POLICY OPTIONS POLITIQUES

IMPROVING CANADA'S RESPONSE TO SEXUALIZED VIOLENCE

The federal government's latest Speech from the Throne recognized the "harm that gender-based violence continues to do to Canadian society," and committed to the development of an action plan to address this pervasive social problem. There are many areas for improvement, both with regard to prevention and also in how our legal and social systems deal with victims. The purpose of this series of articles, published in partnership with the Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR) in early 2020, is to shine a light on the gaps that policy-makers, legislators and the courts need to fill. Experts touch on such areas as the legal response to victims of intimate partner violence; how victims can better attain justice in the spheres of post-secondary education, the military and sports; how to respect the rights of victimized children and prevent sexualized abuse; and the need for better social, legal and police supports for victims of assault.

COMBATTRE LA VIOLENCE SEXUELLE, SOUTENIR LES VICTIMES

Dans le dernier discours du Trône, le gouvernement fédéral reconnaissait les « torts que la violence sexiste continue de causer à la société canadienne », et s'engageait à élaborer un plan d'action pour lutter contre ce problème qui se fait sentir dans toutes les sphères de la société. Des changements sont nécessaires sur plusieurs plans, notamment en prévention et dans le traitement que notre société et notre système de justice réserve aux victimes. Ce dossier, préparé en partenariat avec le Canadian Centre for Legal Innovation in Sexual Assault Response (CCLISAR), vise à faire la lumière sur les lacunes auxquelles les décideurs politiques, les législateurs et les tribunaux doivent remédier. Nos collaborateurs se penchent sur diverses réalités : les procédures judiciaires dans les cas de violence conjugale ; la manière d'obtenir justice dans les milieux militaire, sportif et d'enseignement postsecondaire ; le respect des droits des victimes mineures et la prévention des abus sexuels ; et les besoins des victimes en matière de soutien social, juridique et policier.

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How the minority Parliament can help respond to sexualized violence

Responding effectively to the problem of sexualized violence is not a partisan issue. There are positive changes a minority government can make.

ELAINE CRAIG

(This article has been translated into French.)

Sexualized violence continues to be a widespread, costly, harmful, and discriminatory social problem. Canadian women are more likely to be sexually assaulted than to obtain a university degree or to be paid the same as our male counterparts, as I have noted elsewhere. For Indigenous women, the rate of sexual assault is triple that of non-Indigenous women.

Spurred by the #MeToo movement, our legal and social responses to sexualized violence have received enormous, and novel, public attention in the past five years. Canadians are increasingly frustrated with how our legal systems and social institutions respond to harmful sexual behavior.

During its first mandate, the Trudeau government took some steps that responded to this public dissatisfaction. Those steps should be applauded. For the first time in over 25 years, significant, substantive changes to the law of sexual assault were adopted through amendments to the *Criminal Code*. These include clarifying that intimate sexual communications between a complainant and her alleged abuser should be protected by our rape shield provisions; creating a process to determine whether private records in the accused's possession, such as texts or Facebook messages between him and the complainant, are legitimately necessary for the defence (rather than introduced solely to humiliate, or discriminate against, the complainant); and permitting complainants or their lawyers to have a say on whether evidence of their other sexual activities, unrelated to the alleged sexual assault, should be introduced at trial.

These provisions are being challenged under the *Charter*. Some trial judges have upheld their constitutionality. Others have struck them down, despite the Supreme Court of Canada having already ruled on the constitutionality of laws of this nature.

The previous government also supported several promising policy initiatives aimed at improving our response to sexual violence. For example, the government funded the development of pilot projects to provide state-funded independent legal advice for sexual assault survivors in several provinces. Similarly, as part of its Strategy to Prevent Gender Based Violence, the federal government provided the National Judicial Institute (which trains judges) with money to develop judicial training that focuses on gender-based violence including sexual assault.

Despite these positive changes, there have been missed opportunities. For instance, when given the chance to clarify and improve the legal definition of capacity to consent to sexual touching through a proposed Senate amendment to Bill C-51, the Minister of Justice refused. At what point of intoxication is someone too drunk to consent? This is a frequent, inconsistently answered question in sexual assault trials. Instead of resolving the matter, Bill C-51 added an unnecessary and potentially problematic provision reiterating that unconscious people cannot consent to sex – a point about which judges were not confused.

Our new minority government has an opportunity to bring together all parties to work collaboratively on this social problem. What are some of the legislative steps and policy initiatives addressing sexualized violence that the government should pursue to meet its commitment to reduce violence against women articulated in its recent Speech from the Throne?

Provinces bear responsibility for delivering services to survivors of sexual violence and administering justice. Nevertheless, there is a great deal that could be achieved at the federal level. This piece and the feature series in *Policy Options* offer only a few.

Most obviously, additional revisions to the *Criminal Code* should be introduced. Courts require guidance in adjudicating sexual assault cases involving severely intoxicated complainants. The previous government committed to working on this issue. In many cases, women who are too intoxicated to walk, speak, or dress themselves properly are not found to be too drunk to consent. The *Criminal Code* should include a definition of capacity to consent that requires more than the bare consciousness or "minimal capacity" currently required by many courts.

The previous government eliminated preliminary inquiries in many sexual assault cases. Bill C-75 restricted the availability of preliminary inquiries to those offences liable to a maximum sentence of 14 years or more. This is a positive development for sexual assault law in part because it means that most sexual assault complainants over the age of 16 will not have to undergo the ordeal of testifying and being cross-examined twice.

But, because sexual assaults involving complainants under the age of 16 expose an accused to a sentence of up to 14 years, preliminary inquiries are still available in cases involving children. The new government should amend the *Criminal Code* so that children – some of our most vulnerable sexual assault complainants – are not forced to go through a process we now protect most adult complainants from enduring.

There are also, of course, countless steps beyond revisions to the *Criminal Code* that the federal government should take. To name a few, many of which will be examined more closely by the authors in this series:

- Federal funding for independent legal aid programs should be made permanent.
- A strategy for prevention and provision of services and dedicated funding for responding to sexualized violence in Canada's north, where rates of sexualized violence are more than seven times higher than in the south, should be implemented.
- The Canadian military, which, given the Supreme Court of Canada's decision in *R v Stillman,* will continue to run its own sexual assault trials, should be required to respond to the failings within its legal system identified by the auditor-general and others.

- The Missing and Murdered Indigenous Women and Girls' Calls for Justice should be answered with money and action.
- The funding commitments related to the Strategy to Prevent and Address Gender Based Violence should be revisited and renewed.
- Resources should be devoted to supporting better research on the vital gaps in our justice system that lead to costly harms, often borne by those who are most vulnerable.

Key to the success of any of these efforts will be the government's willingness to consult and work with sexual assault experts – front-line workers, academics and practitioners. Initiatives like the Department of Justice's 2017 Knowledge Exchange (in which sexual assault experts and law- and policy-makers were brought together to examine how sexual assaults are reported, charged and prosecuted in Canada) should be undertaken throughout the government's term including in these early days in office, when mandates are developed and directions chosen.

Effective response to sexualized violence is a non-partisan issue. It is also a prolific and intransigent social problem with devastating effects – the bulk of which are borne by women and girls. This series highlights the many opportunities for Canada's new minority government to improve our social and legal responses to this problem.

Agir efficacement contre les violences sexuelles

Les violences sexuelles n'ont rien d'un enjeu partisan. Et un gouvernement minoritaire peut tout à fait prendre des mesures efficaces pour les combattre.

ELAINE CRAIG

(Cet article a été traduit de l'anglais.)

Les violences sexuelles restent un problème de société répandu, coûteux, préjudiciable et discriminatoire. Pour les Canadiennes, la probabilité d'être agressées sexuellement est plus élevée que celle d'obtenir un diplôme universitaire ou un salaire égal à celui des hommes, comme je l'ai déjà noté, et le taux de ces agressions est trois fois supérieur chez les femmes autochtones.

Depuis cinq ans, et encore plus depuis le lancement du mouvement #MeToo (#MoiAussi) en 2017, les réponses sociales et juridiques apportées à ces violences ont suscité une réaction aussi forte qu'inédite dans la population, de plus en plus insatisfaite du rôle du système judiciaire et des institutions sociales face aux comportements sexuels répréhensibles.

Au cours de son premier mandat, le gouvernement de Justin Trudeau a pris certaines mesures qui tiennent compte de cette insatisfaction, ce qui mérite d'être souligné. Pour la première fois en plus de 25 ans, le Code criminel a ainsi fait l'objet d'amendements qui ont modifié de façon significative et substantielle la loi sur les agressions sexuelles. Ces modifications sont venues confirmer qu'il faut maintenir le caractère privé des communications d'ordre sexuel ou à des fins sexuelles entre une plaignante et son agresseur présumé en les assujettissant au régime sur la protection des victimes de viol. Un processus a été établi visant à déterminer si des documents privés détenus par l'accusé, comme des messages texte ou Facebook échangés avec la plaignante, sont légitimement nécessaires à la défense (au lieu d'être utilisés à seule fin d'humilier la plaignante ou de lui porter préjudice). Les modifications ont aussi accordé aux plaignantes ou à leurs avocats un droit de regard sur la recevabilité en preuve d'antécédents sexuels sans rapport avec l'agression présumée.

Ces dispositions sont actuellement contestées en vertu de la Charte. Certains juges de première instance ont confirmé leur constitutionnalité, mais d'autres les ont invalidées, et ce même si la Cour suprême du Canada s'est déjà prononcée sur la constitutionnalité des lois de cette nature.

Le premier gouvernement Trudeau a également soutenu plusieurs initiatives prometteuses visant à améliorer notre réponse à la violence sexuelle. Suite à un rapport du Comité permanent de la condition féminine, il a notamment financé dans plusieurs provinces des projets pilotes visant à procurer un avis juridique indépendant aux survivantes de violences sexuelles. Le gouvernement du Québec a par ailleurs présenté son propre programme en décembre 2019. Dans le cadre de sa Stratégie pour prévenir et contrer la violence fondée sur le sexe, Ottawa a aussi doté l'Institut national de la magistrature (chargé de la formation des juges) de fonds destinés à l'élaboration d'une formation judiciaire axée sur la violence fondée sur le sexe, y compris les agressions sexuelles.

Mais ces avancées s'accompagnent d'occasions manquées. Par exemple, la ministre de la Justice a refusé de donner suite à un amendement au projet de loi C-51 proposé par le Sénat, qui aurait éclairci et renforcé la définition juridique de la capacité à consentir à des contacts sexuels. À quel niveau d'ébriété perd-on la capacité de donner son consentement ? La question revient souvent dans les procès pour agression sexuelle, où elle est traitée de façon inégale. Mais au lieu de clarifier les choses, le projet de loi C-51 a ajouté une disposition inutile et potentiellement problématique qui réitère simplement qu'une femme inconsciente ne peut consentir à des relations sexuelles, ce que tous les juges reconnaissaient déjà.

Le nouveau gouvernement pourrait profiter de son statut minoritaire pour inciter tous les partis à collaborer au règlement de ce problème de société. Quelles mesures législatives et politiques lui permettraient de combattre les violences sexuelles de manière à respecter l'engagement pris dans le dernier discours du Trône de réduire la violence faite aux femmes ?

Certes, il revient aux provinces de fournir les services nécessaires aux survivantes de violences sexuelles et d'administrer la justice. Mais Ottawa pourrait tout de même favoriser d'importants progrès. Cet article, tout comme tout le dossier d'*Options politiques* sur la question, propose quelques pistes.

La mesure la plus évidente consiste à apporter d'autres modifications au Code criminel pour guider les tribunaux dans les affaires impliquant des plaignantes en état d'ébriété avancé. Le gouvernement précédent s'était d'ailleurs engagé à étudier la question. Car dans de nombreux cas, comme dans cette cause entendue en Ontario, des femmes trop ivres pour marcher, parler ou s'habiller sont encore jugées aptes à consentir à des relations sexuelles. Le Code criminel doit donc revoir sa définition du consentement, qui devrait nécessiter davantage que la simple conscience des faits ou la « capacité minimale » à consentir actuellement retenue par plusieurs tribunaux, comme ce fut le cas dans un jugement rendu en Nouvelle-Écosse qui avait permis d'acquitter un chauffeur de taxi accusé d'agression sexuelle, mais qui avait été ensuite annulé en Cour d'appel.

Le gouvernement a par ailleurs supprimé les enquêtes préliminaires dans de nombreuses affaires d'agressions sexuelles, le projet de loi C-75 les restreignant aux seuls cas d'infractions passibles d'un emprisonnement de 14 ans ou plus. Il s'agit d'une évolution favorable de la loi, notamment parce que la plupart des plaignantes de plus de 16 ans n'auront plus à subir deux fois les épreuves du témoignage et du contre-interrogatoire.

Mais les enquêtes préliminaires restent possibles lorsqu'il s'agit d'enfants, puisque les agressions de plaignantes de moins 16 ans exposent les accusés à des peines maximales de 14 ans. C'est pourquoi le nouveau gouvernement doit aussi modifier le Code criminel de manière à ce que les enfants, qui comptent parmi les plaignants les plus vulnérables, n'aient pas à subir un processus désormais épargné aux plaignants adultes.

Outre ces modifications au Code criminel, Ottawa pourrait évidemment adopter une série de mesures complémentaires. En voici quelques-unes parmi celles qui seront examinées en détail par les auteurs de ce dossier :

- Pérenniser le financement fédéral des programmes d'aide juridique indépendants.
- Mettre en œuvre une stratégie de prévention, de prestation de services et de financement pour combattre les violences sexuelles dans le Nord canadien. Dans les Territoires du Nord-Ouest, par

exemple, le taux de victimes par habitant est sept fois plus élevé que celui observé à l'échelle nationale.

- Exiger des Forces armées canadiennes, qui continueront de tenir leurs propres procès dans les affaires d'agressions sexuelles par suite de l'*arrêt Stillman* de la Cour suprême du Canada, de remédier aux lacunes de son appareil judiciaire notamment révélées par le Vérificateur général.
- Répondre aux appels à la justice du rapport de l'Enquête nationale sur les femmes et les filles autochtones disparues et assassinées par une aide financière et des mesures concrètes.
- Revoir et renouveler les engagements de financement liés à la Stratégie du Canada pour prévenir et contrer la violence fondée sur le sexe.
- Affecter les ressources nécessaires à une recherche plus exhaustive sur les lacunes de notre système juridique qui font subir d'importants préjudices aux personnes souvent les plus vulnérables.

La clé du succès réside dans la volonté du gouvernement actuel de collaborer avec des spécialistes en matière d'agressions sexuelles : travailleurs de première ligne, juristes et chercheurs. Il lui faut aussi multiplier les initiatives, comme celle de la série Échanges de connaissances 2017 du ministère de la Justice (réunissant des panels d'experts, de législateurs et de décideurs pour examiner les étapes du signalement, de l'inculpation et de la poursuite des affaires d'agressions sexuelles), tout au long de son mandat mais aussi dès ces premiers mois où sont définies les attributions et les orientations.
La lutte contre les violences sexuelles n'a rien d'un enjeu partisan. C'est un problème de société tenace et répandu dont les effets dévastateurs touchent majoritairement des femmes et des filles de tout le pays. Ce dossier propose de nombreuses mesures sociales et juridiques que le nouveau gouvernement minoritaire pourrait adopter pour renforcer l'efficacité de son action.

Les délais de prescription dans les cas de violence sexuelle

Il ne suffit pas d'allonger les délais de prescription dans les cas de poursuite civile pour agression sexuelle. Au nom de la justice, ces délais devraient être abolis.

