and a Caucasian background have been associated with a greater likelihood of prosecution (Patterson, 2011). Given the widespread prevalence of these beliefs, it is likely that prejudicial stereotypes about “real rape” and “real victims” influenced the behaviour of the legal personnel that the survivors in this study interacted with. However, it is also recognized that within the current study none of the participants’ experiences fully met these stereotypical conceptualizations of “real rape”, and the impact of any stereotypical characteristics present did not appear to be straightforward. For example, of the two women who reported solely positive experiences with police, neither was assaulted by strangers. One had evidence of physical injury while the other did not. One reported her assault immediately, while the other waited nearly 25 years.
While those participants who believed the police had a vested interest in arresting their assailant due to his criminal history tended to report more incidents of positive treatment, they still experienced a number of negative interactions as well. Further, although the one participant who reported solely negative police interactions had certain characteristics that may have negatively influenced perceptions of her case, such as being assaulted by a publicly respected non-stranger, reporting several years after the abuse ended, and being a woman of colour, she had corroborating evidence in the form of documented evidence from previous non-criminal trials which supported her claims. Indeed, the participant who experienced an assault that most closely resembled the standard of stereotypical rape (e.g., she was assaulted by a stranger, contacted the police during the assault, had the perpetrator apprehended at the scene, and had video evidence of the assault) still experienced a number of negative responses from the police, including disbelief in her claims and questions about her credibility.

Adding to the complexity, treatment at the police stage of the process did not appear to automatically lead to similar treatment at the prosecution stage. For example, one of the participants who described solely positive treatment from the police described solely negative treatment from her Crown Attorney, while the other participant treated well by the police reported a mix of positive and negative experiences with the Crown Attorney. In addition, other individual characteristics such as age, education level and use of substances did not appear to correlate with treatment received, as experiences were mixed across women of varying ages and backgrounds. Previous research has found that perceptions of credibility and attributions of blame may be influenced by a survivor’s style of dress at the time of assault (Canadian Women’s Foundation, 2013; Cassidy &
perceived attractiveness (Deitz et al., 1984; DeJong, 1999; Erian et al., 1998; Jacobson & Popovich, 1983; Seligman et al., 1977; Thornton & Ryckman, 1983; Vrij & Firmin, 2001), body size (Clarke & Lawson, 2009; Clarke & Stermac, 2011; Ryckman et al., 1998), as well as her emotional demeanour following the incident (Klippenstine & Schuller, 2012; Menaker & Cramer, 2012; Schuller et al., 2010), and so it is possible that these characteristics may have influenced the ways in which study participants were treated. However, these variables were not specifically discussed during the interviews, making it difficult to reliably assess their influence.

The mixed treatment that survivors reported receiving from police and Crown Attorneys suggests that the behaviour of legal personnel may depend in part on the specific beliefs, practices and work ethic of the particular individual that a survivor has the fortune (or misfortune) of being assigned to. Indeed, the service providers attributed differences in treatment to the fact that certain officers and Crown Attorneys were simply “better” and more sensitive than others in their dealings with survivors. Support for this idea was also provided by P6, who worked with two Crown Attorneys during her trial, as the first was called away due to other requirements prior to the preliminary hearing. P6 spoke fondly of the first Crown Attorney, describing her as respectful, professional and dedicated, as well as exhibiting knowledge about sexual violence and belief in P6’s experiences. However, P6 felt that the second Crown Attorney assigned to her case showed little devotion to the case, evident through actions such as the loss of important documentation as well as a reluctance to pursue evidence, meet with her, and correct inaccurate information in the file. P6 reported that these latter experiences left her
feeling re-victimized and were so negative that she ultimately filed a complaint against this Crown Attorney. Thus, it may be that the stereotypes in operation today exert a more subtle or complex influence than previously thought and that some legal professionals are more influenced by these beliefs than others. As such, further research regarding the current state of stereotypes and myths within the criminal justice system and the existence of any other factors which may influence survivor treatment is needed.

While variations were seen in the quality of survivor interactions with police and Crown Attorneys, the comments made regarding contact with defense attorneys were overwhelmingly negative. The experience of publicly testifying against one’s assailant in court is an extremely mentally and emotionally demanding task for survivors of sexual assault. It takes tremendous courage for someone to face the person who violated them and describe the details of their trauma to an audience of strangers. Previous research has consistently shown the hardships of testifying and the negative treatment that survivors of sexual assault experience at the hands of defense attorneys, as they are frequently subjected to confusing and abusive styles of questioning and tactics (Konradi, 1999; Konradi, 2001; Matoesian, 1993; Smith & Skinner, 2012) and experience challenges to their credibility and integrity through scrutiny of the most private details of their lives and the introduction of (largely irrelevant) personal characteristics (Krahe & Berger, 2009; Larcombe, 2011). The service providers interviewed in this study attested to the continuation of this kind of treatment and, unfortunately, these experiences were also commonly reported by the survivors interviewed as well. Sadly, every survivor participant described experiencing unpleasant treatment from the defense attorney, including attempts to trick or confuse the survivor, portray the survivor as a liar, or
introduce inappropriate extralegal information (e.g., the survivor’s relationship with the assailant, level of resistance, sexual history or personal background) designed to appeal to stereotypical notions of “real rape” and rape mythology. As a result of these experiences, the survivors in this study commonly reported feeling confused, embarrassed, attacked, angry, mentally and physically exhausted, and pressured to give a “right” answer while testifying.

While it is tempting to villify the defense attorney, the reality is that s/he is acting in accordance with their professional role and goal of acquitting their client, by any means necessary. As several participants noted, the problem lies with a system that permits the introduction of irrelevant information and allows the survivor to be publicly attacked and re-victimized, with little intervention from Crown Attorneys or judges. Given the demands and difficulty associated with testifying, it is concerning that survivors are often entering the courtroom with little support and preparation from the Crown Attorney. As the service providers explained, and several survivors attested to, a Crown Attorney may be assigned the case with little advance notice and often enters a trial with little familiarity with the case and the survivor. Additional evidence is often not available and prosecutors rarely seek out expert witnesses or other strategies to bolster the prosecution effort, making the survivors’ testimony critical. Yet without appropriate information about the process, the defense attorney’s tactics, and their own role while testifying, survivors may feel practically, intellectually and emotionally unprepared for what is to come. This can place them at heightened risk of re-victimization as well as make them less able to present their testimony in the manner needed to convey credibility and support the case (Hovdestad, 2001; Konradi, 1999 & 2001; Menaker & Cramer,
2012). As such, it is vital that survivors receive adequate preparation to increase their personal confidence and ability to give convincing testimony (Konradi, 2001; Menaker & Cramer, 2012).

**Survivor Preparation and Image Construction Activities**

Adequate pre-trial preparation allows a survivor to participate confidently and successfully in the difficult assignment that lies ahead. Across every interview, the women in this study expressed awareness of the benefits of preparation and, although they varied in the tactics chosen, every participant described taking a number of measures to prepare themselves for the task of testifying. While some preparation strategies were engaged in at the urging of police, attorneys, and Victim/Witness Assistance Program staff, many were engaged in independently, based on participants’ ideas of what would be helpful in meeting their goals of increasing personal comfort, enhancing perceived credibility in the eyes of the court, and assisting in the prosecution of the case.