LOUISE LANGEVIN

Plusieurs avenues juridiques s'offrent aux victimes de violence sexuelle. Elles peuvent porter plainte aux autorités policières en espérant qu'elles seront crues et qu'une accusation criminelle sera déposée contre le présumé agresseur. Toutefois, le système pénal en matière d'infractions à caractère sexuel a des failles, qui ont été amplement démontrées. En plus ou au lieu de l'action pénale, les victimes peuvent décider d'intenter une action devant le tribunal civil contre l'agresseur (mais aussi contre son employeur si la violence s'est produite dans le milieu du travail) pour obtenir une indemnisation. Elles peuvent aussi déposer une plainte en déontologie contre l'agresseur, si les gestes ont été posés par un professionnel dans le cadre de son travail (par exemple un médecin, un psychologue, un infirmier). Ou encore, elles peuvent choisir de demander une indemnisation en vertu de la *Loi sur l'indemnisation des victimes d'actes criminels* (LIVAC). À l'instar d'autres régimes étatiques, comme la *Loi sur l'assurance automobile*, la LIVAC reconnaît que les actes criminels que peuvent subir les citoyens font partie des risques sociétaux.

J'aborderai ici l'action civile de la victime en vue d'obtenir une indemnisation pour le préjudice physique et psychologique subi à la suite de violence sexuelle. L'action civile présente des avantages intéressants pour la demanderesse par rapport à la poursuite criminelle. D'abord, elle n'a pas à prouver les faits hors de tout doute raisonnable, mais plutôt selon la prépondérance des probabilités. Lors du procès civil, la demanderesse détient plus de pouvoir. Avec son avocat(e), elle choisit les faits qu'elle présentera, tout comme ses experts et ses témoins. Le tribunal se penchera sur ses besoins. Elle peut expliquer au tribunal les conséquences des agressions, ce que, dans un procès criminel, elle ne peut faire que lors de l'imposition de la peine s'il y a une condamnation. Le défendeur ne bénéficie pas d'une situation privilégiée ; il ne jouit pas de la présomption d'innocence dans un procès civil. Le procès donne l'occasion à la demanderesse d'obtenir la reconnaissance qu'un tort lui a été causé et de dénoncer l'agresseur sans avoir à prouver sa culpabilité hors de tout doute raisonnable. Elle peut aussi vouloir attirer l'attention des médias pour aider d'autres victimes.

Toutefois, ce genre d'action n'offre pas que des avantages. La victime doit avoir les moyens de porter son litige devant un tribunal, et le défendeur doit être solvable. Comme tout recours, l'action est une source de stress, et la demanderesse aura à revivre les événements traumatisants. Parmi les difficultés, plusieurs ont souligné les courts délais de prescription. Il est possible de porter plainte au criminel pour agression sexuelle quel que soit le temps écoulé, mais une poursuite civile oblige la victime à respecter des délais.

En 1992, dans l'affaire *M. (K.)* c. *M. (H.)*, devenue célèbre, la Cour suprême du Canada a dénoncé l'obstacle que représentaient les délais de prescription pour les victimes de violence sexuelle qui voulaient intenter des actions civiles contre leur agresseur. Dans les systèmes de justice occidentaux, les

personnes qui désirent entamer une action civile doivent le faire dans un délai de quelques années (la prescription extinctive), au risque de perdre leur droit d'action. Ces délais se justifient par le respect de l'ordre public. Ils évitent l'érosion des éléments de preuve ; ils assurent la sécurité dans les relations juridiques et mettent le défendeur à l'abri du manque de diligence du demandeur à intenter son action. Les arguments pour les courts délais de prescription sont fondés sur le postulat que le demandeur possède tous les renseignements nécessaires pour intenter une action et que le défendeur doit être protégé contre les retards de celui-ci. Les possibilités d'actions civiles ne doivent pas se transformer en épée de Damoclès au-dessus de la tête des justiciables. Cependant, dans les cas de violence sexuelle, ces postulats ne représentent pas les réalités des victimes.

Dans l'arrêt *M. (K.)* c. *M. (H.)*, la demanderesse, victime d'inceste à 10 ou 11 ans, avait intenté l'action civile contre son beau-père 12 ans après la fin des actes. À 16 ans, elle en avait déjà parlé à un conseiller d'orientation scolaire qui l'avait envoyé consulter un psychologue, mais celui-ci ne l'avait pas crue. Son père l'avait ensuite forcée à se rétracter devant un avocat du conseil scolaire local. Des années plus tard, la thérapie aura permis à la victime d'enfin prendre conscience que ses problèmes psychologiques d'adulte provenaient des agressions passées. Selon le droit de l'Ontario de l'époque, elle aurait dû intenter son action dans un délai de quatre ans (à partir de sa majorité) après les gestes posés. Le plus haut tribunal a rejeté les arguments justifiant les courts délais de prescription dans le cas de victimes de violence sexuelle qui sont traumatisées par les gestes subis (même s'ils remontent à des décennies). Il a proposé une présomption de conscience pour suspendre le temps : les délais de prescription doivent commencer à courir à partir du moment où la demanderesse fait le lien entre la violence subie (la faute du défendeur) et les conséquences désastreuses sur sa vie. Dans l'affaire en question, plusieurs raisons expliquaient l'inaction de la victime : elle avait refoulé les événements, elle n'avait pas été crue lors de dénonciations, elle avait honte ou peur d'en parler, elle se sentait coupable et ne voulait pas briser sa famille. La prise de conscience d'une demanderesse est très souvent déclenchée par une thérapie ou un événement qui lui permet d'établir le lien.

La Cour suprême a appelé de ses vœux des changements législatifs qui allongent les délais de prescription ou les abolissent dans les cas de violence sexuelle. À la suite de sa décision, plusieurs provinces canadiennes ont entrepris des modifications législatives pour allonger les délais de prescription dans les actions civiles pour violence sexuelle. De toutes les provinces et territoires, seuls le Québec et l'Île-du-Prince-Édouard n'ont toujours pas aboli les délais.

Le Québec a tardé à suivre la voie de la modification législative, laissant la tâche aux tribunaux de faire évoluer le droit et aux victimes d'en subir les contrecoups. Il s'agit d'un déni de justice pour les victimes, qui sont surtout des femmes et des enfants.

Pourtant, la Direction de l'indemnisation des victimes d'actes criminels, qui gère l'application de la LIVAC, avait été avant-gardiste. Dès le début des années 1990, l'organisme avait prolongé le court délai d'un an (à partir de la perpétration de l'acte criminel) pour déposer une demande d'indemnisation afin de tenir compte des enseignements de la Cour suprême. Le délai commençait à courir à partir du moment où la victime prenait conscience du lien de causalité entre les agressions subies et son incapacité à agir. Vers la fin des années 1990, les tribunaux civils ont accepté de suspendre les délais de prescription de trois ans dans des litiges pour violence sexuelle si la demanderesse fait la preuve de son impossibilité psychologique à agir. Cette exigence supplémentaire a poussé certains tribunaux à réclamer des expertises médicales démontrant que la demanderesse était dans une impossibilité absolue d'agir — en d'autres mots, presque incapable de gérer sa vie. De nombreuses victimes n'ont pas été indemnisées en raison de cette preuve très exigeante et du délai de prescription échu.

En 2013, le délai de 3 ans est passé à 30 ans pour les actions civiles intentées à la suite de gestes de violence (article 2926.1 du Code civil du Québec). Dans le cas de violence sexuelle subie par des mineurs, le délai de 30 ans commence à courir à partir de la majorité. Le délai de la LIVAC d'un an a été changé à deux ans. Ces nouveaux délais peuvent être suspendus comme je l'ai mentionné plus haut. Mais ils n'ont pas disparu pour autant. Le législateur québécois a refusé de les abolir, considérant qu'un délai de 30 ans était suffisant pour répondre aux besoins des victimes de violence sexuelle. Pourtant, ce n'est pas toujours le cas, comme le montrent certains cas. Ainsi une femme de 75 ans, agressée à la fin des années 1920 par son frère, a attendu le décès de son mari pour intenter une action civile contre son frère. Un délai de presque 65 ans.

Dans des recours collectifs intentés contre des communautés religieuses par des adultes victimes de violence sexuelle alors qu'ils étaient enfants, les défendeurs ont accepté de ne pas soulever l'argument des délais de prescription pour permettre aux victimes d'être indemnisées.

L'entêtement du Québec est difficilement justifiable. L'argument d'actions intentées contre les héritiers des agresseurs a parfois été avancé : sans limite de temps, les victimes pourraient « importuner » les héritiers plusieurs années après la mort de l'agresseur (le délai est présentement de trois ans à partir du décès de la victime ou du défendeur). D'autres ont fait valoir que l'imprescriptibilité de l'action civile ne respectait pas le droit civil. La « pureté » du droit civil doit-elle être maintenue, malgré le déni de justice subi par les victimes de violence sexuelle ?

Le Québec aurait dû abolir les délais de prescription, comme d'autres provinces l'ont fait. L'actuelle ministre de la Justice a promis d'apporter une modification au Code civil en ce sens d'ici juin. L'ordre public est plutôt perturbé si le mécanisme de la prescription empêche en pratique une certaine catégorie de victimes qui ont subi un préjudice bien particulier de poursuivre leur agresseur (qui, la plupart du temps, est un membre de leur famille). Nous attendons un projet de loi qui abolit dans le Code civil et la LIVAC les délais de prescription pour les victimes de violence sexuelle et conjugale.

Legal gaps persist for intimate partner sexual violence after key ruling

A key Supreme Court ruling helped address myths about intimate partner sexual violence, but victims still face inequal treatment in the legal system.

JENNIFER KOSHAN, LISE GOTELL

It has been over 25 years since Supreme Court of Canada Justice Claire L'Heureux Dubé discredited the myth that rape is most often perpetrated by strangers in *R v Seaboyer; R v Gayme*. Sexual violence by men against their female intimate partners is, sadly, a common occurrence in Canada and worldwide. Yet myths about spousal sexual violence – marital rape myths – continue to infuse the approach to sexual assault by a wide range of legal actors, including police, prosecutors, defence lawyers and judges.

These myths include the beliefs that consent can be assumed or implied within intimate relationships, that women frequently make false accusations to gain an advantage in family law proceedings, and that marital rape is less serious than rape between strangers because the parties have had sex before. Social science evidence has established that marital rape is often more violent, not less, that injuries are more commonly experienced, and that survivors experience higher rates of trauma.

Several cases of intimate partner sexual violence have come before the Supreme Court, yet it was only in 2019 in *R v Goldfinch* that the Court first discounted some of these marital rape myths. Still, even after the progress made in *Goldfinch*, as well as by recent changes to the *Criminal Code* provisions on sexual assault, it is clear that judicial education, training for Crown prosecutors, and sufficient legal aid for complainants are all necessary to address the justice gap for women who allege marital rape.

Dealing with the complainant's sexual history

In *Goldfinch*, the parties had dated and then lived together for a time and continued to have sex periodically after the relationship ended. On the night in question, the accused claimed that he and the complainant had consensual sex. The complainant testified that he physically and sexually assaulted her, and she was left with visible bruises and swelling following the incident.

At trial, the accused wanted to introduce evidence that he and the complainant were involved in a "friends with benefits" relationship. The Crown was prepared allow for the introduction of some evidence of the parties' relationship, including that the complainant would occasionally stay overnight at the accused's home. The evidence was offered for context, and to address defence concerns that the jury would assume that the relationship was simply platonic, but s 276 of the *Criminal Code* requires that all prior sexual history evidence meet a strict test in order to be admitted at trial.

In this case, following the Crown's introduction of some evidence of the parties' history, the defense sought to cross-examine the complainant on her "friends with benefits" relationship with the accused.

The trial judge allowed for this, finding that the evidence was "relatively benign" and that to keep it from the jury would be artificial and harmful to the accused's right to full answer and defence. The jury acquitted Goldfinch of sexual assault.

A majority of the Supreme Court held that the trial judge erred in allowing evidence of an ongoing sexual relationship (para 45). According to Justice Karakatsanis, "the obvious implication" of this evidence was that the complainant was more likely to have consented (para 47). The discriminatory myth that a woman is more likely to have consented if she had had sex with the accused in the past is one of the reasons behind s 276, which bars the admission of a complainant's sexual history unless certain conditions are met.

In *Goldfinch*, the Supreme Court found that evidence of a relationship "that implies sexual activity" between the accused and complainant must be subject to a sexual history application under s 276 (para 42). In other words, what the Crown had been prepared to allow in the trial of this case should have been subject to an application. Because the defence application to cross-examine the complainant on the "friends with benefits" evidence had failed to put forward any other legitimate use beside the prohibited inference that this relationship made the complainant more likely to consent, the Supreme Court said the evidence should have been excluded at trial. The Court also recognized that the existence of an intimate relationship does not diminish the severity of a sexual assault (para 45).

Trial judges still allowed much discretion

We are encouraged by the majority decision in *Goldfinch*. Women raped by current or former partners are amongst those most likely to be disbelieved in sexual assault proceedings, and it is positive to see the Court take steps to discredit the pernicious marital rape myths that continue to undermine prosecutions of sexual violence within intimate relationships.

However, *Goldfinch* leaves the door open for evidence of a sexual relationship to be introduced in cases where the accused can show it is relevant to an issue at trial. The Supreme Court said examples of this would be when there is an honest but mistaken belief in communicated consent; or a situation where the complainant has made inconsistent statements about the existence of a sexual relationship (paras 62-63). If the accused can establish the potential relevance of relationship evidence, the trial court will have to balance the probative value of the evidence against its prejudicial effects, considering factors such as the accused's right to make full answer and defence, the complainant's privacy, security, and equality interests, and society's interest in the reporting of sexual offences (*Criminal Code*, s 276(3)).

This balancing of interests leaves much discretion to trial judges, and research shows that s 276 applications continue to be a site of inequality for complainants in sexual assault trials. Women in intimate relationships with the accused are susceptible to discriminatory reasoning here, perhaps especially those whose relationships fall outside expected norms. Women who are sex workers, who were intoxicated or affected by disabilities at the time of the sexual activity, or who are Indigenous or racialized, are often the subject of stereotypical thinking in the context of sexual history assessments.

Independent legal counsel for complainants is key

In addition to the need for ongoing training and implementation of ethical standards for legal actors, women require independent legal counsel who will vigorously refute marital and other rape myths in these applications. Crown counsel cannot be counted on to do so, with the *Goldfinch* trial showing how prosecutors are sometimes prepared to allow evidence that requires scrutiny under s 276. Another recent example is *R v Barton*, where the Crown overlooked its obligations under s 276 and referred to

the deceased victim Cindy Gladue in language that was extremely prejudicial to her as an Indigenous woman and someone who had engaged in sex work.

Since amendments were passed in 2018, the *Criminal Code* now explicitly allows for complainants to be represented by their own counsel in s 276 applications (s 278.94(3)). In order to be meaningful, however, this right to counsel provision needs to be accompanied by robust funding. Several provinces and territories have implemented legal aid funding or other programs for complainants' counsel in sexual assault cases in the last few years. In Alberta, for example, legal aid will now fund 5 hours at $92 per hour for lawyers representing complainants in s 276 applications. In a complex trial with a contested sexual history application, this is grossly insufficient. There are also a limited number of lawyers with the requisite expertise and who lack of conflicts of interest who are available to effectively represent complainants in these applications, especially in rural areas.

In applications where the defence seeks access to the complainant's confidential records, having independent legal representation results in decisions that achieve a better balance between the rights of the accused and the rights of the complainant. This will also be a pivotal factor in s 276 hearings when an accused who is a current or former intimate partner seeks to introduce sexual relationship evidence. In a recent case in British Columbia, a Court "found it particularly helpful" to have independent counsel for the complainant, noting that "the additional perspective added much to the Court's understanding of the issues" (see *R. v. T.A.H.*, para 67). These remarks support our contention that funding and training for complainants' counsel in s 276 applications and more broadly are critical to ensuring that marital and other rape myths do not continue to undermine women's equality, security of the person and privacy in sexual assault proceedings.

The misogyny of the so-called "rough sex" defence

Nobody by law can consent to getting hurt in a fistfight, but rough sex is used as a defence for harming women.
This defence should be banned.

ELIZABETH SHEEHY, ISABEL GRANT, LISE GOTELL

Note to readers: This article contains graphic descriptions that some may find disturbing.

What do Joshua Boyle, Jian Ghomeshi and Bradley Barton have in common? They all claimed "consent to rough sex," Ghomeshi on his Facebook page and the others in response to criminal charges of assault, sexual assault and, in the case of Barton, murder. All three men were acquitted, Ghomeshi and Boyle because the trial judge doubted the complainants' credibility and Barton because jurors had a doubt about consent.