The preparatory strategies reported across each interview were organized according to themes of practical, cognitive, emotional, psychological and physical activities. Many participants described familiarizing themselves with the physical space and judicial process they would encounter while testifying, engaging in independent research on the legal system, reviewing formal and informal records of their experiences, and rehearsing the testimony they were scheduled to deliver. The majority spoke about preparing themselves emotionally and psychologically through reassuring self-talk, while several also discussed the benefits of coping strategies, prayer, and conversations with supportive others. In addition, every single participant described engaging in physical preparation in the form of appearance modification. All participants reported
consciously purchasing and selecting specific outfits, while several described further efforts to style their make-up and hair in precise ways prior to appearing in court.

Although participants differed in the specific preparatory strategies used, preparation was a salient concern for every participant and each woman described engaging in multiple activities. The total number of preparation activities engaged in ranged from three to 10, with an average of seven, and typically involved a mixture of multiple categories of activities. These findings are consistent with those of Konradi (1996a, 1996b, 2007), who found that survivors of sexual assault engage in a number of deliberate strategies to prepare themselves for court, including testimony rehearsal, research on their role within the system, obtaining corroborating evidence to support the case, enlisting the help of key support people, and deliberate efforts to manage emotions as well as physical appearance and dress.

The widespread use of multiple preparatory strategies reported in this study is evidence of the participants’ commitment to performing their testifying duties, as well as their recognition that certain actions would help them manage distress and anxiety, and provide a greater sense of empowerment and efficacy as they faced the perpetrator and cross-examination. However, qualitative analysis of the responses also indicates that these women were motivated by more than just a desire to make the process easier to manage in the moment. Image management was a significant theme across interviews and every survivor participant interviewed identified concerns about the negative impacts of stereotypical rape myths and the benefits of appropriate image construction as central considerations when selecting her preparatory activities.
Research has consistently shown the existence of stereotypes and myths which define certain sexual assault situations and victims as more “real” or worthy of justice than others (e.g., Alderden & Ullman, 2012; Canadian Women’s Foundation, 2013; DuMont & Myhr, 2000; Frazier & Haney, 1996; Krahe & Berger, 2009; Krahe et al., 2008; McGregor et al., 2002; Patterson, 2011; Schuller et al., 2010; Smith & Skinner, 2012; Temkin & Krahe, 2008; Ullman, 2010; Workman & Freeburg, 1999). The service providers interviewed in this study confirmed that these stereotypes are still commonly held within the legal system, noting that cases involving stereotypically consistent characteristics such as stranger perpetrators, corroborating evidence and multiple victims may be more likely to proceed to trial and receive convictions. In addition, they reported that the dress, demeanour, behaviour, and personal backgrounds of women who are victimized are often inappropriately considered when determining allocations of blame and belief.

The survivors interviewed in this study were well aware of these biases and the impact that they could have on the ways in which they and their case were perceived. Each survivor was able to spontaneously describe a number of characteristics associated with “ideal” (e.g., credible, believable, and non-blameworthy) victimhood and recognized that those who do not meet these ideals are at risk of being disbelieved, blamed, treated poorly, and having their cases go unprosecuted and the offender unpunished. This awareness informed their actions, such that the participants described tailoring their activities prior to and during the trial to be as stereotypically consistent as possible, in a reported attempt to protect themselves from disbelief and blame, ensure commitment to their case from legal professionals, and help increase the likelihood that their assailant
would be convicted. This is similar to the findings of Konradi (1996a; 1996b; 2007), who found that survivors shaped their courtroom presentation in an effort to meet images of the “model victim” as a way of strengthening their case and assisting in its prosecution.

While exact definitions of “ideal” presentation varied somewhat across the participants in this study, there was general agreement that it was important to appear professional, “appropriate”, and unprovocative while testifying. Stereotypes about the influence of clothing in precipitating sexual assault are extremely prevalent, with provocative and sexy clothing often mistakenly believed to indicate an invitation for sexual contact (Shen, 2003). As a result, those who are dressed in a manner perceived to be provocative at the time of their assault are at greater risk of being blamed and held responsible for their victimization (Canadian Women’s Foundation, 2013; Cassidy & Hurrell, 1995; ICM, 2005; Shen, 2003; Workman & Freeburg, 1999). The service providers in this study unanimously agreed that wearing provocative, sexy or otherwise “inappropriate” clothing, whether at the time of the assault or during later court appearances, would have a negative impact on the survivor’s perceived credibility, leading them to be disbelieved and/or blamed.

Although they could not change the clothing worn at the time of their victimization, the survivors in this study also realized that their appearance during the trial also had the potential to signify information about their character and credibility. As a result, every participant reported consciously selecting clothing that would portray her as professional, conservative and unprovocative, qualities perceived to be linked to believability. In addition, three of the participants reported deliberately modifying their make-up, while two reported modifying their hair style to meet these standards. The
finding that 100% of the participants in this study used clothing to construct a particular physical image is striking, as this is higher than the numbers found in previous work by Konradi (1996a; 1996b; 2007), where just over half of the sample described consciously shaping their physical appearance. While it may be simply an anomaly of the present sample, it may also be that as a result of increased media attention in recent years women are more aware of the negative influence of physical appearance stereotypes now than they were when Konradi conducted her interviews in the early 1990s.

While deliberate outfit and accessory selection may be common for the majority of witnesses testifying in criminal trials as there is an expectation of respectful attire and decorum in legal proceedings, many of the women in the present study were motivated by more than a desire to look “appropriate”. For many, they were aware that clothing and appearance would convey a message about their sexual history and preferences, which could in turn hurt their perceived credibility and innocence. As a result, they dressed conservatively in part to ensure that they were not mistakenly judged to be, in the words of one participant, a “slut” who “asked for it”. As such, this particular kind of preparation is likely unique to sexual assault cases.

Many participants were also concerned about the specific emotional demeanour they presented in court, as they were aware of stereotypical expectations regarding the “appropriate” emotional response following assault. Sexual assault survivors face conflicting expectations regarding emotional presentation, as the stereotypical victim is expected to be tearful and distressed (Klippenstine & Schuller, 2012; Konradi, 1999; Menaker & Cramer, 2012; Schuller et al., 2010), while the preferred witness presentation is typically composed and able to present the information calmly and clearly (Konradi,
Even the service providers interviewed in this study described somewhat conflicting ideas regarding ideal emotional demeanour. Although some felt that it was beneficial for a survivor to be distraught in order to meet expectations of victimhood and receive sympathy, all who were responsible for preparing survivors for court reported recommending that survivors display a calm and controlled emotional demeanour in order to increase believability and allow testimony to be given in a clearer manner.

The survivor participants within this study varied in the precise emotional image they strove to portray, depending on their personal understanding of the ideal way for a victim to present herself. Regardless of their specific definition, many participants demonstrated an understanding of the narrow restrictions placed upon survivors as they attempt to simultaneously navigate both the victim and witness role. This fine distinction between appropriate and inappropriate levels of distress was eloquently highlighted by one participant, who described an expectation that survivors must appear “sad and devastated but not broken”. While two participants described a desire to appear sad and tearful in order to allow the judge to see the impact their victimization had on them, the majority of participants described trying to remain calm and avoid becoming angry or excessively distressed. It was agreed by all who discussed emotional demeanour that, although anger was an understandable and natural response to victimization, it was inappropriate to express while providing testimony. Expressions of outright anger were believed to be in conflict with expectations of the “wounded victim” as well as general stereotypes about femininity, and therefore were thought to damage credibility and potentially lead people to reject the survivor’s claims and/or question whether she was motivated by vengeance or other ill intent. As such, the participants commonly reported
attempting to manage and hide their anger and show that they were seeking legal action out of a desire for fair justice or closure rather than being motivated by any ulterior motives. This emotional control was believed to allow the women to present their testimony clearly, as well as help them appear emotionally stable and not vindictive, which was in turn believed to enhance their credibility.

As these findings show, both the service providers working within the legal system and the survivors who had engaged with it were aware of the presence and implications of cultural myths and stereotypes which define certain situations and victims as more “legitimate” than others, and the benefits that modifying their behaviours and presentation accordingly might have. As a result, all of the survivor participants reported attempting to align themselves with these myths to the greatest extent possible by drawing attention to stereotypically consistent aspects of their experience or background, downplaying inconsistent aspects, and intentionally attempting to modify their appearance, body language and emotional presentation. These image construction efforts were generally believed to be beneficial by both the service provider and survivor participants. Among the survivor participants, the majority believed that these efforts helped increase their perceived credibility. Some further believed that aligning themselves with a normative image of ideal victimhood was beneficial in increasing the level of empathy, commitment, and quality of treatment received from legal personnel. Only one participant believed that it had no impact on the way she was treated or her case outcome.

However, despite these perceived benefits of enhanced credibility and better treatment, the act of image construction was ideologically uncomfortable for some. For
several participants, consciously attempting to conform to restrictive stereotypes was considered problematic as it upheld systemic injustice and left biases in the system unaddressed. For example, P4 was clear that she did not believe in rape myths and described verbally challenging the defense attorney when he attempted to use rape myths to discredit her at several points in the cross-examination. However, she was aware of the potent influence of these myths on the judgements of others and, although she believed that clothing should be irrelevant, she described attempting to meet stereotypical expectations by dressing in a deliberately non-provocative manner while testifying. As the following dialogue indicates, P4 recognized that there was a limit regarding how far to go in challenging social expectations within one’s own case:

P4: I know that there’s an image and that it says something certain about you, um, and I would probably suggest to other people to dress as conservatively as possible. But that’s because that’s the belief that I know society holds. It’s not necessarily the belief that I think is right and I know that in a sense, you know, maybe I’m playing a part in the whole gender stereotype because I’m suggesting that to somebody else, but unfortunately it’s not me that’s judging them. It’s a whole group of males. Males. There’s normally a male judge. The guy who’s talking to you on the other side is normally a male. So you have to take that into account. But it is a sad reality.

Researcher: Mmhmm. I can imagine that feeling uncomfortable because you might not believe this but, yeah, do you play into these stereotypes because it’s going to help you in this situation or do you challenge them? It sounds like you did a bit of both.
P4: *I tried to, but...*

Researcher: *You challenged with your testimony and yet you didn’t want to challenge too much by dressing “inappropriately”?*

P4: *Yeah, because then his “slut case” might have actually worked!*

The women in this study were not unique in facing this difficult paradox, as previous research has found that female survivors may feel pressured to meet stereotypes that they find personally objectionable and oppressive in the interests of increasing their believability in the eyes of judges and jurors (Konradi, 1996a; 1996b; 2007). Among the service providers in the present study, the participants noted that their knowledge of the negative consequences of not meeting stereotypical norms made them quick to recommend that survivors construct their image accordingly. However, all of those interviewed acknowledged the inaccuracy and unfairness of these stereotypes and the negative consequences they have for survivors of sexual assault generally. For some, this caused them to experience a personal conflict within their work. For example, one service provider spoke of feeling trapped to maintain the status quo in her job:

SP3: *It’s hard because being in the system, I can’t really speak out about it. But believe me, if I’m out of here one day, I will do what I can to make a difference because it’s disgraceful what’s going on.*

Thus, the interview data from both service providers and sexual assault survivors indicates that women who have been victimized engage in a number of purposeful actions in order to prepare themselves emotionally, intellectually, psychologically and
physically for the difficult task of testifying against their assailant, doing what is necessary to protect their wellbeing and help their case even when it is personally objectionable. As such, the strategies that women engage in to reduce the distress associated with testifying, enhance their own credibility, and improve their ability to effectively support the prosecution effort are evidence that survivors of sexual assault seek opportunities for agency and empowerment during even the most difficult legal interactions.

**Evidence of Survivor Agency in Legal Interactions**

Following a traumatic experience, proper recognition of the impact of the incident, consistent support, and the re-establishment of a sense of autonomy and control are essential to healing (Herman, 2005). Unfortunately, the current structure of the legal system often does not afford survivors these experiences, as the hierarchical power structures and rape mythology at play within the criminal justice system typically grant the survivor little standing and often subject her to re-victimization and oppression at many points in her journey for justice. However, while the police, attorneys and judges hold the majority of decision making power regarding the usual process of interviewing, charging, and prosecution, themes of agency emerged across the stories shared by the participants in this study. Although the circumstances varied across cases, every survivor interviewed described several instances in which they took conscious action to control what they could, make interactions more personally manageable, and assist in the prosecution of their perpetrator, suggesting that even in situations of significant power imbalance there is an opportunity for displays of power from those in marginalized positions (Matoesian, 1993).
Greeson & Campbell (2011) identify two types of agency commonly found within legal interactions: agency expressed through deliberate acts of compliance with system expectations in order to support one’s goals of convicting the perpetrator; and agency in the form of defiance of expectations as a means of demanding better treatment or protecting oneself from harmful practices. The participants in the present study described asserting agency in both these forms. For example, each participant reported typically complying with the requests and expectations conveyed by police, attorneys and judges during their interactions. At times, this compliance appeared to be motivated by their respect for the professional’s authority, or trust that this person was conducting themselves appropriately and in the best interests of the client. It is likely that this kind of compliance was largely unconscious, based more in a belief that this is the way things are done and/or that challenging these practices was not an option, rather than an act of conscious agency. However, in many situations the participants described engaging in behaviours that were consistent with the normal practices and expectations of the legal system in a deliberate attempt to achieve a specific goal, suggesting an expression of agency.

To begin with, all eight participants described complying with legal expectations by making a conscious choice to file a police report and follow through with the initial interview and subsequent investigation, a decision that the majority of survivors decide against. Although several women described seeking input from trusted sources when considering this course of action, they all ultimately made the decision on their own. Importantly, this decision was not made impulsively. Participants were for the most part aware of the personal risks associated with taking legal action and made the decision to
embark on this path independently, following a careful consideration of the potential costs and benefits. They did not report because of external pressures or because it was perceived to be the only option available, but rather because they believed that doing so would help them meet their personal goals for official recognition of the crime, protection, justice and/or healing. In addition, several women described consciously engaging in preparatory actions prior to contacting the police, in order to strengthen their personal readiness for initiating legal action and/or enhance the ways in which they were perceived by police.