Should Canadian criminal law recognize a defence of consent to sexual practices that cause bodily harm? Strangulation involves the deprivation of oxygen to the brain, inevitably causing loss of brain cells and risking brain damage. Punching another in the face can fracture delicate facial bones or teeth and cause brain injury. Inserting a fist or sharp object in another's body cavity can result in tearing, bleeding and internal damage. All of these activities present risks that can — and sometimes do — culminate in death.

Those who practise sado-masochism argue that such activities are private matters best left to the autonomous decisions of individual adults. In this liberal view, sexual freedom, exploration and expression should not be regulated by the state. They assert that criminalizing the actions of consenting adults risks disproportionately penalizing sexual minorities like themselves. Rarely, however, do we see criminal cases where the parties agree that they engaged in consensual "rough sex" but that one of them accidentally was injured. To the contrary, women usually report not consenting to the violence inflicted on them.

And let's be clear: the so-called "rough sex" defence is not gender neutral. The sex is "rough" for women, not men. "Rough sex" depicted in pornography and in practice is marked by gender asymmetry. It is overwhelmingly women who are on the receiving end of this violence and whose health and very lives are on the line. For example, women are two to four times more likely than men to report having experienced strangulation, a powerful predictor of intimate femicide. Yet with the cultural scripts provided by pornography, aided by liberal feminism's championing of "sex positivity," judges and juries can conclude that injuries, and even death, are simply accidental by-products of violent, but consensual, sex.

The "rough sex" defence has devastating consequences for women as complainants in sexual assault trials. If the complainant had a previous sexual relationship with the accused, he will inevitably argue that the couple engaged in violent sex in the past, as both Boyle and Barton did, potentially opening the door to the complainant being cross-examined on her past sexual activity, with the accused or with others. While this evidence is supposedly not relevant to a complainant's credibility, it functions to

undermine her assertion that she did not consent to violence. Even when a consent defence is not itself the key to acquittal, there is no doubt that evidence that a complainant had previously engaged in sexual practices that risked her health and safety, or had even contemplated them, prejudices judges and jurors against her and damages her credibility indelibly. She is seen as "up for anything" and presumed to be consenting.

When a woman dies from her injuries, she has no voice to assert she did not consent to violence. Instead, an accused can testify that she consented to and, in fact, enjoyed the violence. If money is promised in exchange for sex, powerful stereotypes about women in the sex trade consenting to anything and everything infect the trial. Such was the case in the murder trial of Bradley Barton, who caused an 11-cm tear in the vaginal wall of Cindy Gladue, an Indigenous woman. The prosecutor alleged that Barton used a knife or other sharp object to cause the fatal wounds. Barton countered that he had instead thrust his entire fist into her vagina for at least 10 minutes, describing the encounter as consensual despite Gladue's level of intoxication. The acquittal could only mean that the jury had a reasonable doubt about whether Gladue consented to this violence.

People lay flowers and light candles during a candlelight vigil for murdered British tourist Grace Millane at Cathedral Square in Christchurch, New Zealand, on Dec. 12, 2018. (AP Photo/Mark Baker)

The recent murder of 22-year-old Grace Millane in New Zealand was committed by a man who strangled her for what experts say must have been 5 to 10 minutes. After she died, he took photographs of her corpse, watched pornography, stuffed her body into a suitcase and left it in the woods. We never heard Millane's story except through attempts to tarnish her reputation by the introduction of sexual history evidence portraying her as someone who relished violent encounters.

In Britain, John Broadhurst left his partner to bleed to death at the bottom of the stairs. His guilty plea to negligent manslaughter was based not on the 40 horrific injuries that he inflicted on Natalie Connelly during sex, but rather on his failure to seek medical treatment as she lay dying. Connelly, like Gladue and Millane, was repeatedly depicted as responsible for her own death because of her purported enjoyment of "rough sex."

The campaign We Can't Consent to This has documented 52 homicides in the UK where men who have killed women claimed that the deceased consented to "a sex game gone wrong."

Two-thirds of these victims died by strangulation. Most of the men were ultimately convicted of murder, but 14 were convicted of the lesser crime of manslaughter and another 5 were either acquitted or had charges dropped. Of course, these numbers do not include the far more numerous cases of sexual assault involving strangulation in which the victim did not die.

Why are we seeing the emergence of a "rough sex" defence now? Online pornography is proliferating and the violent and sexist nature of mainstream porn is intensifying. In fact, Barton's laptop was found

to contain recent searches for the torture of women, including "extreme penetration" and the insertion of objects in women's vaginas. Women are consistently portrayed in pornography as submissive, if not actively enjoying the violence inflicted upon them. Even more pernicious is the confusing messaging of rape porn, where women superficially protest but then succumb to the alleged "pleasure" of rape.

Given that young people are increasingly accessing violent pornography, and given the normalization of violence against women as "just sex," it is time for the criminal law to take a clear stand on the validity of consent to sexual activities that cause bodily harm. We argue that women's equality rights, the pursuit of sound criminal and health policy and the need to send clear and consistent messages to young people who may be influenced by pornographic myths that violence against women in sex is normal and that women are masochistic all demand a ban on the "rough sex" defence.

In Canadian law, no one can consent to bodily harm in a fistfight, which the Supreme Court describes as having "precious little utility." However, in Ontario, consent to bodily harm during sex will be negated only when the accused "intended and in fact caused" bodily harm. Other provinces have not yet decided this issue. In the *Barton* decision, the Supreme Court declined to clarify the law for the rest of Canada, and thus we are left with uncertainty in the law.

It is true that the Criminal Code has been amended to turn assault involving strangulation into assault causing bodily harm, without the prosecutor having to prove injury. However, because consent remains a defence, an accused can still argue that the complainant consented to strangulation. It is time for Parliament to explicitly acknowledge that there is "precious little utility" in allowing men to bite, strangle, punch and otherwise injure women during sexual activity. In fact, the "rough sex" defence causes irreparable harm to individual women and to women's equality rights.

Prévention primaire et exploitation sexuelle des mineures

Pour prévenir l'exploitation sexuelle des mineures, il faut des campagnes sociétales qui rejoignent tous les jeunes et surtout tous les hommes.

MICHEL DORAIS

La prévention de l'exploitation sexuelle est plus que jamais dans l'actualité, notamment depuis la déferlante #MeToo (#MoiAussi). Les actions à mener visent non seulement à empêcher qu'advienne cette exploitation et à mieux comprendre et soutenir les victimes, mais aussi à agir sur les personnes qui génèrent le marché de l'exploitation.

Rappelons brièvement les trois types possibles de prévention. La prévention primaire consiste à diminuer ou contrer les risques *avant* qu'un problème ne survienne, en créant les conditions requises pour éviter qu'il ne se produise. Elle vise donc une très large population, dans le cas présent tous les jeunes et toutes les personnes susceptibles de participer à l'exploitation des jeunes.

La prévention secondaire vise à intervenir à court terme, dès l'apparition des premiers signes d'un problème, avant qu'il ne produise davantage de dégâts et de séquelles. Elle cible en particulier les personnes à risque d'adopter ou de subir des conduites d'exploitation, ou celles qui se trouvent déjà dans cet engrenage.

La prévention tertiaire constitue moins une prévention au sens premier du terme qu'un soutien à la réadaptation active des personnes qui ont vécu un problème et qui sont en voie de s'en sortir. C'est une action qui a pour but de contrer ou d'atténuer les risques de récidive. Elle doit cibler essentiellement les personnes ou les groupes ayant déjà vécu de l'exploitation, afin d'assurer à moyen et à long terme la complète résilience des victimes et leur donner la capacité d'agir sur leur propre vie. Il s'agit aussi d'assurer la désistance et la réhabilitation des auteurs ou des complices d'exploitation sexuelle.

En matière d'exploitation sexuelle de personnes mineures, une prévention primaire devrait idéalement cibler tous les jeunes et surtout toutes les personnes, mineures ou adultes, susceptibles de les exploiter. En effet, il est contreproductif de faire porter sur les seules épaules de victimes potentielles la prévention de crimes commis à leur encontre. Si on veut combattre efficacement l'exploitation sexuelle, il faut logiquement agir sur les individus qui en sont à l'origine : les clients, les proxénètes et tout autre acteur qui tirent profit de ces crimes, directement ou indirectement, ou quiconque est témoin complice, fût-ce par son silence.

Une prévention primaire de l'exploitation sexuelle devrait idéalement cibler tous les jeunes et surtout toutes les personnes, mineures ou adultes, susceptibles de les exploiter.

Bien sûr, il n'est pas inutile de faire en sorte que les jeunes — filles, garçons, personnes trans, intersexuées ou non binaires quant à leur genre — aient des conditions de vie qui maximisent les facteurs de protection et minimisent les facteurs de vulnérabilité devant la prédation et l'exploitation

sexuelles. Mais cela sera sans grand effet si les personnes qui génèrent le marché de l'exploitation sexuelle et en profitent ne sont pas directement touchées : une victime en remplacera vite une autre si les actions préventives n'atteignent pas ces personnes et qu'un système produit et rentabilise la « demande ».

À cet égard, saluons le fait que l'éducation sexuelle fasse enfin son retour dans nos écoles. Le Web et les réseaux sociaux dont sont friands jeunes et moins jeunes sont d'affligeants colporteurs de mythes sur la sexualité humaine. Le nombre d'hommes de tous âges croyant encore que leur sexualité provient d'une pulsion incontrôlable illustre bien l'aspect dangereux de ces mythes. Certes, personne ne choisit ses désirs, mais une société civilisée devrait enseigner à les gérer afin de valoriser le respect de soi, des autres et des lois qui protègent ces derniers. C'est là un processus et un apprentissage continus, à peaufiner la vie durant, qu'il vaut mieux commencer le plus tôt possible. Cela est d'autant plus vrai que les auteurs de prédation et d'exploitation sexuelles commencent en général leurs exactions avant l'âge adulte. Il n'est pas nécessaire d'attendre que l'irréparable ait été commis pour éduquer et sensibiliser à une sexualité qui respecte les droits et le bien-être des autres (et pour critiquer le mythe persistant des pulsions indomptables).

L'exploitation sexuelle est toujours le résultat d'un abus de pouvoir. En théorie, toute personne peut donc se retrouver ainsi piégée. Malheureusement, il existe des facteurs de vulnérabilité accrus chez des personnes mineures. En passer quelques-uns en revue permettra d'entrevoir quelle forme peut prendre une prévention secondaire, certains jeunes étant plus à risque que d'autres d'être sous le joug d'exploiteurs.

- La pauvreté et le désœuvrement : il existe encore des jeunes qui croient que leur seule ressource pour vivre ou survivre est la vente de leur corps ;
- La faible estime de soi : plusieurs jeunes filles demeurent sous le joug de proxénètes pour un semblant d'amour ;
- Des problèmes affectifs ou familiaux : ils font en sorte que des jeunes peuvent devenir des proies faciles, en particulier lors du passage de l'adolescence à l'âge adulte (c'est souvent le cas chez des jeunes des Centres jeunesse, fréquemment laissés à eux-mêmes au moment de cette transition) ;
- La vision de la prostitution : nombre de jeunes en quête identitaire voient la prostitution parfois comme une « aventure », croyant que les adultes alors rencontrés pourront leur apporter davantage que leur propre famille ou leurs amis ;
- Les agressions sexuelles antérieures : des enfants ou des adolescents ayant vécu des agressions sexuelles peuvent avoir intégré des réflexes ou des scénarios permettant plus aisément qu'on abuse d'eux. Une personne qui a développé une sexualité sur la base d'une expérience traumatique est mal armée pour se défendre face à des prédateurs, car on ne lui a pas permis d'apprendre à le faire.

Mener des actions qui toucheront aussi les auteurs (actifs ou potentiels) d'abus de pouvoir et d'exploitation sur le plan sexuel est évidemment décisif. Ce volet a traditionnellement été négligé. Il y a certes de l'éducation sexuelle à faire auprès des jeunes, mais il y en a aussi à faire auprès des adultes de tous âges.

Beaucoup d'exploiteurs semblent avoir du mal à saisir que la question du respect des personnes mineures relève non seulement de la morale et de l'éthique, mais aussi des droits. Raison de plus pour le leur rappeler, par exemple par des campagnes sociétales. Puisqu'il n'existe pas de groupe naturel

d'hommes exploiteurs ou agresseurs de personnes mineures, il faut s'adresser en amont à tous les hommes. S'ils sont déjà passés aux actes ou sont à risque de le faire, il faut alors assurer auprès d'eux des suivis menés par des professionnels compétents.

Comme je crois au changement tant personnel que social, je voudrais porter un regard sur la prise de conscience qui peut le provoquer ou du moins l'amorcer chez les victimes s'étant tues jusque-là (pour des motifs légitimes, comme des sentiments d'anxiété, de peur, de honte) ou chez leurs exploiteurs. Il s'agit ici de prévention secondaire et tertiaire, puisqu'il faut veiller à ce que des réactions préjudiciables chez les victimes ou des conduites criminelles chez les exploiteurs non seulement cessent, mais soient remplacées par des conduites socialement plus acceptables. Cela exige de l'écoute et de l'imagination de la part des intervenants et de la motivation de la part des personnes en processus de changement. Il faut donc impérativement fournir des ressources qui encouragent et permettent le changement. La nature ayant horreur du vide, il faut présenter aux personnes concernées des alternatives concrètes aux conduites que l'on veut modifier.

On ne peut aider les gens à changer sans comprendre le raisonnement, le contexte et les circonstances qui les ont poussés vers une série de choix conscients menant à leur conduite actuelle. Tant qu'un comportement donne les résultats escomptés, il est prévisible qu'il perdure. Plusieurs jeunes quittent les gangs de rue et la prostitution lorsqu'ils se rendent compte que ce qui semblait être une solution est devenu un problème. Que ce soit du côté des proxénètes ou des victimes, la motivation à demander ou à accepter de l'aide provient presque toujours d'un relatif constat d'échec. Par exemple, un jeune qui est devenu proxénète pour se sentir *king* au milieu de ses pairs et plus libre grâce à l'argent obtenu se rend compte que, lorsqu'il arrêté par la police, puis emprisonné, il est soumis à plus de contraintes que jamais. Ou encore, une jeune fille qui se prostituait pour aider financièrement son petit ami et proxénète peut se retrouver « vendue » à un pair par ce petit ami. Un déclic se produit alors. Ce sont des moments charnières où une personne peut être amenée à chercher de l'aide, encore faut-il que cette aide soit à portée de main.

Notre travail en prévention et en intervention consiste très précisément à offrir des possibilités aux jeunes et moins jeunes qui veulent s'en sortir et à encourager l'adoption de celles qui apparaissent les plus viables. Personne n'est condamné à être exploité sexuellement, à être proxénète ou à acheter les services sexuels de personnes mineures. Commise ou subie, l'exploitation sexuelle n'est pas une fatalité. Une société comme la nôtre devrait avoir davantage d'impact sur les personnes qui permettent à ces crimes d'exister et de prospérer, et aussi sur leurs victimes, trop souvent laissées à elles-mêmes (l'indemnisation des victimes d'actes criminels ne leur offre actuellement pas de soutien), voire déconsidérées. Blâmer la victime de crimes sexuels ou lui faire porter l'odieux de sa condition est un réflexe encore courant. Ces personnes sont souvent soupçonnées à tort d'être les seuls artisans de leur malheur.

En somme, deux approches peuvent guider l'action.

La première consiste à redonner à toutes les victimes, réelles ou potentielles, du pouvoir sur leur vie. Cette approche a une visée tant préventive que curative. Les personnes ayant été sexuellement exploitées vivent le plus souvent avec des séquelles incapacitantes, notamment post-traumatiques.
La seconde vise un travail d'éducation qui n'est manifestement pas fait auprès de tous : il faut enseigner aux exploiteurs sexuels, actifs ou potentiels, qu'ils doivent gérer leur sexualité de façon à respecter les autres, tout en reconnaissant les limites légitimes que l'État met en place pour protéger les personnes mineures. Cette deuxième approche devrait conduire à des actions à grande échelle (des campagnes

sociétales, par exemple). Ce travail doit être fait aussi à l'échelle individuelle par un suivi adéquat — encore ce suivi doit-il être accessible à tous les hommes qui en auraient besoin. Gérer ou non sa sexualité dans le respect des autres ne devrait pas être vu comme un choix personnel optionnel, c'est le devoir de tout citoyen, quel que soit son âge.