During their subsequent contact with police and Crown Attorneys, the majority of women chose to cooperate in the investigation and interviews as expected, persisting in disclosing details and reviewing evidence even when it caused them to feel re-traumatized, because they believed that it would help in the prosecution of their assailant. They remained committed to the process even when subjected to negative treatment, and agreed to testify despite the discomfort of facing their assailant and enduring a cross-examination. Further, the participants actively sought out information about the court process and the ways in which to best prepare and present themselves. When this wasn’t available through the Crown Attorney’s office, participants took measures to find this information elsewhere. Every participant reported accepting assistance from the Victim/Witness Assistance Program, an optional program designed to complement the services of the Crown Attorney’s office, indicating that they were committed to obtaining a better understanding of their role within the court process as well as receiving needed legal and emotional support.
The preparatory activities undertaken by each participant can also be understood as acts of agency. Every participant described engaging in multiple deliberate activities to prepare themselves for their testifying roles. Many reported researching the structure and process of the legal system, reviewing evidence and rehearsing their statements. The majority engaged in at least one form of formal and informal emotional and psychological preparation, including reassuring self-talk; professional counselling; and the use of prayer, exercise, medication, and food as coping strategies. Several tailored their level of contact with social support systems according to their needs. In addition, every participant reported modifying their appearance through clothing – and in some cases, make-up and hair styles – to craft a particular image when appearing in court. Some of these preparatory strategies were done as a way of complying with the instructions of their Crown Attorney, personally hired lawyer or Victim/Witness Assistance Program staff. However, in many situations the women selected their strategies independently, motivated by a desire to meet their goals for preparation, comfort and case enhancement. In addition, every participant reported engaging in some form of deliberate action to align themselves with stereotypically consistent conceptualizations of victimhood, even if they found it uncomfortable to do so.

These decisions were not made automatically or out of simple deference to the authority of the court. Rather, these were described by several participants as difficult decisions made after careful consideration of one’s options and the impact that these actions may have on meeting one’s goals for prosecution as well as self-protection. While many participants believed in the importance of challenging oppressive stereotypes within the legal system, they also recognized that the appropriateness and effectiveness of
attempting to do so within the real-time context of testifying in court was questionable. Unfortunately, in many cases it is likely that attempting to challenge stereotypes by resisting expected forms of, for example, dress or emotional demeanour would not only have potentially placed the survivor at risk of negative judgement, blame and poorer treatment, it may also have hurt their chances of convicting the perpetrator. As such, choosing to comply with system expectations, no matter how personally uncomfortable, can be viewed as an act of agency aimed at meeting their goals for supportive recognition and justice (Greeson & Campbell, 2011) and indication of the commitment that women show in their search for justice (Konradi, 2007).

While in many situations compliance with system expectations can be mutually beneficial for survivors and legal personnel, in some legal interactions one’s need to protect themselves from emotional or physical harm, or a desire to advocate for positive change may prompt them to defy the authority of legal personnel (Greeson and Campbell, 2011). This was evident in a number of the interviews within the present study, as several participants described exerting agency through acts of defiance, by challenging the common practices and assumptions of the legal system or refusing to participate in the ways expected of them.

For some participants, this involved seeking out services beyond those routinely provided. Many participants described feeling underprepared about the legal process and their role within it. Contrary to expectations of passive victims who defer to the authority of legal personnel, these participants took action to better inform themselves. Several sought the services of rape crisis centres to provide information, accompaniment and advocacy regarding interactions with police and Crown Attorneys. In addition, three
women reported obtaining their own legal representation to assist them in understanding and navigating the legal system and ensure their interests were better represented. This act is somewhat uncommon, in part because many may not have the financial resources to secure personal legal representation but also because it represents an act of defiance against the traditional notion of a submissive victim who defers to the Crown Attorney for all legal matters. By hiring their own lawyer to help them feel more informed, comfortable, and involved in the process, these women are making an assertion that the traditional legal system is not structured to provide adequate consideration of their interests. Personally hired lawyers work with or for the survivor, giving them a central and powerful role rather than the diminished status of witness that they were assigned in their interactions with the Crown Attorney. In addition to helping protect them from undue harm from legal personnel and preparing them for what to expect, these lawyers were able to use their professional status to speak on behalf of the survivor and, to some extent, assist the survivor in securing the charges and conditions they desired for the perpetrator.

In addition, several participants showed defiance in response to poor treatment from legal professionals. For example, P8 refused to accept a detective’s attempts to dismiss her complaint, seeking out the services of a rape crisis centre advocate as well as her personally hired lawyer to place pressure on the detective to lay charges. In addition, she attempted to set limits on her interactions with the detective by filing a formal complaint to the detective’s supervisor requesting the detective be removed from the case. When that was unsuccessful, she personally insisted that the detective leave a pre-
trial preparation meeting and had her lawyer draft a letter barring the detective from having further contact with her.

Acts of purposeful defiance fly in the face of expectations of a helpless victim and are typically motivated by a desire for self-protection and/or an attempt to protest poor treatment and obtain better treatment (Greeson & Campbell, 2011). P8’s insistence that criminal charges be laid against her perpetrator and the filing of a formal complaint against the detective can be considered a protest against poor treatment. A similar protest was described by P6, who filed a formal complaint against the unprofessional and re-victimizing behaviour of one of the Crown Attorneys in her case.

Acts of defiance aimed at confronting inappropriate behaviour as well as assisting in the prosecution of the perpetrator were also seen in survivors’ interactions with the defense attorney. Fully half of the participants described resisting the defense attorney’s attempts to intimidate them and undermine their credibility. They did this by refusing to answer certain questions or answering narrow questions with expanded answers that more fully described their experience, as well as insisting that the defense attorney address them in a more professional manner. In addition, several participants described making statements explicitly challenging the relevance of the defense attorney’s questions and use of rape mythology. For example, P4 described attempting to challenge victim-blaming rape myths by resisting the defense attorney’s attempts to attribute blame to her based on her clothing choices during the time of her assault:

P4: I kept saying “Who cares, so what if I dress like a slut? Then I deserve to be assaulted?” Like, I kept saying things like that on stage because I was already aware of it. And I know it doesn’t make much of a difference but I just think all
women should get up there and continue to say things like that because maybe eventually someone will listen.

While she acknowledged that actions of this kind may have little impact in the moment, P4 encouraged other women to similarly challenge these beliefs, perhaps as a kind of “symbolic protest” (Taylor & Norma, 2012) against the system’s continued acceptance of rape myths.

Thus even when faced with the restrictive and asymmetrical rules of cross-examination, as well as the many painful emotions associated with facing one’s perpetrator and telling the story of their victimization in public, a significant proportion of the women in this study were still able to assert power and resist the defense attorney’s attempts at domination and control. This is significant, as defense attorneys operate from a place of privilege and power relative to the survivor (Matoesian, 1993). These women were taking a risk by asserting themselves and attempting to alter the established power hierarchy. While their efforts may or may not have had a positive impact on the judge’s deliberations regarding the case and the final verdict, they did allow these women to feel a sense of power and efficacy. In addition to helping them shape their interactions with the defense attorney, these acts allowed them to maintain the integrity of their testimony and attempt to positively influence the judge’s perceptions of their case.

These acts also allowed these women to better protect themselves from further re-victimization and humiliation. Similar to P8’s requests to have no further contact with the detective on her case, these women were setting boundaries in their interactions with the defense attorney. They recognized that it was not possible to avoid these interactions
altogether and, for the most part, complied with the expected practice of testifying in order to assist in the prosecution of their case. However, they still set limits on these interactions in order to protect themselves, even if this meant challenging established norms or, in one case, withdrawing from the trial completely. In the latter case, the participant’s need to prioritize psychological and emotional health outweighed her goal of convicting the offender. Indeed, many of the acts of defiance were not successful in leading to objective improvements, as the complaints filed by P6 and P8 had little impact on their particular cases and the challenges voiced against the defense attorney did not typically prevent the acquittal of the perpetrators. However, these acts of resistance were still successful in helping the survivors find a sense of power and agency that was much needed following the disempowering experiences of victimization and legal interactions. Thus, even in the aftermath of serious trauma, these women were able to take purposeful action to assess their own needs and shape their interactions in order to best move toward meeting their goals.