Cet article est une version abrégée d'un mémoire présenté par l'auteur le 5 novembre 2019 devant la Commission spéciale de l'Assemblée nationale du Québec sur l'exploitation sexuelle des mineurs.

Rape myths and sexism still cloud police responses to sexualized violence

A model developed in Philadelphia has helped counter police preconceptions and identify investigative failures. It should be replicated in Canada.

HOLLY JOHNSON

Confidence in Canada's criminal justice system among victims of sexual assault is demonstrably at an all-time low. Just five percent of sexual assaults are reported to the police and, in contrast to other violent crimes, sexual assault rates have not declined. It stands to reason that sexually violent men who are not held to account are free to target other women. Clearly, significant, transformative change is long overdue.

Despite progressive reforms of Canada's sexual assault laws designed to remove sexist barriers to fair treatment of (primarily) women complainants, and to encourage victims to come forward, women continue to avoid the police. There are many reasons for this, such as shame and embarrassment, or fear of retaliation. But a chief deterrent is a concern they will receive poor treatment by police and courts. These barriers to reporting persist despite police training, specialized sexual assault police units, and improved coordination between police and sexual assault support centres in many communities.

When women do report these crimes, police can use their discretion to drop complaints they deem to be "unfounded," even when there are grounds for criminal charges and a suspect has been identified. A Globe and Mail investigation showed that, depending on jurisdiction, between two and 51 percent of sexual assault complaints are dismissed by police as unfounded. This sends a message to women there is a very real chance the police will not believe them.

Fortunately for Canadian police, there is a gold standard practice on which to base their own reforms: a model developed in Philadelphia almost 20 years ago and replicated in several American cities. Under this model, police partner with local sexual assault support centres in a transparent effort to understand and remedy problems with sexual assault investigations. They review unfounded and closed cases to identify investigative failures and decisions based on rape myths and stereotypes.

The results are impressive. The thoroughness of investigations and classification of cases have improved significantly. Some cases deemed unfounded were re-opened and charges laid where warranted. Suspicion and mistrust between police and community groups were reduced and both rate the model highly.

Amidst growing evidence, it is time to acknowledge that sexist views and rape myths govern decision-making at all stages of the Canadian justice system. Police decisions are influenced by preconceptions about "real rape" and "genuine" victims, and who is worthy of police protection. Officers take account of legal factors to determine whether a crime has occurred; but they also assess complainants'

credibility and truthfulness based on non-legal factors, some of which have been specifically abolished by law. For example, credibility can be assessed on the basis of a woman's clothing, ethnicity, poverty, level of emotional upset, prior sexual assault complaints, relationship to the suspect, drug or alcohol use, and history of psychiatric problems.

Some claim that police operate within a pervasive ''culture of skepticism,'' where the goal of the investigation is to find evidence that the complaint is false. This skepticism is grounded in widespread assumptions among police and wider society that large numbers of women cry rape falsely. In reality, only between 2 and 10 percent of sexual assault complaints are false, no higher than for other crimes.

Among cases police consider to be legitimate crimes, less than half result in charges against a suspect. Dismissal of sexual assault cases then continues throughout the justice system. Half of suspects face a prosecution and just half of prosecutions result in a conviction. In other words, just 1 in 10 sexual assaults recorded by police as legitimate lead to a conviction. If we factor in the 95 percent of sexual assaults that are not reported to police, as well as those classified as unfounded, a perpetrator is held accountable in less than 1 percent of all sexual assaults. This spells impunity for sexual predators.

There is a growing recognition that trauma resulting from sexual violation also affects the chances of being believed. For example, truthfulness is often judged on how vigorously the woman defended herself and how flawless and linear was her initial statement to police. We now know that trauma can affect both the ability to meet stereotypical expectations about how a "real" victim reacts or how coherently a traumatized person can describe the details of the attack. Sexual assault centres and health and social service agencies know this and are trained to respond to trauma. Police officers typically are not. This can affect the level of respect and sensitivity police show complainants and the thoroughness of the investigation.

Fair investigations and collection of solid evidence depend on police having knowledge of the impacts of trauma and trauma-informed investigative techniques. Some Canadian police agencies have begun to develop appropriate training and all must be encouraged and supported to do so.

The media attention that followed the Globe and Mail exposure of the widespread practice of "unfounding" – that is, dismissing – sexual assaults put pressure on police to review how they handle these cases. Some police agencies with above-average unfounded rates concluded – in closed-door case reviews – that there were no problems with investigations or how cases were classified. However, reviews conducted behind closed doors offer no transparency or accountability, allowing police to evade scrutiny of how thoroughly they pursued certain lines of evidence, or about prejudicial or incomplete questioning of complainants or suspects. Thus, these police agencies are free to re-classify cases without making meaningful changes to policies or procedures.

The good news is a small number of Canadian police agencies are looking to adopt the Philadelphia model. The accountability and community oversight this involves are essential for real, sustainable improvements to women's safety and dignity and to the proper functioning of the law. All police agencies must be encouraged and supported to do the same.

According to the Ontario Human Rights Commission, the failure to properly investigate and prosecute sexual offences is a form of systemic discrimination and a human rights violation. The Chief Commissioner recommends independent monitoring of operations and accountability, as well as data

collection to identify where systemic discrimination occurs — the very essence of the Philadelphia model.

Considering the many failures to deliver justice to sexual assault complaints, some may be surprised to know that Canada is considered a leader in sexual assault law reform. There are aspects of our law, such as affirmative consent requirements and protections for complainants who testify, that are explicitly designed to promote gender equality and improve accountability of violent men. But laws are only as good as their implementation. Sexual assault complainants who are afraid of the consequences of reporting, or put their faith in police only to see their cases dropped, do not benefit from our progressive laws.

The first step toward transformative change is to acknowledge that sexism among police is systemic, and not simply a problem of a few "bad apples." Police agencies must dig deep to find the level of self-criticism needed for truly revolutionary change within their ranks and power structures that will ensure justice and safety for all women. The way forward is clear, if only we can find the will.

Support services still lacking for survivors of sexual assault

Sexual assault survivors need community-based, coordinated services with on-call hospital and police accompaniment, counselling, advocacy and clinics.

GRACE LORE, DALYA ISRAEL, TRACY PORTEOUS

Changes in the wake of the #MeToo movement have been monumental. Perhaps the most promising outcome is recent research suggesting that survivors themselves are feeling less self-doubt, more supported and more empowered. Furthermore, based on the increases in the number of sexual assaults reported to police, survivors' belief in their right to access the system is on the rise. Yet in Canada #MeToo has not led to a transformation of public policy and response models, or to an increase public funding, so support services for survivors have not kept pace with our understanding of what is needed.

We know what survivors need immediately after a sexual assault, starting with access to coordinated trauma-informed professionals and community-based emergency sexual assault services. There are well established best practices based on peer-reviewed research, the experience of survivors and the front-line experts who serve them. Major advances have been made in understanding the neurobiology of trauma, survivors' needs, and what trained responders must do to avoid causing more harm or revictimization.

Community-based responses and emergency services are lifelines for survivors. They include sexual assault response teams (SART), which provide on-call hospital and police accompaniment, emotional support, counselling and advocacy, and integrated sexual assault clinics, where survivors can access medical care, crisis support and police reporting options in a safe and confidential location.

These community-based supports, designed using best practices for sexual assault response in mind, offer a rare policy win-win-win for many reasons.

First – and most importantly – coordinated sexual assault services are survivor-centred and reduce the long-term effects of trauma by providing survivors with early social support and control over their care.

Second, they are inclusive and accessible. Many survivors find entering a medical institution or police station unbearable as a result of current or past trauma, experiences of marginalization, and fear of being blamed. Survivors have felt that there are few pathways to healing, few opportunities to be heard, and even fewer prospects for justice. Perhaps it is not surprising that just 5 percent of survivors who are victimized by sexual assault file a complaint with police. A 2018 report from West Coast LEAF found that survivors who do report to police experience re-traumatization, a lack of trust in the system, and feel they have little control or choice during the process.

Community-based services, including SART teams and integrated sexual assault clinics, open the door to key supports. They are especially critical for members of marginalized communities – young women,

Indigenous people, sex workers, and trans or gender-diverse individuals – who are often most likely to be targeted by sexual predators and face barriers to accessing services. The need for these services is demonstrated by the numbers: in the year after the Victoria Sexual Assault Integrated Clinic opened in British Columbia, emergency responses increased by 124 percent and police-supported interviews rose by 400 percent – not because sexual assault rates had gone up, but because more survivors were able to access the medical care, preventative medication and forensic services they needed.

Better access to health care and justice for more survivors – what more could we ask? In fact, it also turns out that these services are cost-effective. The economic impact of sexual assaults is astronomical – the costs borne by survivors, governments and the economy amount to an astounding $4.6 billion annually. By reducing the long-term emotional and physical impacts of sexual assault, an adequate and trauma-informed response can substantially lower the expenses associated with social services for survivors' health care, counselling and suicide attempts.

The Victoria centre estimates that providing care at its integrated clinic, instead of in regional hospitals, resulted in an immediate savings of $1,350 per patient/survivor for the health care system and local police. All this while improving services for survivors. Beyond these savings, in the context of missing and murdered Indigenous women and girls, and the profound need for reconciliation, there is a moral obligation to provide these services based on the Calls for Justice (specifically, numbers 3.5 and 5.5.iii). A policy no-brainer, right? Yet, the reality is that most communities in British Columbia don't have a community-based sexual assault response program. Where such specialized programs exist, they are almost always at risk of losing their funding. Canada has just one integrated sexual assault clinic, the Victoria Sexual Assault Centre, which opened in 2016 and has been struggling to keep its doors open ever since, due to a lack of predictable and dedicated funding.

Why, in the wake of #MeToo, have the transformations and conversations in society not permeated the world of policy and government services for survivors? There are a few reasons.

First, services in BC are still suffering from the massive funding cuts two decades ago by the Liberal government of the day, which slashed core/operational funding for all sexual assault centres in its 2001-2002 budget. That followed the closing of the provincial Ministry for Women's Equality. Despite generous and committed donors and the advocacy of organizations like EVA BC, the sector has not recovered, and to this day BC remains the only province in Canada without sustained provincial government funding for sexual assault centres.

Second, sexual assault is still treated as primarily – or solely – a criminal-justice issue. Yet that excludes the 95 percent of survivors who don't report their attack to police. The physical, sexual, spiritual, and emotional health of these survivors must be taken seriously. Sexual assault nurse examiners are a step in the right direction. Although front-line service providers have managed to collaborate, government ministries have failed to recognize the importance of taking a public health approach with funding and policy changes, despite the evidence that doing so would save lives and money.

Third, in BC the emergency supports that do exist are almost entirely dependent on one-time grant funding; appropriate access to medical care and justice should not rely on bake sales to raise essential financing. When there is not enough grant funding to go around, survivors in one community are pitted against those in another.

Fourth, the stigma of sexual assault, rape myths and victim-blaming persist. Domestic violence units and shelters in BC are now funded through secure resources (as they should be); a recognition, no doubt, of the importance of predictable funding. The fact that sexual assault survivors lack the same suggests a hierarchy of victims; that is, those who are deserving of support versus those who are not.

Finally, much heavy lifting still must be done to end stigma and victim-blaming and to ensure care is available to all survivors. EVA BC has persistently advocated for a provincial sexual assault policy, training for all responders and more funding. In Vancouver, WAVAW was recently recognized for its inclusion work in creating specialized sexual assault response services tailored to trans, nonbinary and two-spirit survivors of sexualized violence. Its work will form a blueprint for other centres across Canada. We can and must trust the expertise of sexual assault and anti-violence organizations and provide security and resources for the services they provide.

These barriers are not insurmountable, and we are optimistic. In 2019, sexual assault centres and other anti-violence organizations joined together to push the BC government to shift its funding model away from a grant-based one and adopt a system of contracted, predictable service agreements. Health ministry resources must be deployed in support of these collaborative and community-based models, working in unison with the Ministry of Public Safety and the Solicitor General.

Given the great potential for significant costs-savings and the long-term benefits, as well as our responsibility to the survivors of sexualized violence, all of our governments must fully meet these challenges and provide survivors with the services they need and deserve.

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Médias et agressions sexuelles : prévenir ou nuire

Les médias sont les premiers à éduquer la population sur les agressions sexuelles. Ils défont certains mythes, mais en perpétuent d'autres.

CLAUDIE-ÉMILIE WAGNER-LAPIERRE

De quelle façon la population canadienne s'informe-t-elle de la criminalité ? Selon une étude réalisée par Éric Bélisle, 95 % des Canadiens passent par les médias traditionnels pour s'informer sur le sujet. Après l'homicide, l'agression sexuelle se trouve au deuxième rang des crimes les plus traités par les médias. Ainsi, c'est par les sources journalistiques que la population canadienne accède à des connaissances en matière d'agressions sexuelles. Les médias influencent donc grandement les croyances, les attitudes et les comportements de la population face à ces phénomènes, et il est primordial qu'ils offrent une information objective et exempte de préjugés. Mais est-ce réellement le cas ? Si nous pouvons nous réjouir du rôle joué par les médias au cours des dernières années dans la prise de conscience collective de la gravité de la situation en matière d'agressions sexuelles, il faut tout de même reconnaître qu'ils contribuent également à la perte de confiance de la population canadienne à l'égard du système de justice. Le traitement médiatique est un couteau à double tranchant : il peut certes prévenir, mais aussi nuire.

Depuis 2014, à la suite des mouvements #AgressionNonDénoncée et #MoiAussi, les médias traditionnels, particulièrement la presse écrite, ont mis au jour les comportements sexuels inappropriés d'importants acteurs publics, dont Éric Salvail et Gilbert Rozon au Québec, et Harvey Weinstein et R. Kelly aux États-Unis. Le sujet étant d'actualité, la presse écrite québécoise a saisi l'occasion pour souligner la situation préoccupante dans les milieux postsecondaires, ce qui a mené à la création de politiques visant à prévenir et à combattre les violences à caractère sexuel dans de nombreux établissements d'études postsecondaires.

La couverture médiatique des agressions sexuelles influence indéniablement les politiques gouvernementales et entraîne des changements d'attitudes dans la société canadienne. Les changements survenus dans les établissements postsecondaires n'en sont qu'un exemple. Les reportages des médias ont aussi amené les gouvernements à s'intéresser au besoin d'accompagnement des victimes et à la pertinence de créer des tribunaux spécialisés. De plus, ils ont permis des discussions importantes sur le consentement autant dans les familles qu'entre amis. Enfin, en écrivant sur les agressions sexuelles, les journalistes permettent à des victimes de se rendre compte qu'elles ne sont pas seules, de connaître les services d'aide et de sentir qu'il est possible d'ouvrir le dialogue sur ce qu'elles ont vécu. Ces effets positifs méritent d'être applaudis.

Cependant, en s'intéressant à un sujet aussi complexe que les agressions sexuelles, les médias risquent parfois de publier des informations erronées. Ils peuvent par conséquent influencer à tort tant les gouvernements que l'opinion publique. Par exemple, lorsque les médias rapportent les paroles de certains juges qui errent en culpabilisant la victime, comme le juge albertain Robin Camp en 2014, ils laissent croire que le système judiciaire est contre les victimes et que les juges basent leurs décisions sur

des mythes et des préjugés. Pourtant, bien que certains juges témoignent effectivement d'un manque de connaissances de la réalité des victimes d'agression sexuelle tout comme du droit applicable en la matière, la plupart d'entre ceux qui doivent se prononcer sur de tels cas rendent des jugements conformes au droit. À mon avis, il n'y a pas de problème systématique dans l'application des règles de droit en matière d'agression sexuelle. Des erreurs peuvent survenir dans tous les types de dossier, et les cours d'appel et la Cour suprême veillent à corriger les erreurs de droit et de procédure. Il va de soi que les journaux ne peuvent pas couvrir tous les procès pour agression sexuelle où le juge fait bien son travail. Mais en ne soulignant que les très mauvais coups de nos juges, les médias influencent négativement la vision qu'a la population canadienne du système de justice et érodent indirectement la confiance nécessaire à la dénonciation.