The present study demonstrates that survivors of sexual assault face a number of systemic challenges and are at risk of re-victimization at many points in the legal process. However, although the legal system routinely deprives women of control and power, it is a mistake to assume that these women are completely powerless. Psychologically and interpersonally, assisting in the prosecution effort can be a way of shifting the balance of power between survivor and perpetrator, as it involves breaking silence and resisting the dominance and disempowerment inherent in sexual assault (Konradi, 1999). While certain major decisions related to charges, prosecution, conviction and sentencing are typically beyond their control, survivors still make many critical choices along the way. It
is clear that the women in this study expressed agency through thoughtful and purposeful compliance with legal system expectations as well as actively challenging the process and refusing to participate as expected, depending on which course of action was thought to be most beneficial in making the process more personally manageable and increasing the likelihood of successful prosecution of their assailant. Thus, the present study provides compelling evidence that survivors of sexual assault are able to assess their needs and shape their interactions accordingly in even the most restrictive situations.

**Strengths, Limitations, and Directions for Further Research and Intervention**

The present study has a number of strengths, including its examination of a minimally explored area within the field of sexual assault research and the combination of input from survivors and service providers. However, there are several limitations that merit acknowledgement. First, it must be noted that all of the survivors interviewed in the present study had their cases forwarded on for prosecution. While many described feeling disbelieved, blamed and unsupported by the police, the fact that the cases progressed to trial suggests that the police found them and their stories to be credible enough to pursue. Previous researchers have suggested that the quality of treatment received from police may depend on detectives’ perceptions of survivor credibility, with better treatment provided in those cases deemed fit for prosecution (Patterson, 2011). As such, it is possible that the experiences with police reported in the present study may be more supportive than those experienced by the majority of survivors whose cases are declared unfounded earlier in the process.

In addition, the sample size within each group, particularly the service provider sample, was small. Although small samples are customary in qualitative research,
recruitment challenges resulted in a more limited number of participants than had been
originally hoped for. While several themes emerged consistently across the interviews
(e.g., the use of particular preparatory strategies; efforts at image construction; examples
of agency) and therefore provide a depth of understanding that can be accepted with
reasonable confidence, it is possible that certain themes may be limited in their breadth
and generalizability. This is particularly true regarding the responses arising from the
service provider sample which, due to the small sample size and varied roles of those
interviewed, may be thought of more as providing valuable context to the experiences
described by the survivors rather than an indepth analysis of the service provider
experience in and of itself.

In addition, while the participants varied considerably in age and education level,
they were predominantly Caucasian and heterosexual. According to constructivist
grounded theory, multiple interpretations exist for any phenomena, and theory is
inevitably a product of the context in which it emerges (Charmaz, 2006). The women in
this study spoke from a particular social location and their experiences with the legal
system and expressions of agency are reflective of a particular sociocultural context.
Several participants acknowledged the privilege they held by virtue of their Caucasian
background, education level, literacy skills, work history, social connections and
financial resources, and the relative advantages this afforded them in navigating the
system and meeting ideal stereotypical conceptualizations. As such, the findings of the
present study may or may not extend to women from other situations.

Those from different locations in terms of race/ethnicity, socioeconomic status,
education, gender expression, sexual orientation, mental health status and a host of other
variables may hold varying degrees of social power and, as a result, may receive different
treatment from legal personnel and express agency in different ways. For example, those
who are at greater risk of prejudicial treatment, such as women of colour, may have less
faith in the legal system and seek to protect themselves by refusing to comply with legal
processes that are deemed threatening or harmful to a greater extent than other groups
(Greeson & Campbell, 2011). Further research with diverse samples is needed to better
understand the ways in which women’s social locations and backgrounds influence their
experiences, preparatory strategies, and opportunities for agency, as well as the systemic
and individual factors that constrain and encourage agency in various situations (Greeson
& Campbell, 2011; Konradi, 1996b). In addition, research exploring the ways in which
legal personnel and organizational structures can better support survivors of various
backgrounds and encourage greater participation and agency would be beneficial in the
interests of identifying strategies to improve treatment and empower survivors (Greeson
& Campbell, 2011). Observational studies assessing the interactions, as well as
expressions of agency made as survivors navigate the legal system would be a valuable
complement to self-report data (Greeson & Campbell, 2011).

Further research is also needed to better understand the current state of
stereotypes and myths within the criminal justice system and the existence of any other
factors which may influence survivor treatment. This study highlights a number of micro
and macro-level problems within the legal system, including negative and re-victimizing
treatment, a lack of accountability shown by police and lawyers, hierarchical power
structures which privilege the rights of the accused and deny control to survivors, and a
lack of convictions and justice. Of interest is the fact that participants reported receiving a
mix of positive and negative treatment from police and Crown Attorneys, often
experiencing both types of response during the same interaction or from the same person
at different times. This varied treatment was seen across cases and did not appear to be
consistently linked to characteristics normally thought to impact credibility, such as
relationship with the perpetrator, level of violence involved in the attack, time of
reporting, and substance use. It may be that other characteristics such as style of dress at
the time of assault, physical appearance characteristics, emotional demeanour during the
police statement or additional variables not specifically assessed as part of this study may
have influenced the response received. Additionally, it may be that stereotypes exert a
more subtle or complex influence than previously thought and that some legal
professionals are more influenced by these beliefs than others. Expanded research
assessing current beliefs held by legal personnel as well as effective strategies for
intervention is needed.

The high prevalence of negative treatment experienced in legal interactions, even
when positive treatment is experienced concurrently, is concerning as survivors
experience numerous profound damages to their emotional, physical, economic and
social wellbeing as a result of sexual assault. When they subsequently engage with the
legal system, it is critical that they are met with belief, acknowledgment, protection,
support, and the provision of necessary resources (Herman, 2005). When they are
subjected to negative treatment such as dismissal, silencing, suspicion, blame, and re-
victimization instead, it compounds their difficulties and affects their recovery process.
Indeed, two separate women in this study reported being hospitalized for psychological
reasons following their contact with the legal system and many more described
experiencing significant distress as a result of their interactions. Across participants, dissatisfaction with their experiences, the case outcome, and the structure of the system as a whole was high. The majority of the participants did not receive a conviction against their perpetrator and even those who did were typically dissatisfied with the nature of the sentence assigned and the fact that it was reached through plea bargain. Only one-quarter of the participants described experiencing any sense of satisfaction with the outcome of their case and this satisfaction was related in part to a combination of factors beyond the legal process and verdict (e.g., social and employment sanctions faced by the perpetrator).

While some participants achieved a sense of personal resolution by participating in the process, the majority still expressed dissatisfaction with the level of justice it provided, the lack of accountability and uneven power structures within the system, as well as the personal costs of legal action in terms of their time and energy. Thus, despite legislative reform and more specialized service provision, many survivors continue to experience their involvement with the legal system as negative, dissatisfying and even harmful. The ethics of continuing to allow survivors to participate in a system that disrespects them and exacerbates their trauma is highly questionable (Larcombe, 2011), and therefore further efforts to improve the system are needed. The participants in the present study offered a number of potential solutions, many of which are consistent with those advocated in previous research and public lobbying, such as increased training and education on myths, stereotypes and sensitive treatment of survivors; collaboration with trauma professionals; more protection and supportive treatment for survivors; more
punitive sentencing of offenders; and systemic changes to address entrenched problems in the structure of the system.