De plus, la couverture médiatique des dénonciations publiques augmente le risque de revictimisation. Les cas considérés comme sensationnels par les médias, comme celui de Jian Ghomeshi en Ontario ou celui du député Gerry Sklavounos au Québec, ont entraîné une véritable chasse aux sorcières. Dans ces cas-là, plutôt que de responsabiliser les agresseurs, on a cherché à s'assurer que la victime est irréprochable, que son comportement correspond à nos attentes. C'est le retour du mythe de la « bonne victime ». La victime devrait être une personne sans histoire, qui a pris toutes les mesures pour éviter l'agression, qui a manifesté la réaction escomptée d'une victime type, qui n'a rien à gagner en dénonçant. Dans son mémoire sur le traitement médiatique du mouvement #AgressionNonDénoncée au Québec, la chercheuse Raphaëlle Savard-Moisan fait ressortir le double discours des journalistes qui dénoncent d'un côté les mythes et les clichés entourant les agressions sexuelles, mais qui les renforcent de l'autre par leurs représentations stéréotypées des enjeux.

De même, la couverture des crimes plus notoires ou sensationnels risque de tracer un portrait erroné de la réalité des agressions sexuelles. En se concentrant sur les cas hors du commun, les médias donnent à penser que les agressions ne relèvent pas de la problématique sociale puisqu'elles ne toucheraient qu'une minorité de femmes. En effet, ces dernières années, l'accent a surtout été mis sur des agresseurs dans l'industrie du divertissement. Pourtant, les études réalisées en matière d'agression sexuelle sont formelles : la plupart des agressions sexuelles ont lieu dans les familles, et les victimes sont mineures. Étonnamment, ce type de crime est rarement couvert par les médias. Plusieurs raisons peuvent peut-être expliquer cela, dont le manque d'intérêt du public pour ces cas, les ordonnances de non-publication, la non-dénonciation de ces types d'agression, etc. Ainsi, on ne saurait simplement blâmer les médias. Mais la conséquence n'en est pas moins importante : la population demeure mal informée des situations réelles d'agression. Encore aujourd'hui, il faut préciser que la plupart des agressions ne se passent pas dans des ruelles sombres, bien au contraire. Elles ont lieu dans des endroits qui sont réputés être sécuritaires. Et l'agresseur n'a pas nécessairement le profil du monstre, le plus souvent c'est un « homme ordinaire » et, en plus, connu de la victime.

La couverture médiatique entraîne un autre problème non négligeable, soit la simplification des raisons pour lesquelles une agression n'est pas dénoncée par la victime. Les médias tendent à attribuer l'importante sous-dénonciation à la perte de confiance des victimes à l'égard du système de justice canadien. Pourtant, les études sont également formelles à cet égard : plusieurs facteurs expliquent pourquoi les victimes ne dénoncent pas ou prennent de nombreuses années avant de le faire. S'il est vrai que certaines victimes peuvent redouter le système judiciaire et le traitement que celui-ci leur réserve, la non-dénonciation peut aussi s'expliquer par l'âge de la victime au moment de l'agression sexuelle, son lien avec l'agresseur, son genre, son sentiment de culpabilité, l'anticipation de la réaction de ses proches, etc. Les médias doivent mieux se renseigner sur le sujet et faire appel à de vrais experts.

Des psychologues partout dans le monde étudient le phénomène de la non-divulgation depuis de nombreuses années, mais les médias les approchent rarement pour leurs compétences en la matière.

Cela dit, qu'est-ce qui peut être fait pour améliorer la couverture médiatique des agressions sexuelles pour s'assurer que le public ne perd pas davantage confiance dans le système de justice canadien ? Déjà, l'Institut national de santé publique propose une trousse média sur les agressions sexuelles en vue de sensibiliser les journalistes à « diffuser dans l'espace public une information juste et exempte de sexisme, de préjugés et de dramatisation ». Pour sa part, le Centre canadien de ressources pour les victimes de crime propose aussi un guide pour les médias.

Ces guides se fondent sur un même constat : il revient aux médias de s'assurer de transmettre une information juste sur les agressions sexuelles. Pour ce faire, ils doivent faire appel à des experts de différents domaines (avocats, psychologues, criminologues, etc.). De plus, il faut qu'ils veillent au choix des faits et des mots lorsqu'ils décrivent une victime. Par exemple, lorsqu'ils mettent l'accent sur le fait que la victime n'avait pas bu, ils perpétuent le mythe qu'une victime qui a bu aurait plus tendance à consentir à une relation sexuelle.

Les médias exercent un important pouvoir d'influence sur l'opinion publique. Ils ne peuvent prendre ce pouvoir à la légère. Ainsi, ils doivent couvrir tous les types d'agression sexuelle, indépendamment des caractéristiques personnelles de la victime — femme, homme, personne trans, racisée, autochtone, etc. Ils doivent aussi cesser de mettre tout le blâme sur le dos du système de justice. Il faut qu'ils commencent à montrer que la situation est complexe. Enfin, leur devoir est de promouvoir les services d'aide, puisqu'ils ont la chance de rejoindre un large public.

Mais émettre des directives, est-ce suffisant ? Les différents organismes publics devraient-ils aller plus loin et imposer des contraintes ? Si oui, comment, et lesquelles ? Une telle réflexion doit venir des principaux acteurs des médias contemporains.

External monitoring body would hold military accountable for sexual assaults

Real accountability for sexual assault in the military requires stringent external oversight, better research, and responsiveness to survivors.

MAYA EICHLER, MARIE-CLAUDE GAGNON

In 2018, the federal government controversially argued that it did not owe a "private law duty of care" to provide a safe, harassment-free work environment, or policies against sexual harassment or assault, for individual members of the Canadian Armed Forces (CAF). Basically, it argued it had no responsibility under negligence law, nor duty to compensate individual victims. Yet only a year later, the Federal Court approved a $900 million class action settlement for victims in military sexual assault and harassment cases. So, does this mean the courts alone are the only way to hold the military accountable for sexual violence? We think not, but as we demonstrate, the military acting on its own won't change matters. It's time for high-level action.

The issue of sexual violence in the military has continued for too long. First brought to public attention by media reports in the late 1990s and again in 2014, sexual violence continues to have a detrimental effect on the lives of serving members of the armed forces. Both CAF and Veterans Affairs Canada, lacking real accountability and dedicated resources, have not seen any need to create initiatives beyond crisis and image management, skimming a few ideas from reviews and reports, initiating pilot projects and overseeing endless planning.

Accountability is possible – but it requires external oversight, evidence-based research to track progress, and responsiveness to the needs of sexual assault survivors. Indeed, women in the Canadian military experience sexual assault at higher rates than military men, Statistics Canada reported in 2016, adding that both women and men in the military experience higher rates of sexual assault than civilians. In Canada, close to one in three women are sexually assaulted during their military career, compared to four percent of men.

In March 2015, former Supreme Court of Canada Justice Marie Deschamps released her *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*. It documented a sexualized culture that is hostile towards female and LGBTQ members of Canada's armed forces. Deschamps found an "environment characterized by the frequent use of sexualized language, sexual jokes, innuendos, discriminatory comments with respect to the abilities of female members of the military, and ... sexual touching." This prevailing sexualized culture, she argued, increases the risk of "more serious incidents of sexual harassment and sexual assault."

The military responded with Operation HONOUR, a top-down, internally driven approach aimed at eliminating sexual misconduct and gaining buy-in from military members by emphasizing the negative impact of sexual violence on operational effectiveness, specifically on unit cohesion and morale. A

report by Canada's Auditor General on Operation HONOUR three years later, and a follow-up survey by Statistics Canada, showed a lack of significant progress on sexual violence prevention.

Waiting for the military to change itself means continued failure. But policy-makers have other options available.

Second, progress on sexual violence prevention demands evidence-based research to measure the effectiveness of initiatives related to Operation HONOUR. Yet, that was lacking. The Operation's response team "did not have good-quality information to support the progress reports that senior management used to understand and make decisions about Operation HONOUR," the Auditor General found.

Similarly, a Senate Committee report recommended that the Department of National Defence and CAF "improve the collection and dissemination of data on harmful and inappropriate sexual behaviour within their organization, including how visible minorities, lesbian, gay, bisexual, transgender, queer and two-spirit (LGBTQ2) members and other designated groups are affected."

It is essential that research focus on outcomes rather than outputs, as is currently the case. An increase in the number of reports of sexual misconduct, or an increase in the number of bystander training sessions, should not be presented as signs of progress *per se*. Bystander training is worth nothing if bystanders who report sexual misconduct face reprisals, as a recently publicized case showed. Instead, measuring outcomes rather than outputs would give Canadians a better indication of whether the military's sexual violence prevention measures are working.

We recommend that the prime minister convene a group of experts to advise on the creation of an independent external monitoring body to oversee Operation HONOUR and the Sexual Misconduct Response Center. This independent body should conduct research into the outcomes of current sexual violence prevention strategies in order to measure the effectiveness of Operation HONOUR.

Finally, the true measure of accountability is in how policy responds to the needs of survivors of sexual assault. Too often, their voices have been left out of policy decisions. Bill C-77 concerning military victims' rights, was passed last year by Parliament without consulting victims of military sexual assault. These survivors do not have anyone to speak on their behalf. Military members are not unionized. They do not have formal representation or support. Instead, individual victims are left to shed light on the issue of military sexual violence by going through painful complaint processes, and when this fails, to speak publicly or even launch class-action lawsuits. It is incumbent on Parliament to consult directly with survivors of military sexual assault if it wants to hold the military accountable.

True external oversight, evidence-based research on outcomes, and responsiveness to the needs of survivors of military sexual assault, taken together, would go a long way towards developing policy to address and prevent sexual violence in the military. Only then will Canadians be able to rely on policy, and not the courts, to hold their military accountable.

Sex-assault prosecutions often fail women with mental disabilities

Testimony of the most vulnerable women is undermined by a process that infantilizes and hypersexualizes them. The trial system must be reformed.

JANINE BENEDET, ISABEL GRANT

Women who have a psychiatric or intellectual disability are four to five times more likely than other women to be sexually assaulted. Yet discussions of "rape culture" do not typically address why these women are targeted for sexual violence with such frequency, and the MeToo movement has been largely silent on sexual abuse of women with mental disabilities. When these cases do get to court, the criminal justice system does not serve these women well. Their credibility can be undermined by expert evidence, they are simultaneously hypersexualized and infantilized, and they are subjected to cross-examination, the dominant purpose of which is to confuse.

The sex-based power of men over women is augmented when it intersects with other grounds of discrimination and oppression such as disability and age, as well as forms of social power that come from formal roles such as employer, service provider or caregiver. These imbalances of power both facilitate the imposition of sexual acts upon others and are part of what makes these acts "sexual" for the offender. Further, perpetrators are aware that women with mental disabilities are less likely to be believed by police, judges and juries when a criminal justice process is pursued.

Until 1983, the offence of "carnal knowledge" of an "idiot or imbecile" (not amounting to rape) persisted in the Criminal Code. But the offence, which might have offered some protection to women who had been labelled with one of these offensive and demeaning terms, was seldom prosecuted and, when prosecuted, rarely resulted in convictions. Any ostensible protection that might have been offered by this offence was offset by the accused's ability to argue that the complainant had consented out of "animal passion." People labelled intellectually disabled were confined to sex-segregated institutions and subject to forced sterilization until the 1970s. Even after eugenics legislation was repealed, guardianship law was sometimes used to authorize the sterilization of women with a mental disability. All of these practices were rooted in attitudes that saw these women not as victims of violence particularly targeted by exploitative men, but rather as women who were sexually indiscriminate and perpetually willing participants whose impulses needed to be controlled.

Given the significant reform of laws and policies affecting both women and people with mental disabilities and the widespread nature of men's sexual offending against them, one would expect that the criminal justice system today would be designed to foreground the experience of this group of women and to accommodate the realities of their lives. While we see progress in some cases, too often evidence of disability continues to be used against women with mental disabilities, often in contradictory ways. On the one hand, women with mental disabilities are often infantilized and given labels that equate them with children. Thus a woman might be described as operating at "a mental age

of a three to five year old child" despite her years of lived experience. Yet when we are considering whether she actually gave consent, her vulnerability disappears and instead she is portrayed as desperate for male attention or as overly friendly. Too often, these women get the disadvantages that come from being described as childlike but are denied the protections from the legal system that their increased vulnerability to exploitation warrants.

Of course, unlike children, most women with mental disabilities are capable of affirmative and voluntary consent in many contexts and are entitled to the same sexual self-determination that other women are supposed to have. But this fully realized understanding of sexual self-determination is different than a thin notion of "sexual autonomy" that ignores the very real effects of power and authority on meaningful choice.

This infantilization is frequently facilitated by the fact that the lives of women with mental disabilities are often medicalized, and their experiences are filtered through the knowledge of experts, such as social workers, doctors and psychologists. For a complainant with a mental disability, every aspect of her life is likely to already have been highly documented and subject to expert reports or evaluations. This profound lack of privacy is often perpetuated by the criminal justice system. For example, the *Criminal Code* provides a process to prevent the impermissible use of sexual history evidence to taint the credibility of a sexual assault complainant. For a woman with a mental disability, by contrast, evidence of her prior sexual experiences or communications about sexual matters may be admitted without resorting to this protective process in order to demonstrate that she understood what sex is. While the evidence may be admitted under the guise of an assessment of her legal capacity to consent, it inevitably also undermines her credibility as a witness.

Expert reports that portray women as having childlike levels of intelligence, verbal ability, self-care or even mathematical skills are used to undermine their credibility as witnesses in ways that would be impermissible for other women. Expert opinion should be admissible in court only on matters that are directly relevant to the narrow legal questions of capacity to consent or competence to testify. Expert opinion should not be allowed to describe aspects of a woman's life that are irrelevant to these legal tests, such as whether she "confabulates" or is "suggestible." There is significant variation in these traits in the general population. Allowing such evidence to be used against women with mental disabilities, when no other witness is subjected to similar scrutiny, is discriminatory and premised on the false stereotype that women with mental disabilities are more likely to lie, exaggerate or make things up.

Cross-examination is often said to be the best vehicle for getting at the truth. The reasoning is that rigorous challenging of witnesses will bring to light dishonesty and inaccuracies in their testimony. In fact, cross-examination is often confrontational and accusatory, relying on leading questions that are designed to confuse and intimidate a complainant and to provoke contradictory testimony. It rewards those who are quick, are verbally agile and have strong memories. For many women with intellectual disabilities, a rigorous cross-examination obscures rather than uncovers truth. We have suggested elsewhere that courts should use a support person who can actively participate as an intermediary to ensure that a witness understands questions being asked of her and can communicate what happened to her, a practice that has been used successfully in other jurisdictions. Such an accommodation could assist with this problem while maintaining the constitutional right of an accused to a fair trial.

A disability should never be a reason to disbelieve a woman's testimony that she was sexually assaulted. This discriminatory reasoning may be disguised as a concern about her reliability as a witness, but it operates to attack her credibility because her disability means her evidence cannot be trusted to be

true. We need to reform the criminal trial process to facilitate the testimony of these witnesses rather than creating extra hurdles to be surmounted.

Effective reform requires that in some situations we remove the additional barriers for women with mental disabilities, and treat them like any other witnesses. In other situations, accommodations may be required to ensure full participation. These must be more than just token adaptations to the traditional trial through accommodations that have been analogized from those used for child witnesses. Instead, we must design a criminal trial process with the needs of women with disabilities in mind. We must also identify and reject the myths and stereotypes about sex and disability that intersect to place unique, discriminatory burdens on women with mental disabilities, burdens that we do not impose on any other witnesses.

Les hommes victimes d'abus sexuels durant l'enfance

L'abus sexuel chez les garçons est un enjeu de santé publique trop souvent absent des politiques gouvernementales.

JEAN-MARTIN DESLAURIERS,
NATACHA GODBOUT, ANDRÉ SAMSON

Un homme sur dix révèle avoir été victime d'abus sexuels durant l'enfance. Ce taux ne représente probablement que la pointe de l'iceberg, puisque les études qui tiennent compte des définitions légales canadiennes, comme l'impossibilité d'invoquer le consentement pour un acte sexuel entre un jeune de moins de 16 ans et un adulte de plus de 5 ans son aîné ou en position d'autorité, indiquent des taux plus élevés.

On a tendance à associer les agressions des garçons aux événements perpétrés dans certaines congrégations religieuses, ou même à des hommes qui « offrent des bonbons aux abords des écoles ». En vérité, elles ont le plus souvent lieu dans l'environnement familial des enfants. Dans 80 à 90 % des cas, l'agresseur est un membre de la famille proche ou élargie, ou une personne connue de la victime. Il faut noter aussi que les agresseurs ont beaucoup plus recours à la manipulation qu'à la violence physique.

Les garçons qui vivent des abus sexuels sont fréquemment exposés à d'autres formes de mauvais traitements, comme la négligence ou des violences corporelles, qui entraînent souvent des répercussions complexes à l'âge adulte. Nos données indiquent qu'environ la moitié des victimes d'agression sexuelle durant l'enfance subissent en moyenne cinq formes supplémentaires de traumas.

Les répercussions de l'abus sexuel

Malgré sa prévalence, l'agression sexuelle des garçons demeure un problème de santé publique négligé, absent de la plupart des politiques sociales au Canada comme ailleurs, mal connu et insuffisamment documenté. Or on ne saurait lutter efficacement contre ces agressions sans données précises sur le phénomène.

Les services de prise en charge sont rares, ce qui renvoie aussi au silence des victimes, qui dévoilent peu les abus. Les hommes ont tendance à s'isoler et à réprimer leurs réactions post-traumatiques. Une des raisons de leur silence est leur sentiment de honte exacerbé par la socialisation masculine. Les hommes ont notamment l'impression de ne pas avoir été assez forts ou assez déterminés pour se défendre. Souvent, ils se sentent profondément trahis : ce sont des adultes, la plupart du temps connus d'eux, qui ont abusé de leur confiance, alors qu'ils auraient dû avoir un rôle de protecteur auprès d'eux.

Les répercussions psychologiques et relationnelles de l'agression sexuelle durant l'enfance sont considérables : symptômes de stress post-traumatique, détresse psychologique (anxiété, colère, affects dépressifs), honte, stigmatisation, insécurité d'attachement, difficultés conjugales, méfiance envers autrui, etc. Certains hommes se disent confus quant à leur orientation sexuelle, ou encore se demandent si les abus subis n'ont pas forgé leur orientation ou leur identité sexuelle. L'abus sexuel en

enfance peut aussi avoir des répercussions sur l'exercice du rôle parental. Les victimes peuvent craindre qu'on les perçoive comme des agresseurs potentiels de leur propre enfant, ce qui tend à les freiner à donner des soins ou de l'affection. Une confusion peut naître dans l'esprit des victimes entre les soins nécessaires au développement d'un enfant et des comportements abusifs. En bref, les effets de l'agression sexuelle durant l'enfance sont multiples, durables et ont d'importantes répercussions sur le plan de la santé mentale, du parcours scolaire, des relations interpersonnelles et de la vie sexuelle, professionnelle et familiale.

Les hommes qui demandent de l'aide

Les hommes attendent en moyenne 40 ans avant de dévoiler les abus subis ou de demander de l'aide. Ils s'y décident souvent quand les difficultés se sont accumulées au cours des années, telles que la dépression, l'anxiété, l'abus de drogues, des idées suicidaires ou des transitions de vie dures comme une rupture amoureuse.

Les victimes qui décident de participer à des rencontres de groupe pour hommes ayant vécu des abus sexuels durant leur enfance mentionnent en premier lieu l'importance du soutien mutuel. Être entendus dans un climat de confiance les soulage du sentiment de solitude et de honte. Ils sentent non seulement qu'aucun jugement ne sera porté sur eux, mais qu'on recevra le récit de leur expérience et de ses répercussions avec empathie, sans le dramatiser ni le banaliser.

Lors de ces rencontres, certains hommes parlent pour la première fois des abus sexuels vécus. D'autres en avaient peut-être déjà parlé, mais gardaient l'impression de ne pas avoir été écoutés. L'expérience d'une confiance réciproque construite entre hommes est considérée comme décisive par les participants. Le partage leur permet de « se sentir normal » en dépit des agressions vécues.

Les politiques publiques

En 2017, le Québec a publié un plan d'action ministériel sur la santé et le bien-être des hommes, dont une partie traite des agressions sexuelles. On y note que beaucoup de gens ont de la difficulté à croire que des garçons peuvent être victimes de ce phénomène. Une conception stéréotypée des victimes d'agression sexuelle persiste ainsi dans la société québécoise.

Le plan souligne la pénurie de services pour les hommes abusés sexuellement dans l'enfance. Il apparaît primordial de mettre sur pied des ressources d'intervention qui prennent en compte les réalités et les problématiques propres à ces hommes, comme le suicide, les agressions sexuelles, la violence conjugale et la sous-utilisation des services sociaux et de santé. Une approche différenciée selon le sexe permettrait d'intervenir de façon ciblée sur des problèmes de santé physique et mentale selon leur prévalence au sein de différents sous-groupes de la population, que ce soient des hommes ou des femmes.

Des services pour les hommes existent, mais ils sont largement insuffisants. Ils relèvent généralement d'initiatives spontanées qui dépendent, surtout dans les plus grandes agglomérations, d'un financement local non lié à une politique gouvernementale précise qui bénéficierait d'un financement récurrent.

La question des agressions sexuelles des garçons doit faire partie intégrante des politiques publiques en matière de prévention et d'aide aux victimes. Pour ce faire, il est primordial de reconnaître clairement que « ça arrive aussi aux garçons ». Les politiques peuvent prendre exemple sur les services structurés déjà en place pour soutenir les femmes victimes de violence sexuelle, notamment des interventions

adaptées aux besoins divers des victimes : interventions de groupe, thérapies individuelles, interventions de crise, soutien et éducation.

Voici nos principales recommandations :

- Tenir compte de la prévalence de la violence envers les garçons et du profil type réel des agresseurs (c'est-à-dire, dans la vaste majorité des cas, une personne connue de la victime) dans les campagnes de prévention des abus sexuels chez les enfants et les adolescents ;
- Élaborer des façons d'intervenir dans les médias qui font connaître la problématique et l'aide offerte, afin de rejoindre les hommes qui hésitent à dévoiler la situation vécue et à demander de l'aide professionnelle ;
- Offrir des services d'aide dans toutes les agglomérations et s'assurer que ces services sont accessibles rapidement pour les hommes victimes ;
- Former les intervenants œuvrant dans les services d'aide au sein desquels les hommes ayant vécu des abus sexuels durant leur enfance sont surreprésentés, en particulier dans les domaines de la toxicomanie et des dépendances, des violences familiales et de la santé mentale ;
- Mettre sur pied des programmes de recherche qui permettent de dresser un portrait précis de la réalité des hommes victimes et de connaître leurs besoins ;
- Établir des programmes de recherche qui évaluent l'efficacité des interventions pour ainsi créer et déployer des services appropriés aux besoins des victimes.

Encore aujourd'hui, la problématique des violences sexuelles envers les hommes n'est pas pleinement reconnue en tant qu'enjeu de santé publique. Sans cette reconnaissance, il ne pourra y avoir de véritables politiques de prévention, de recherches approfondies pour mieux comprendre et documenter le phénomène et de mise sur pied de services d'aide adéquats qui répondent aux multiples besoins.

Bringing fairness to campus sexual violence complaint processes

More transparency and collection of data are needed to assess how well post-secondary institutions are handling complaints among students.

KAREN BUSBY, JOANNA BIRENBAUM

About one in four female students will be sexually assaulted while studying at a Canadian post-secondary institution. Many complainants experience a drop in their grades, have difficulty concentrating and curtail their social lives. Some drop out of school altogether. In response to calls from student and anti-violence organizations, most provinces and one territory have, since 2016, passed legislation or issued ministerial directives requiring post-secondary institutions to adopt policies to create awareness about the problem, provide support to complainants and create formal complaint processes.

While ministers in some jurisdictions have the power to table regulations or issue directives, none of them has exercised this power in relation to formal complaints. So the details of complaint policy in all jurisdictions are left up to individual institutions. They take widely divergent approaches on key provisions related to the scope of the policy, the model for determining the complaint (oral hearing or investigation), the participation of the student respondent (the person about whom the complaint has been made), privacy and public accountability.

Under some policies, complaints related to events off campus can be made only if the conduct has an identifiable and substantial link to the institution. Other policies expressly apply to off-campus conduct or capture any conduct that could materially affect the working, learning or living environment. Allegations about events occurring in a private home — which are the most common scenarios — are not captured by an "identifiable and substantial link" requirement but are covered by a "material effect" provision.

Some institutions employ an "investigative" model, in which a single trained investigator interviews witnesses and makes findings of fact, rather than an "adjudicative" model, where a student discipline panel (made up of faculty and students) presides over an oral hearing where witnesses give evidence. An investigative model addresses the mistreatment of complainants and the barriers to reporting in a number of ways. Trauma-informed practices may be incorporated into witness interviews; there is no retraumatizing cross-examination or direct confrontation of the complainant by the student respondent; the complainant has full participatory rights; and the fact-finding is undertaken by a trained professional who should be expert in avoiding discriminatory assumptions and irrelevant questions around sexual history, thus producing better decisions. The investigative model achieves fairness by respecting the human rights of complainants as well as the rights of both complainants and respondents to procedural fairness.

Another feature of an investigative model is that, practically speaking, student respondents cannot refuse to participate. An adverse inference can be drawn from their silence: if they had something to say in their defence, they would speak up.

Any benefits of an investigative model, however, can be frustrated at institutions where, following an investigation, respondents have the right to a full new hearing before a student discipline panel under a discipline by-law. When such hearings are available, respondents may make a strategic decision not to participate in the investigation and tell their story only at the later hearing. Moreover, these hearings are not governed by a sexual violence policy, so decision-makers usually have no training on sexual violence, and stereotypes about complainants easily creep in. Complainants lack participatory rights, and the length of time to completion can be increased by months, even years.

In addition to proceedings on campus, respondents may face criminal charges. Some observers assert that it is wrong to require respondents to go through both proceedings concurrently, especially when any statements they make during the campus proceedings can probably be obtained by the Crown and used in the criminal proceedings, too. This outcome seems like an unfair compromise to a person's right to be silent in criminal proceedings. Others fear that suspending the university proceedings until the criminal proceedings are resolved may render the university proceedings meaningless. Because some criminal proceedings drag on for more than two years, suspension of the campus process can make it possible for the defendants to complete their studies and get their degree before the discipline hearing is held. Under some policies, campus proceedings are suspended pending criminal proceedings; under others, they are not.

While freedom of information and protection of privacy acts (FOI/FIPPA) are more or less the same across the country, there are significant differences among sexual violence policies on what information about findings and disciplinary or remedial measures can be released to complainants and others. Complainants will generally learn about the findings, but they may not be provided with a copy of the investigation report or decision in which the finding was made, and may not learn much about the discipline or remedial consequences. This is because some institutions conservatively interpret FOI/FIPPA as limiting their ability to release this information to complainants. Non-disclosure to complainants, however, disregards well-established principles under human rights legislation that complainants should be advised about outcomes. The confidential nature of information on findings and discipline deprive complainants of validation as well as of a sense of safety.

Privacy laws clearly prohibit sharing any case-specific information about ongoing processes, findings and outcomes beyond complainants — with others in the campus community, media and potential employers. In one case, a university was ordered to pay more than $240,000 to a former professor after the institution confirmed in the media that a professor had been suspended because of "serious allegations" and later confirmed that it had valid reasons to let the professor go because of an "irreparable breach of trust."

The broader question of institutions' accountability for how they address sexual violence turns on what the public can find out about their handling of complaints. The effectiveness of campus policies cannot be measured if data are not collected and made publicly available. Provincial acts mandating sexual violence policies have two weaknesses that compromise or undermine transparency and public accountability.

First, the statutory provisions can be thinly interpreted to require the reporting only of information on the number of informal disclosures and formal complaints. Most legislation does not require the reporting of data on, for example, demographics, withdrawn complaints, process and fairness factors or outcomes; an exception is the Quebec act, which requires that information on timeliness and sanctions be made available.

Second, only the Manitoba legislation requires a public report; the Quebec law requires that the information be included in the institution's annual report. British Columbia, Prince Edward Island and Ontario laws, by contrast, require only a report to the minister or the institution's governing board. The Yukon act is silent on public reporting. Similarly, other legislative data collection provisions, such as the requirement in some legislation for a student survey to be conducted on the minister's request, do not require that the survey results be made public.

Many of the key demands made by anti-violence activists and student groups are difficult to accommodate. It's hard to ensure that complaint-based processes are swift and that they avoid any retraumatizing of the complainant. Restrictions on the release of information to complainants about findings and outcomes may leave them in the dark. Constant vigilance is required to ensure that complainants are not treated with blame and hostility. The potential for public accountability of post-secondary institutions is very limited unless meaningful data about their handling of sexual violence complaints are collected and published.

Karen Busby and Joanna Birenbaum are the authors of *Achieving Fairness: A Guide to Campus Sexual Violence Complaints*, which will be published by Thomson Reuters in March.

Quebec City murder underscores need to abolish prostitution

Canada has only partially adopted a legal model for prostitution, an activity inherently violent toward women. Ending prostitution should be the goal.

TRISHA BAPTIE, CHERRY SMILEY

Can prostitution be made safe? The question has landed again in our national conversation following the murder of a woman in Quebec City. The short answer is no. Those who support the full decriminalization of prostitution as a way to make the industry safer fail to acknowledge the inherent violence of prostitution and ignore the context in which prostitution occurs. The only way to end the violence of prostitution is to end prostitution. One of the ways we can work toward this is by strengthening the Protection of Communities and Exploited Persons Act (PCEPA).

Last month, Eustachio Gallese allegedly murdered Marylène Lévesque in a hotel room in Quebec City. Gallese had been out on day parole while serving a life sentence for brutally murdering Chantal Deschênes, a woman he had been married to, in 2004. Gallese's parole officer had allowed him to hire women to satisfy his "sexual urges" despite the fact the parole board felt that Gallese remained a threat to women.

It is a criminal offence to purchase sexual services in Canada, but it is not an offence to sell those services. It is illegal for a third party, such as massage parlours and escort agencies, to profit from the sale of sexual services. Still, the violence of unwanted sex remains whether prostitution is regulated or unregulated. "Sex work" is the default conceptualization of prostitution. This means that exchanging sex acts for payment is seen as a job. "Sex work" means that women are obligated to regularly engage in unwanted sex acts with men they do not sexually desire as part of their job. This is the foundational violence of prostitution and it cannot be reduced or eliminated.

All women have the right to live free of male violence and the threat of male violence. This includes being free to say yes or no to sexual partners and to sexual acts without guilt, fear or consequence. Prostitution does not allow women the freedom to choose their partners and sex acts – this is how "paying for a service" works. When "sex work" is tolerated or promoted, so is the message that it is entirely acceptable for men to demand particular sex acts from women.

Proponents of full decriminalization often state that decriminalization would make prostitution "safer" by allowing women more time to "screen" their "clients." The idea that women are able to tell which man will be violent and when is a myth that serves only to victim-blame. When we accept the lie that a woman can tell which man will harm her, the weight is on her shoulders to protect herself. Should she be attacked, it's her fault because she "screened" incorrectly. But the reality is that no woman is able to predetermine whether she will be assaulted by a man, no woman is ever responsible for violence committed against her, and even those on the parole board with plenty of time to "screen" were not able to determine that Gallese wouldn't harm another woman.