Increased training for police, lawyers and judges on common survivor responses and needs following trauma, as well as definitions of consent, the eradication of rape myths, and effective techniques for interviewing survivors and collecting evidence, are believed to be particularly valuable. Many of the symptoms which arise following a sexual assault, including memory impairment, avoidance of material related to the incident, emotional and psychological distress, and substance use may not only make it difficult for one to manage the challenges of a criminal trial but may also negatively impact perceived credibility to those who are unfamiliar with common traumatic response (Seidman & Vickers, 2005). In addition, addressing myths about appearance, emotional demeanour, and other characteristics mistakenly believed to be relevant to judgements of responsibility and credibility would help protect survivors from blame and unfair case outcomes (Menaker & Cramer, 2012). Enlisting the assistance of trauma professionals in training and as expert witnesses in trial proceedings has the potential to help facilitate attitudinal shift and more sensitive treatment (Klippenstine & Schuller, 2012; Konradi, 2010). In addition, regular audits of the charges, convictions, pleas and sentences in sexual assault cases could be done to assess bias and stereotypes in legal decision making and foster greater accountability of legal personnel (Konradi, 2010).

Legal participation should be meaningful for the survivor and provide her the opportunity to tell her story in an influential manner. Unfortunately, this is often not the case, as testimony may be interrupted and pulled apart by defense attorneys, preventing survivors from fully conveying the impact of their experience. In addition, as survivor
testimony is often the only piece of evidence in a sexual assault trial, a weak statement
may lead to acquittals rather than convictions. As such, systemic change is needed to
restrict abusive and inappropriate behaviour by the defense attorney, as well as the
introduction of irrelevant survivor characteristics.

In addition, more comprehensive preparation and support is needed from the
Crown Attorney. This study, as well as previous work by Konradi (1996a; 1996b; 2007),
demonstrates that survivors actively prepare themselves and engage in impression
management, with or without the help of prosecutors, based on their perceptions of what
is beneficial to the case. Prosecutors must recognize that survivors are invested in the
process and have the capacity and resources to be productively involved, and build upon
these efforts to ensure that survivor strategies are maximally helpful in supporting the
case (Konradi, 2010). Efforts should be made to build rapport, minimize power
differences, and provide proper preparation about the survivor’s role, the process, and the
difficulties associated with cross-examination. This will help protect survivors from re-
victimization by allowing them to adequately prepare themselves mentally and
emotionally, which will in turn allow them to participate in a way that may restore a
sense of control and efficacy (Konradi, 2010; Menaker & Cramer, 2012). It may also
enhance one’s sense that justice is being pursued and their interests are being equally and
fairly represented (Konradi, 2010). In addition to offering adequate information and
support, prosecutors should also be responsible for acting to protect survivor wellbeing
during trial proceedings and obtain fair sentences (Konradi, 2010). By helping survivors
feel invested, prepared and supported, Crown Attorneys can enhance their ability to
provide effective testimony and thereby increase their likelihood of prosecution (Konradi, 2010).

The study participants called for greater input, standing and rights during the trial process, all of which are essential for a truly respectful and just legal system. The need for greater access to resources such as personal lawyers, translators, safety programs and counselling was also highlighted. These recommendations are consistent with those of previous researchers who have argued that survivors should be provided with adequate pre-trial preparation including information on support services that may help them prepare for, participate in and cope with the outcomes of engaging in the criminal justice system (Orth, 2002). Based on the statements provided by several participants, access to personal lawyers may be particularly helpful for survivors. The three survivors who received services from personal attorneys were highly appreciative of the information and support they received, and noted that they would have taken further advantage of their services if they had been able to afford it. As such, routinely providing survivors with affordable personal lawyers is one strategy that could help provide protection from inappropriate questions and maltreatment. However, further thinking is needed on the role of this lawyer and the level of input and influence they would have on the assigned Crown Attorney’s practices (Smith & Skinner, 2012).

The aims of feminist law reform, which seek legislative practices that reflect the experiences of all survivors, treat women with respect and protect them from humiliation, disempowerment and re-victimization, are modest and should not be beyond the grasps of the justice system (Larcombe, 2011). However, as the present study indicates, there is still considerable work to be done to achieve these goals and ensure that the basic needs
and rights of survivors are met with the Canadian criminal justice system. In addition, greater understanding of the ways in which women navigate the system and find power within it is needed, as the restoration of survivor control is an important goal for systemic change. Not only would greater empowerment within the legal system aid in the personal healing of survivors, it would simultaneously make it easier for them to feel comfortable reporting their victimization, remain invested in the process, and contribute to the prosecution effort (Herman, 2005). The present research helps to broaden the scope of previous work which has focused exclusively on treatment directed at survivors, by recognizing the ways in which survivors seek opportunities to direct their own actions and express agency within these interactions. As a result, this study is believed to offer fuller insight into the survivor experience. Further research in this area is needed, however, as a better understanding of the resilience and agency that women show in the face of victimization and oppression can help expand dominant social narratives which portray survivors as powerless (Greeson & Campbell, 2011) and help identify strategies for remedying problematic power dynamics within the legal system.
References


American Psychological Association: Washington, DC.


Appendix A

Recruitment Flyer and Study Invitation Letter for Survivor Sample

Researchers at the Ontario Institute of Studies in Education of the University of Toronto (OISE/UT) are conducting a research study on the experiences that sexual assault survivors who take legal action against their perpetrator(s) have within the Canadian Criminal Justice System.

We are currently conducting confidential interviews with women who:

a) Are 18 years or older

b) Experienced a sexual assault(s) after age 16

c) Testified against their attacker(s) in a criminal trial within the greater Toronto area in the year 2000 or later

We would appreciate your participation in this research study.

All responses will be kept anonymous and confidential.

Financial compensation will be provided for your participation.

For more information, please contact Allyson at:
allyson.clarke@utoronto.ca or call 416-978-0686

**This study has been approved by the University of Toronto Research Ethics Review Board**
Hello,

My name is Allyson Clarke. I am a doctoral student in Counselling Psychology at the Ontario Institute for Studies in Education at the University of Toronto (OISE/UT), currently studying the experiences that sexual assault survivors who take legal action against their perpetrator(s) have within the Canadian Criminal Justice System. For the present study, I am specifically interested in the interactions and experiences that female survivors of sexual assault have with police, lawyers and judges, as well as the ways in which these women personally prepare for court appearances and testifying against their perpetrator(s) in court.

I am currently looking for women aged 18 years and older who were sexually assaulted in adulthood and later testified against their attacker(s) in a criminal trial within the greater Toronto area in the year 2000 or later to participate in a confidential interview about their experiences. The interview will ask about participants’ personal background and experiences; motivations for pursuing legal action against their attacker(s); experiences with legal personnel; and preparation activities leading up to court appearances and testifying duties. This interview can be conducted in-person at the researcher’s office at the University of Toronto, over the telephone or using Skype online conferencing software. It is expected to take approximately 1.5 hours to complete.

This study has been approved by the University of Toronto Research Ethics Review Office. All responses will be kept anonymous and confidential, and every effort will be made to ensure participant safety and comfort throughout the process. The information gained from this study may help us to better understand the need of sexual assault survivors and may help with the development of future research projects and social programs. In addition, as a token of appreciation, financial compensation will be provided to all participants.

Your involvement in this research study would be greatly appreciated. Attached please find a poster advertising this study. Please feel free to post this advertisement within your organization and please pass this information along to any individuals or organizations that you feel may be interested in participating in this study.

If you have any questions or concerns, please contact me by email at [address]. You may also contact Dr. Lana Stermac, the faculty supervisor of this project, by telephone at 416-978-0722 or by email at lstermac@oise.utoronto.ca. If you have any questions about the rights of a research participant, please feel free to contact the Ethics Review Office at ethics.review@utoronto.ca or 416-946-3273. Thank you for your participation.

Sincerely,

Allyson Clarke, MA
Thank you for your interest in this study. My name is Allyson Clarke and I am a doctoral student completing my PhD in Counselling Psychology at the Ontario Institute for Studies in Education at the University of Toronto (OISE/UT). Under the supervision of Dr. Lana Stermac, a faculty member and researcher at OISE/UT, I am currently studying the experiences that female sexual assault survivors have within the Canadian Criminal Justice System and the ways in which they prepare for legal interactions and testifying duties. For the present study, I am recruiting women who were sexually assaulted in adulthood and later testified against their attacker(s) in a criminal trial within the greater Toronto area, to participate in confidential interviews about their experiences leading up to and during the trial.

If you choose to participate in this study, you will be asked about your personal background, experience(s) of sexual violence, and reasons for pursuing legal action against your attacker. You will also be asked about your experiences with police, lawyers, judges and court support workers, as well as the ways in which you prepared to testify in court. In addition, you will be asked to rate your overall satisfaction with the legal process and given the opportunity to provide any suggestions you may have for improvement within the legal system.

This study has been approved by the University of Toronto Research Ethics Review Office. Your responses will be kept confidential and anonymous, and every effort will be made to ensure that you feel safe and comfortable throughout the process. This interview will be conducted in-person at a private and confidential office at the University of Toronto. It is expected that the entire interview will take approximately 1.5 hours to complete. As a token of appreciation, you will be paid $25 for your participation. TTC tokens will also be provided to assist with travel costs, if needed.

In order to determine if this study is the right fit for you, and vice versa, I would like to ask you a few questions:

1. Are you currently over 18 years of age?
2. Do you identify as female?
3. Have you experienced a sexual assault since the age of 16 years?
4. Did you report this assault to the police/seek legal attention within the GTA for this assault within the past 11 years (since the year 2000)?
5. Did you participate in a preliminary hearing or criminal trial related to this assault within the GTA, at which you testified against your perpetrator in court?
6. Are you currently involved with the legal system regarding this case (e.g., are you involved in any appeal process or civil proceedings regarding this case)?
7. Are you willing to participate in a confidential interview about your experiences leading up to and during your sexual assault trial?
8. Are you willing to have your interview responses audiotaped?
Appendix C

Recruitment Flyer and Study Invitation Letter for Service Provider Sample

RESEARCH
VOLUNTEERS NEEDED!

Researchers at the Ontario Institute of Studies in Education of the University of Toronto (OISE/UT) are conducting a research study on the treatment that sexual assault survivors who pursue legal action receive within the Canadian Criminal Justice System.

We are currently conducting confidential interviews with service providers aged 18 and older who:

a) Work in the field of sexual assault and/or criminal justice, and
b) Have at least 2 years of experience preparing and/or accompanying survivors of sexual assault through the legal process within the greater Toronto area since the year 2000 or later

We would appreciate your participation in this study. Interviews can be completed in person at a private and confidential office at OISE/UT (252 Bloor St. W., Toronto, ON) or an appropriate location of your choosing. Financial compensation will be provided for your participation.

All responses will be kept anonymous and confidential.

For more information, please contact Allyson at: allyson.clarke@utoronto.ca or call 416-978-0686

**This study has been approved by the University of Toronto Research Ethics Review Board**
Hello,

My name is Allyson Clarke. I am a doctoral student in Counselling Psychology at the Ontario Institute for Studies in Education at the University of Toronto (OISE/UT). Under the supervision of Dr. Lana Stermac, a faculty member and researcher at OISE/UT, I am currently studying the experiences that sexual assault survivors who take legal action against their perpetrator(s) have within the Canadian Criminal Justice System. For the present study, I am specifically interested in the treatment that female survivors of sexual assault receive as they navigate the justice system and prepare for legal interactions, court appearances and testifying duties.

I am currently looking for service providers, aged 18 years or older, with a minimum of two years of experience preparing and/or accompanying survivors of sexual assault through the court process within the greater Toronto area to participate in a confidential interview about their experiences. The interview will ask about your personal and professional background, as well as your perceptions of the treatment that sexual assault survivors commonly receive from legal personnel and the influence of any obstacles or stereotypes that you may have witnessed within the legal system. This interview can be conducted in-person at a private and confidential office at the University of Toronto or an appropriate location of your choosing. It is expected to take approximately 1.5 hours to complete.

This study has been approved by the University of Toronto Research Ethics Review Office. All responses will be kept anonymous and confidential, and every effort will be made to ensure participant safety and comfort throughout the process.

The information gained from this study may help us to better understand the needs of sexual assault survivors and may aid in the development of future research projects and social programs. As a token of appreciation, financial compensation will be provided to all participants. TTC tokens will also be provided to assist with travel costs, if needed.

Your involvement in this research study would be greatly appreciated. Attached please find a poster advertising this study. Please feel free to post this advertisement within your organization and please pass this information along to any individuals or organizations that you feel may be interested in participating in this study.

If you have any questions or concerns, please contact me by email at allyson.clarke@utoronto.ca or by telephone at 416-978-0686. You may also contact Dr. Lana Stermac, the faculty supervisor of this project, by telephone at 416-978-0722 or by email at l.stermac@utoronto.ca. If you have any questions about the rights of a research participant, please feel free to contact the Ethics Review Office at ethics.review@utoronto.ca or 416-946-3273. Thank you for your participation.

Sincerely,

Allyson Clarke, MA
Appendix D

Initial Screening Interview for Service Provider Sample

Thank you for your interest in this study. My name is Allyson Clarke and I am a doctoral student completing my PhD in Counselling Psychology at the Ontario Institute for Studies in Education at the University of Toronto (OISE/UT). Under the supervision of Dr. Lana Stermac, a faculty member and researcher at OISE/UT, I am currently studying the experiences that female sexual assault survivors have within the Canadian Criminal Justice System and the treatment they receive as they navigate the justice system and prepare for court appearances and testifying duties. For the present study, I am recruiting service providers with a minimum of two years of experience preparing and/or accompanying survivors of sexual assault through the court system within the greater Toronto area, to participate in confidential interviews about their experiences.

If you choose to participate in this study, you will be asked about your personal and professional background, as well as your perceptions of the treatment that sexual assault survivors commonly receive from legal personnel. You will also be asked about the nature of any obstacles or stereotypes that you may have witnessed within the legal system, and the influence you believe this may have on legal proceedings and/or the treatment received by survivors of sexual assault. In addition, you will be asked to rate your overall satisfaction with the legal process and given the opportunity to provide any suggestions you may have for improvement within the legal system.