In 2014, Canada adopted a partial version of the Women's Equality Model of Prostitution Law (or Nordic Model). This model was first implemented in Sweden and is also used in other countries. It has three main components: 1) The criminalization of pimping and the purchase of sex, and the decriminalization of the selling of sex. 2) It provides robust preventative social services that also work to help women leave prostitution. 3) It educates the public about prostitution as a form of male violence against women that impacts the status of women.

Canada has failed to adopt the entire model and to consistently implement the law as it stands now. Yes, Canada has recognized that prostitution is an inherently exploitive system – the purchase of sex has been criminalized, and the selling of sex decriminalized. But the country has yet to adopt or implement robust social services and public education, the other components of the Women's Equality Model.

It is disingenuous to suggest that Canada's prostitution laws are to blame for the deaths of women in prostitution, including that of Lévesque. The blame lies with the men who murder women. Canada's prostitution laws are a start – they send the message that purchasing sex is not acceptable behaviour. Legislation, however, is only one part of the solution to this global abandonment of mostly poor, Indigenous, and women of colour to "sex work." We must take a stand against men's entitlement to women's bodies, improve the material conditions of women's lives, and educate ourselves about the connections between prostitution and women's oppression. Prostitution, like all forms of male violence, harms women and must be abolished.

The gaps in Canada's efforts to stop sexual violence against children

We have a host of well-intentioned initiatives that would benefit from far more coordination, and by grounding them with a rights-based approach.

KATHY VANDERGRIFT

There are different faces of sexual violence against children – some get a lot of attention and others remain hidden and under-reported. There's been news coverage of how RCMP officers have been able to trap and charge perpetrators of online sexual exploitation of children by posing as users of websites that host images of child sexual abuse. It is a sophisticated, high-tech approach to child protection against one form of sexual violence. But less well known is the fact that sexual violence within the family is on the rise in Canada. It increased between 2017 and 2018, according to a recently posted analysis by the Statistics Canada publication Juristat as part of a look at police-reported violence against children. Non-family police-reported abuse of children declined between 2009 and 2018, though these numbers are lower than the reality because incidents are under-reported, a point agreed upon by researchers.

Sexual violence against children is likely even more prevalent than self-reported surveys suggest. Approximately 12 percent of girls and 4 percent of boys over age 15 have reported that they experienced sexual violence in their childhoods. But survey methods, definitions and age ranges can all produce different statistics on the prevalence of sexual violence against children.

On the level of public policy and programs, Canada has a piecemeal approach to dealing with sexual violence against children. Separate programs with few connections are employed to deal with online sexual exploitation, child prostitution, dating violence, the use of sexual images in cyberbullying, or domestic violence. This approach leaves gaps and lacks a strong and coherent focus on prevention, which is essential to reduce the vulnerability of children to sexual violence and other forms of violence.

Effective prevention needs to address the causes as well as specific incidents of sexual violence. In 2019, Dr. Deborah Pepler did a review of what we know about all forms of violence against children for a national consultation. Pepler is a retired director of PrevNet, a network of researchers and organizations delving into bullying. Her research and many years of experience indicate that the causes of sexual violence against children, like other forms of violence, involve many factors. Addressing the causes of violence requires understanding the circumstances in which vulnerable children live, as well as analysis of specific incidents. Preventing sexual violence involves addressing the factors that contribute to violence in all its forms. From a child's perspective, sexual violence comprises any sexual experiences that they do not comprehend and cannot consent to, often involving an adult or someone in a position of power. This includes coercion to participate in sexual acts, unwanted touching or advances, sexual exploitation, and sexual harassment.

We have four national strategies that address aspects of sexual violence against children:

1. National Strategy for the Protection of Children from Sexual Exploitation on the Internet
2. Strategy to Prevent and Address Gender-Based Violence
3. Strategy to Combat Human Trafficking 2019 -2024
4. Canada's Roadmap to End Violence Against Children

Efforts to stop internet sexual exploitation tend to focus on:

- Cybertip, a national tipline.
- Project Arachnid, a program that trawls the dark web to find and remove images of child abuse.
- The prosecution of predators who lure children online.
- Public education resources on the dangers of the internet.

The family-violence component of the Strategy to Prevent and Address Gender-Based Violence includes pilot projects to identify and expand good practices in responding to children who experience sexual abuse in the home, although it focuses primarily on violence against women. Teen dating violence and the use of sexual images in cyber-bullying are other areas receiving attention to raise public awareness and identify effective responses.

More promising for prevention is a stronger focus on empowerment and prevention in the new national Strategy to Combat Human Trafficking 2019-2024. These were included after an evaluation of an earlier four-year strategy, done in 2016-2017, found too little focus on prevention to meet its objectives. The first strategy focused more on finding and prosecuting offenders. The prevention pillar will support public awareness programs and pilot projects designed to reduce the vulnerability of youth at higher risk of exploitation. Under the empowerment component of the new strategy, youth hackathons will be used to raise awareness about trafficking and teach children about their rights.

We know that teaching children about their rights makes them less vulnerable to exploitation. But teaching children's rights is not part of the regular curriculum in most provinces, according to a survey done by the Canadian Coalition for the Rights of Children. The very uneven access to comprehensive sexual education across Canada has created a critical gap in the prevention of sexual violence against children.

Comprehensive sex education has been shown to help prevent sexual violence. It allows children to develop a positive understanding of human sexuality, know the difference between consensual and abusive experiences, and use practical measures to help prevent sexual violence. Not only does access and quality vary widely in Canada, as interviews with young people have shown, there is no effective mechanism to ensure that children's right to access such information is fulfilled. It falls through the cracks of federalism: provinces are responsible for education, and the federal government is primarily responsible for how Canada implements children's rights. Children have a right to access information they need, including information that helps to prevent sexual exploitation, under the Convention on the Rights of the Child, which Canada ratified 30 years ago, but implementation of it remains weak across Canada. It also includes other provisions that would help to prevent sexual violence.

Our piecemeal approach to public policy is too incoherent and uncoordinated to be effective. Children's lives are not neatly compartmentalized the way these strategies are. The possibility of some coherence and coordination from the perspective of children could come through Canada's Roadmap to End

Violence Against Children, but right now improving co-ordination is a one-line statement, not a plan. The Roadmap draws on the international INSPIRE framework, which has helped other countries, such as Sweden, make more progress than Canada in ending all forms of violence against children.

The right to grow up without sexual violence is every child's human right. All Canada's well-intentioned initiatives would benefit from putting children at the centre and treating them as persons with dignity and rights rather than objects of care or victims of a few evil adults. A rights-based approach is the foundation for the #MeToo movement and other women's rights movements, but it has yet to be taken seriously in public policy for children at federal and provincial levels in Canada.

One hopeful note is the recognition that sexual violence is a violation of human rights in the final report of the Inquiry into Missing and Murdered Indigenous Women and Girls. One of its recommendations is full implementation of children's rights as well as women's rights and The UN Declaration on the Rights of Indigenous Peoples. The federal government has promised an action plan to implement the report in June 2020. Time will tell whether the action plan will be yet another piece in a jigsaw puzzle that never makes a full picture or whether it will be a paradigm shift in how Canada deals with sexual violence against children.

Sexual assault policy must better protect migrant women

Migrant women who are sexual assault survivors and have no immigration status need protection. Canada must observe human rights treaties it has ratified.

DEEPA MATTOO

Although Canada provides many resources to support women who have experienced sexual violence, migrant women with precarious immigration status are practically invisible and do not usually have access to these resources. Isn't it time for immigration enforcement agencies, police and social services to shift their focus, from apprehension and criminalization to protection and assistance? Canada must meet its obligations under international law to better protect migrant women.

Take, for example, the first resource that most of us would think of when a sexual assault occurs: the police and the criminal justice system. Yet, for a migrant woman without immigration status, that avenue may be closed. After a sexual assault occurs, the type of services and recourse a woman is eligible for or is able to utilize, is directly linked to her immigration status. From access to justice to access to health care, it is all determined by her status. Women without status fear they won't be supported by police but will instead be deported or placed in detention. Migration laws and fear of deportation act as a barrier for survivors to report sexual assaults. This also creates a breeding ground for continued violence and fear, further empowering perpetrators of sexual violence.

Let's consider some important policy terms. Women without immigration status are deemed "nonstatus," which encompasses those whose refugee claims were rejected; whose immigration sponsorship has failed; victims of human trafficking; those whose visas or permits to stay have expired; and undocumented entrants to Canada.

Many migrant women have lived here without status for 10, 20 or more years and have no links to their country of origin to which they might be deported if found out by Canadian authorities. Countless women make refugee claims that are rejected; or choose to remain without status rather than return to their countries of origin. Some women enter Canada legally through avenues such as sponsorship by an employer, spouse, or family member. But when these avenues fail, those women may become nonstatus. Another important term, "precarious status," refers to women with less than full immigration status. This includes documented but temporary workers, students, refugee applicants, as well as those holding other forms of authorized status, such as visas and permanent residency.

Women with no status or whose status is precarious often work in situations that are also precarious – nonstandard employment. This is usually temporary work without employee benefits or legal protection and usually pays minimum wage or less. A plethora of such workers across Canada suffer in these precarious conditions because of legislative and policy inadequacies.

Women in these situations are especially at risk because they are the most likely to depend on third parties for residence and/or employment. They are also the least likely to seek police or medical

assistance after a sexual assault from fear their status will be discovered. These women are susceptible to workplace exploitation, including poor working conditions where they are at risk of workplace injuries.

Migrant women without status have some hope of finding protection in one of Canada's "sanctuary cities," which include Hamilton, London, Montreal and Toronto. A sanctuary city is one that aims to limit cooperation with enforcement of immigration law. In 2013, Toronto City Council reaffirmed its commitment to nonstatus residents, and aimed to improve services to this vulnerable population.

Significantly, sanctuary cities apply a "Don't ask, don't tell (DADT)" policy, in which service providers – from police to health to social services – shouldn't inquire into a client's immigration status; and shouldn't inform the Canada Border Services Agency (CBSA) about clients. This is a powerful idea: if implemented correctly, it would allow any woman, regardless of her migration status, to access services without fear of discovery.

Unfortunately, in practice, sanctuary cities have failed to live up to this policy, creating severe anxiety for nonstatus women because they cannot be certain that seeking services won't expose them to the CBSA. In Toronto, the DADT policy is only partially upheld by the police, who have a broad discretionary power that, in practice, makes it almost impossible for a migrant to know if they might be reported to the CBSA. This has happened too often.

Research by the advocacy group, No One is Illegal, found that Toronto police had conducted numerous status checks in violation of the DADT policy; that numerous calls had been made to the CBSA; and that the Toronto police had been asking about status and taking steps to enforce immigration law. The 2015 study showed numerous cases where victims and witnesses of crime were reported to the CBSA, making it clear that anyone contacting police could be subject to deportation or detention. It's understandable why women without status who had been sexually assaulted would not consider the police an appropriate avenue of protection or justice. Ultimately, this conveys the message to nonstatus women that the protection of the state is not available to them. This has the effect of muzzling them, while permanently depriving those with precarious status of their rights under federal and international human rights legislation.

All individuals, regardless of immigration status, should have their rights protected by the Canadian Charter of Rights and Freedoms, including protection from discrimination and security of the person. In practice, this is not the case. Access to services and rights for nonstatus women is at best minimal and usually almost nonexistent.

Compliance with international commitments would require changes in Canada's immigration enforcement and police services. But it is essential: Canada has ratified numerous international human rights treaties that protect migrants and those without status. These include the International Covenant on Civil and Political Rights , International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination Against Women. These treaties mean status and nonstatus people should enjoy equal access to civil, political, economic and socio-cultural rights. The International Convention on the Elimination of All Forms of Racial Discrimination recommends participating states eradicate obstacles that nonstatus and precarious status people face in exercising their economic, social and cultural rights, and in accessing education, housing, employment and health care. Significantly, it also requires that states shift away from determining standards of

treatment based on citizenship status. Despite this, women without status or with precarious status continue to be deprived of social services and protection of the law available to citizens.

Canada is in direct contravention of its international legal obligations and must work to eradicate the treatment of individuals based on immigration status. At the same time, survivors of sexual violence with precarious immigration status need a framework through which they can come forward with a criminal complaint, safe from retaliation and protection from fear of referrals to immigration enforcement. In an era where challenges are present for survivors, from individual to systemic levels, multiple and cross-sectoral interventions are needed to improve outcomes for migrant women.

Independent national body would address violence against athletes

Athletes need a safe place to take their concerns about abuse, where they will be heard without facing retribution or risking their athletic careers.

GRETCHEN KERR

Our most prized Canadian athletes are too often experiencing violence in sport and suffering in silence. While national-level athletes perform spectacular athletic feats on the world stage as millions of Canadians watch in amazement and admiration, most of us are oblivious to the harm many of these athletes encounter on their journey to the podium. Injuries are a risk we can see and understand. But the effects of neglect and psychological and sexualized violence are often invisible or, in many cases, deliberately hidden.

In a recent study of 1,001 national team athletes, 17 percent of current athletes and 23 percent of retired athletes reported experiences of psychological harm, defined as repeated exposure to humiliating, demeaning and degrading comments, and being intentionally ignored or criticized as a person. Further, 15 percent of current and 23 percent of former athletes spoke of repeated experiences of neglect, such as training in unsafe conditions and being provided inadequate food and hydration. With respect to sexual harm, 4 percent of current athletes and 7 percent of retired athletes reported receiving sexist jokes and remarks, intrusive sexual glances, sexually explicit communications and sexually inappropriate touching.

We know that young people who meet with these forms of violence are more likely to suffer from mental health challenges, and high-performing athletes are no exception. They reported damaged self-esteem and confidence, increased feelings of depression and anxiety, self-harming behaviours and eating disorders in connection with episodes of violence. Ironically, these athletes are experiencing physical and psychological harm through the very environment that is assumed to contribute positively to health and development.

Equally disturbing is that so many of these athletes do not tell anyone about their experiences. Fewer than half told anyone of the harm they had suffered or felt they had a safe place to go with their concerns. Additionally, only 16 percent of current athletes and 13 percent of retired athletes submitted a formal complaint, due to the fear that disclosing their abuse could jeopardize a lifetime of training to reach a national team.

There are good reasons why athletes do not complain. Currently in the Canadian sport system, national-level athletes must take their concerns to the very organization that makes decisions about their careers and that employs the staff members who are typically the perpetrators of the violence. The recent allegations by athlete Megan Brown provide a poignant illustration of the inherent conflicts of interest in the current system. Brown, a nationally ranked distance runner, alleges her coach at the University of

Guelph groomed her for a sexual relationship while she was a minor. She said she has experienced psychological distress and her performance suffered as a result of this relationship. She filed a complaint with the university in 2006. The coach, Dave Scott-Thomas, was promoted to higher positions within the sport. The university last week issued a general statement of apology, and noted Scott-Thomas was terminated in December after they received another complaint.

In the words of one Olympic athlete, telling sport organizations about violence in their ranks "means putting them in a position where they have to incriminate themselves." In response to these conflicts of interest, athletes stay silent. Moreover, as the funding of sports is largely based upon podium results rather than the overall health and well-being of the athletes, it's no wonder that it's so difficult to eradicate violence from sport. Until funding models take into account the means used to achieve these results or the harm endured by athletes, violence against athletes will continue.

If secondary school, university or college students reported regular experiences of violence, the public would react with anger and disgust. We assume that sport is generally a healthy environment for young people and that our Canadian Olympians are the picture of physical and psychological health. Indeed, some of them are – but we also know that many are suffering in very real ways from the effects of violence.

So where do we go from here? Athletes, including those who have suffered violence from those in authority positions in sport, have provided us with the answers to this question. Athletes have clearly, repeatedly and courageously said that in addition to preventive measures, they need a safe place to take their concerns, where they will be heard without facing retribution or risking their athletic careers. They need psychological supports to heal from the violence they have endured. And if they decide to submit a formal complaint, they need a safe, confidential, neutral place to go that is completely separate from sport organizations, which too often turn a blind eye to violence within their ranks.