This study has been approved by the University of Toronto Research Ethics Review Office. Your responses will be kept confidential and anonymous, and every effort will be made to ensure that you feel safe and comfortable throughout the process. This interview can either be conducted in-person at a private and confidential office at the University of Toronto or an appropriate location of your choice. It is expected that the entire interview will take approximately 1.5 hours to complete. As a token of appreciation, you will be paid $25 for your participation. TTC tokens will also be provided to assist with travel costs, if needed.

In order to determine if this study is the right fit for you, and vice versa, I would like to ask you a few questions:

1. Are you currently over 18 years of age?

2. Have you worked in a role where you were/are responsible for preparing and/or accompanying survivors of sexual assault during the court process, within the GTA, for more than two years?

3. Are you willing to participate in a confidential interview about your experiences observing and supporting survivors of sexual assault as they prepare for and participate in sexual assault trials?

4. Are you willing to have your interview responses audiotaped?
Appendix E

Interview Schedule for Survivor Sample

1) Demographic information

This interview will focus mainly on your experiences preparing for and interacting with legal personnel during your sexual assault trial. However, before we talk about that, I would like to get a little bit of background information about you.

- What is your age?
- What is your gender?
- What is your sexual orientation?
- What is your race/ethnicity?

2) Sexual assault description

I would like to ask you a few questions about your sexual assault, as this information will help me to better understand your experiences. However, as this can be a difficult topic to speak about, I will not be asking for a detailed description of the events that occurred. Please only answer these questions in as much detail as you feel comfortable. As well, please let me know if you would prefer not to answer any of these items and we will skip to the next question.

- What year did the sexual assault take place?
- How old were you at the time of the assault?
- What was the gender of the perpetrator(s)?
- Did you know the perpetrator(s)?
  o PROBE: If yes, what was your relationship with him/her?
- Where did the assault take place?
- Did the perpetrator(s) use a weapon during the assault?
- Were you physically injured during the assault?
- Were alcohol, “date rape drugs” and/or recreational drugs involved in the assault?
  o PROBE: If yes, what substances? Who was under the influence of these substances?
- Is there anything else that you would like me to know about the sexual assault?

3) Experiences with reporting and police interactions

I would now like to ask you about your decision to take legal action against your perpetrator, and your experiences with the police.

- Please tell me about your interactions with the police.
  o PROBE: What made you decide to report the sexual assault to the police?
  o PROBE: Did you do anything to prepare for reporting the sexual assault to the police? If yes, please describe. What made you decide to prepare in this way?
  o PROBE: How were you treated by the police? How did you feel about that? What did this mean to you?
4) Experiences at trial
   I would now like to ask you about your experiences leading up to and during the trial.

   • Please tell me about your interactions with the prosecutor.
      o PROBE: How were you treated by the prosecutor? How did you feel about that?
      What did this mean to you?
      o PROBE: Did you do anything to prepare for your meetings with the prosecutor? If yes, please describe. What made you decide to prepare in this way?
   • Did you work with a court support worker, victim advocate or counsellor to prepare for the trial? If yes, please tell me about those interactions.
      o PROBE: What kind of services did you receive from this person?
      o PROBE: How were you treated by this person? How did you feel about that? What did this mean to you?
      o PROBE: Did you do anything to prepare for your meetings with this person? If yes, please describe. What made you decide to prepare in this way?
   • Please tell me about your interactions with the defense attorney and/or judge.
      o PROBE: How were you treated by the defense attorney? How were you treated by the judge? How did you feel about that? What did this mean to you?
      o PROBE: Did you do anything to prepare for your interactions with the defense attorney/judge? If yes, please describe. What made you decide to prepare in this way?

5) Court preparation
   I would like to ask you some questions about how you prepared for appearing in court and testifying against your perpetrator.

   • How did you prepare for testifying against your perpetrator?
      o PROBE: Did you rehearse your testimony? If yes, please describe how.
      o PROBE: Did you do anything to prepare yourself emotionally? If yes, please describe.
      o PROBE: Did you do anything to prepare yourself physically? If yes, please describe.
      o PROBE: What made you decide to prepare in this way?
      o PROBE: Did you receive any preparation instructions from your lawyer or another person?
   • Did you try to present a particular image when testifying or appearing in court?
      o PROBE: If yes, what kind of image did you try to present? In what ways did you try to present this image?
      o PROBE: What made you decide to present this image?
   • What impact did preparing in this way/presenting this image have for you?
      o PROBE: What impact did this have on how you felt while testifying?
      o PROBE: Do you think it had an impact on how you were viewed or treated by the lawyers, judge and/or jury? If yes, please describe.
      o PROBE: Do you think it had an impact on the outcome of your case? If yes, please describe.
6) Case outcome and concluding thoughts

• What was the outcome of the case?
  o PROBE: How did you feel about that?
• Overall, how would you rate your satisfaction with the legal system?
• What would you recommend to improve the process?
• Is there anything else you would like to add before we end the interview?
Appendix F

Interview Schedule for Service Provider Sample

1) Demographic information

This interview will focus mainly on your perceptions of the legal system and experiences helping survivors prepare for and attend their sexual assault trials. However, before we talk about that, I would like to get a little bit of background information about you.

- What is your age?
- What is your gender?
- What is your sexual orientation?
- What is your race/ethnicity

2) Professional background and job description

I would also like to ask you a few questions about your work and professional background.

- What kinds of professional background/training do you have?
  - PROBE: What kinds of formal education have you completed? What kinds of specialized training in the area of sexual violence have you completed?
- Please tell me about your current job description and responsibilities.
  - PROBE: What kinds of clients do you typically serve (e.g., age range, gender, race/ethnicity, SES, etc.)?
  - PROBE: What kinds of services do you typically provide to clients?
- How many years have you been working in your current role?

3) Perceptions of survivor treatment within sexual assault trials

I would like to ask you a few questions about your perceptions of the ways in which sexual assault survivors are treated within the legal system.

- In your experience, how do police treat survivors of sexual assault?
  - PROBE: What impact do you think this has on survivors?
- In your experience, what kinds of cases are more likely to proceed to trial?
  - PROBE: Why do you think this is?
- In your experience, how are survivors treated by prosecutors as a case proceeds through trial?
  - PROBE: What impact do you think this has on survivors?
- In your experience, how are survivors treated by defense attorneys and judges?
  - PROBE: What impact do you think this has on survivors?
4) Influence of stereotypes and survivor appearance within sexual assault trials

- In your experience, have you seen any stereotypes or rape myths operating within the legal system?
  - PROBE: If yes, what stereotypes or rape myths have you witnessed?
  - PROBE: What impact do you think these stereotypes have on the ways in which survivors are treated? On the ways in which survivors interact with the legal system? On case outcome? On survivor wellbeing and/or satisfaction with the legal system?

- In your experience, does survivor physical appearance and/or demeanour influence the treatment that survivors receive from legal professionals?
  - PROBE: If so, in what ways? What characteristics seem to have an influence?
  - PROBE: What impact do these characteristics have on the ways in which survivors are treated? On the ways in which survivors interact with the legal system? On case outcome?

- In your opinion, is it advisable for survivors to present a particular image when engaging with legal professionals, appearing in court and/or testifying?
  - PROBE: If so, what kind of image?
  - PROBE: What impact does presenting this image have on the ways in which survivors are treated? On case outcome?
  - PROBE: Do you personally recommend that survivors present this kind of image? Why or why not?

5) Concluding thoughts

- Overall, how would you rate your satisfaction with the legal system?
- What would you recommend to improve the process?
- Is there anything else you would like to add before we end the interview?