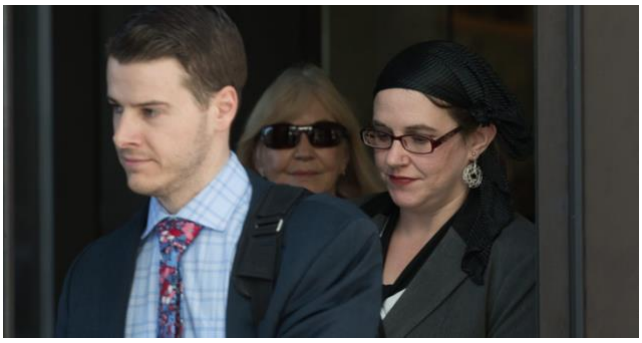
This neutral, independent body should be established and overseen by Parliament through the *Physical Activity and Sport Act* and funded by the government of Canada. This organization would oversee the mandatory application of a pan-Canadian, universal policy, with standardized definitions, procedures and penalties, to all federally funded sports and their member associations. To avoid conflicts of interest and ensure safe reporting mechanisms for individuals, the body would have the capacity and authority to investigate allegations of violence against athletes. It would oversee compliance with the policy and publicly disclose violations of the policy and associated sanctions. It would also provide appropriate counselling to those affected and address prevention of violence by mandating education.

Creating a single national body would ensure consistency in the application of the policy, its investigation and adjudication processes, and its education and support services across all jurisdictions and sports, including both small and large sport organizations. Fortunately, Canada already has models to follow, including the Canadian Centre for Ethics in Sport and the Sport Dispute Resolution Centre of Canada. If we can develop independent organizations for detecting banned substances and resolving disputes, surely we can do the same for addressing and preventing violence against young people. Curiously, sport in Canada is the only youth-populated domain that remains self-regulating. It is no wonder, given the lessons learned from the failed systems of self-regulation in the Catholic Church and the Boy Scouts, that violence against athletes continues.

Canada must do better to eradicate violence against young people in sport. It's time to respond to the athletes' calls for action — to end the reliance on self-regulation and instead provide athletes with an

independent authority to turn to. Only when athletes have confidence that their concerns will be heard and addressed in ways that will not involve negative repercussions will they feel free to break their silence.

Trauma must be considered in cases of intimate partner violence



Changes to the criminal law are needed so that complainants like Caitlan Coleman are treated with greater compassion and respect.

DANIEL DEL GOBBO

In December, the Ontario Court of Justice dismissed all charges against Joshua Boyle, the former Taliban prisoner accused of sexually assaulting and physically abusing his wife, Caitlan Coleman. Before the alleged assaults, Boyle and Coleman had been kidnapped and held hostage by Taliban militants in Afghanistan for over five years. Boyle and Coleman returned to Canada after being freed by Pakistani forces in October 2017. Less than two months later, Boyle was arrested and charged with more than a dozen criminal offences relating to events that occurred after the couple's release.

Boyle's trial was treated like a sensational event in the media, with the couple's kidnapping and release making the case feel like an outlier. But we should focus on what makes Boyle's trial similar to, not different from, more routine cases of intimate partner violence.

Among intimate partners, abuse is common, and it is overwhelmingly women who are assaulted and abused in their relationships. The criminal justice system has systemically failed to address the realities of intimate partner violence in Canada. Boyle was acquitted because of a lack of corroborating evidence for Coleman's claims, but changes to criminal law are needed to ensure that complainants like Coleman, who might well have experienced a trauma reaction, are treated with greater compassion and respect.

"He said / she said"

One might think of Boyle's trial as a classic "he said / she said" case of sexual assault, but the legal issues in the case were much more complex. There was little physical evidence like bruising or scarring to show Boyle had assaulted or abused Coleman. There were no independent eyewitnesses to the alleged events. This meant that the parties' credibility was a key question for the court to decide.

Boyle claimed his wife has a longstanding mental illness and experienced violent fits. He claimed that the couple were members of the BDSM community and practiced rough but consensual sex as a matter of routine. For her part, Coleman claimed that she was assaulted and abused throughout the marriage, with Boyle hitting, biting, choking, and spanking her when she failed to live by a list of rules he had devised after they were released from captivity. Coleman has said she was more afraid of Boyle than her captors in Afghanistan.

Proof beyond a reasonable doubt is an extremely high standard. The judge showed his exasperation during the closing arguments phase of the trial, saying: "How am I supposed to decide what to believe and what not to believe?" He found that Boyle's evidence lacked credibility, but he was concerned by Coleman's memory lapses and unreliability as well, coupled with a lack of corroborating evidence for her claims. Ultimately, the judge dismissed all charges against Boyle.

The complexities of violence

Boyle's acquittal should not surprise us. Coleman had particular vulnerabilities that are shared by complainants of intimate partner violence everywhere. The criminal justice system has struggled to recognize and accommodate these issues in case after case.

In her testimony, Coleman said she had trouble recalling traumatic events, suffered blackouts, and could have occasionally "invented and inserted" memories. She was diagnosed with post-traumatic stress disorder after her time as a hostage. This information is relevant because memory lapses should not necessarily be taken as evidence of a complainant's lack of credibility. Courts should conduct a fact-specific analysis in every case. Research shows that intimate partner violence can elicit fear, terror, intense feelings of helplessness, and other trauma reactions in complainants. These feelings can affect complainants' ability to remember and interpret events in the past and manage the stress of a criminal process.

Coleman's testimony alleged that she endured a pattern of emotional and psychological manipulation by Boyle for a long time. There are similarities between Coleman's allegations and what sociologists have termed "coercive control," a cumulative, patterned process of domination by which intimate partners, primarily men, interweave physical and sexual violation with intimidation, sexual degradation, isolation, and other forms of control. Crucially, the signs of coercive control are often less visible than physical injuries like bruising or scarring. Law enforcement has an incident-based understanding of intimate partner violence. Historically, this approach has silenced complainants' narratives of ongoing abuse through coercive control and underestimated the risks and severity of the harms at stake. Research suggests that coercive control is intrinsically harmful to complainants as well as a reliable predictor of physical violence.

A plea for reform

Criminalization can be a blunt and ineffective tool for remedying intimate partner violence and other compound problems of gender inequality. For complainants of intimate partner violence and sexual violence especially, the risks of secondary victimization and traumatization by the criminal justice system have been well-documented. Boyle's trial should lead us to rethink and reform the criminal law in this area as part of a more comprehensive and therapeutic response to the problem.

Feminist anti-violence experts have sought to educate police officers, prosecutors and judges in more trauma-informed approaches to professional service delivery in recent years. Additionally, there is rich scientific literature in the field of therapeutic jurisprudence, which explores the extent to which criminal rules and procedures promote the psychological health of complainants and other stakeholders affected by them. These are extremely important developments that should be funded and supported. Legal responses to intimate partner violence must be strength-based and recovery-oriented to avoid trauma reactions and fully support complainants in coping with their trauma symptoms. Criminal reporting procedures, police-victim interviews and cross-examination techniques need to change in order to better reflect the neurobiology of trauma and promote complainants' health and well-being. It should be possible for the criminal justice system to meet these important objectives without compromising the parties' rights to a fair trial at the same time.

In the Criminal Code of Canada, there is no specific offence of intimate partner violence or coercive control. Last year, the House of Commons passed Bill C-75, a law that strengthened a range of criminal offences including aggravated assault and sexual assault that can be committed against intimate partners. Among other changes, the new law expands the legal definition of "intimate partner" to

include both current and former partners; requires courts to consider prior convictions for intimate partner violence when determining whether to release the accused or impose bail conditions; and increases the maximum sentence allowable in cases involving repeated offenders of intimate partner violence. The impact of these changes should be closely monitored and evaluated to ensure that they are increasing access to justice for complainants.

Coercive control has been recognized in the United Kingdom through the introduction of a new standalone criminal offence. The impact of this change should be similarly monitored and evaluated to determine whether a corresponding change to the criminal law should be made in Canada. Preliminary assessments of the English legislation have identified problems that law enforcement has had in correctly reading the signs of coercive control and exercising its discretion to investigate and prosecute consensual intimate relationships deemed coercive or controlling without clear justification. This is consistent with problems that have been observed in this country, where law enforcement has similarly struggled to investigate and prosecute cases of intimate partner violence.

Specialized training of police officers, prosecutors and judges is needed to better identify the risks of coercive control throughout the criminal justice process. Clear and effective guidelines are needed to prevent the state from policing consensual sexual relationships, particularly in queer and BDSM communities, through vague and potentially overbroad definitions of crime.

Boyle's trial might seem exceptional, but it is really anything but. Access to justice for complainants will remain out of reach until the complexities of intimate partner violence are more widely understood. The criminal law should be modernized in response to this reality.

Femmes noires et violence sexuelle : visibilité et stigmatisation

Il faut travailler à une meilleure compréhension des violences sexuelles vécues par les femmes noires afin de les prévenir et de les enrayer.

KHAROLL-ANN SOUFFRANT

Proclamée par l'Organisation des Nations unies, la Décennie internationale des personnes d'ascendance africaine (2015-2024) vise à promouvoir les droits des peuples descendants de l'Afrique et à reconnaître leur contribution aux autres cultures. Le mois de février — Mois de l'histoire des Noirs — est également l'occasion de célébrer l'histoire et l'apport des populations noires à la société canadienne. C'est dans ce contexte que Statistique Canada a réalisé en 2019 (et plus récemment en 2020) un portrait illustrant la diversité des parcours et des expériences des populations noires du pays. Ces portraits, qui sont fondés principalement sur les données du recensement de 2016, offrent un aperçu démographique de la population noire (diversité ethnique, culturelle et linguistique, travail, éducation, etc.), mais ils n'exposent pas d'autres défis auxquels cette population doit faire face (et ce n'était pas non plus son but). Ainsi, la question des femmes noires canadiennes vivant ou ayant vécu des violences sexuelles n'y est pas abordée.

Un vide considérable dans les connaissances scientifiques

Au Canada, 620 000 femmes et filles s'autodéclarent comme noires. Pourtant, la rareté, voire la quasi-absence, d'études canadiennes qui traitent des survivantes d'agressions sexuelles racisées, particulièrement des survivantes noires, laisse sans voix. Il est important de se pencher sur ces réalités de manière approfondie pour dépasser l'éternel constat que davantage de recherches sont nécessaires sur la question.

Selon le Groupe de travail d'experts sur les personnes d'ascendance africaine des Nations unies, les femmes noires sont sujettes à des taux significatifs de violence en raison du « racisme anti-noir, de l'historique d'esclavage au pays, la ségrégation raciale et la marginalisation », qui continuent d'avoir des impacts contemporains tangibles.

Robyn Maynard, auteure de l'ouvrage primé, *NoirEs sous surveillance : esclavage, répression et violence d'État au Canada,* estime que les femmes noires sont historiquement et structurellement plus vulnérables aux abus sexuels, aux viols, et aux violences sexuelles et reproductives, notamment lors de la grossesse ou de l'accouchement comme d'autres personnes en témoignent. Ce sujet est sous-étudié ici comparativement aux États-Unis, où des statistiques indiquent que les femmes noires sont surreprésentées parmi les victimes de violence sexuelle en raison de l'enchevêtrement de divers systèmes d'oppression et de marginalisation.

Plusieurs études, notamment celles faites par Femmes et Égalité des genres Canada (anciennement Condition féminine Canada), citent des travaux sur certaines des réalités des femmes immigrantes et réfugiées victimes de violences. Toutefois, ces travaux de recherche se prononcent peu sur le problème de la violence sexuelle, de même que la violence vécue dans un contexte non conjugal. Il y est également très peu question des violences vécues par les femmes noires et racisées nées en sol canadien. Ainsi, les réalités de divers groupes issus de l'immigration sont amalgamées, alors que des groupes minorisés, notamment des femmes noires, peuvent vivre des situations particulières de violences sexuelles.

Le dilemme des points de vue en recherche

Un autre constat s'impose en matière de recherche sur les violences sexuelles des femmes noires : les rares études menées sur les femmes noires, qu'elles soient nées au Canada ou ailleurs, sont effectuées par des chercheuses blanches. Certes, il est important de s'allier avec des personnes non racisées dans la mesure où elles adoptent une approche réflexive, tolèrent l'inconfort et font preuve d'écoute et d'humilité en matière de lutte aux violences sexuelles auprès de cette population. Cette réalité pose toutefois un certain nombre de défis.

De manière générale, les femmes noires sont sous-représentées parmi les chercheuses en milieu universitaire. Ainsi, celles qui choisissent de se pencher sur les réalités des survivantes noires d'agressions sexuelles constituent un groupe encore plus restreint. Cela explique sans doute pourquoi peu de recherches sont consacrées à cette question et que les rares études qui existent sont faites par des personnes qui ne proviennent pas des communautés noires. Toutefois, être femme noire et universitaire n'est pas une panacée. Le dilemme des points de vue intérieur et extérieur pose également d'autres questions éthiques et scientifiques. Il n'est pas dit que des études d'un plus grand nombre de chercheuses issues des communautés noires produiraient des résultats substantiellement différents lorsqu'il est question de la compréhension des violences sexuelles vécues par cette population.

Qui plus est, il existe pour les chercheuses un réel risque de renforcer des stéréotypes négatifs sur la sexualité des femmes noires (et, par ricochet, des hommes noirs lorsque ces violences sont commises au sein des communautés). En effet, plusieurs stéréotypes, construits lors de la colonisation et de la période esclavagiste pour justifier des violences sexuelles commises envers des femmes noires, perdurent, même si la culture du viol et les violences sexuelles sont présentes dans tous les pays. Les violences sexuelles ne sont aucunement l'apanage d'un groupe culturel ou religieux donné, mais touchent toute la population et toutes les sphères de la vie en société. Affirmer le contraire relève de la mauvaise foi, voire carrément du racisme. Or la crainte de nuire à des communautés déjà surcriminalisées peut faire partie des raisons qui empêchent plusieurs femmes noires de dénoncer des violences sexuelles à la police, par exemple.

Le besoin de ressources spécialisées et adaptées

C'est Tarana Burke, militante et organisatrice communautaire afro-américaine, qui est à l'origine du mouvement #MeToo. C'était en 2006, et dans un contexte bien loin d'Hollywood et de l'affaire Harvey Weinstein. La campagne de Burke était destinée aux adolescentes noires et racisées issues de communautés défavorisées et visait précisément à pallier l'absence de programmes axés sur leurs besoins. Au Canada, les ressources spécialisées pour des survivantes d'agressions sexuelles qui tiennent compte de cultures différentes sont rarissimes. La mise en place et le financement de telles ressources relèveraient sans doute du gouvernement provincial. Elles constitueraient une avenue intéressante pour répondre de manière culturellement sensible aux besoins des survivantes noires en matière de justice, de santé et de services sociaux. Pour ce faire, il importe que chercheuses, militantes, survivantes et

acteurs et actrices clés ayant une expertise et une proximité avec cette population de survivantes s'allient pour mettre un terme aux vœux pieux et aux raccourcis intellectuels en la matière.
La question qui nous préoccupe ici est délicate et multidimensionnelle. Les solutions qu'il faut apporter pour contrer les violences sexuelles vécues par les femmes noires doivent être tout aussi différenciées, et amenées avec sensibilité et doigté. Pour ce faire, il faut que davantage de chercheurs réfléchissent à ces questions de manière respectueuse.

Alors que l'ONU s'apprête à célébrer le 25e anniversaire de la quatrième Conférence mondiale sur les femmes et l'adoption de la Déclaration et du Programme d'action de Beijing, force est de constater que le Canada a encore du chemin à faire pour pouvoir mieux répondre aux préoccupations des femmes noires ayant vécu des violences sexuelles. La force du mouvement #MeToo, le message porté par sa fondatrice ainsi que la Décennie internationale des personnes d'ascendance africaine actuellement en cours peuvent être des opportunités de saisir la balle au bond et de travailler à une meilleure compréhension de cette problématique sociale afin de la prévenir et de l'enrayer. Ces changements en amont permettraient sans aucun doute de mieux orienter la recherche et les politiques publiques canadiennes.