

# Enforcing the New Sexual Assault Laws: An Exploratory Study

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## ABSTRACT

This study was initiated as an exploratory study of the impact of Bill C-127 upon police processing of sexual assaults. Using data from the City of Halifax Police Department, 263 complaints of sexual assault from 1982 to 1984 inclusive were examined. It was hypothesized that Bill C-127 would have minimal impact upon police decision making. The hypothesis was confirmed by evidence that the abolition of both the penetration and corroboration requirements was nullified by the continued administration of the rape kit examination, and by the evidence that the police continue to discriminate against disreputable victims.

## RÉSUMÉ

Cet article se veut une première étude sur l'effet du Projet de loi C-127 sur les procédures adoptées par la police dans le cas d'agression sexuelle. À partir de données obtenues auprès du Bureau de police de la ville d'Halifax, on a étudié 263 plaintes d'agression sexuelle entre 1982 et 1984 inclusivement. L'hypothèse proposée suggérerait que le Projet de loi C-127 aurait très peu d'effet sur les décisions prises par la police. Cette hypothèse a pu être confirmée par un double preuve: d'abord, le fait que l'abolition des exigences de pénétration et de corroboration se voyait annulée par la continuation de l'examen par trousse médico-légale pour viol, et ensuite l'indice que la police fait toujours preuve de discrimination contre les victimes de mauvaise réputation.

In January, 1983, the Criminal Code of Canada (CCC)<sup>1</sup> was amended by implementation of Bill C-127 which abolished the charge of rape,<sup>2</sup> and substituted a trio of *sexual assault*<sup>3</sup> charges. These and other changes,<sup>4</sup> it was claimed (see Clark and Lewis, 1977; The Law Reform Commission of Canada 1978a; 1978b), would make it easier for women to report incidents to the police, for the police to charge offenders, and for the courts to register convictions. But how effective have these law reforms been in meeting these objectives? This study was designed as an exploratory look at two areas of expected impact upon police processing of complaints: Changes in processing of complaints alleging unconsented intercourse; and changes in processing of complaints from victims with tarnished social reputations.

The research was guided by two distinct sets of observations. First, some critics (e.g., Cohen and Backhouse, 1980; Jackman, 1982; Lowenberger and Landau, 1982; Ranson, 1982a; 1982b) of the legislation were concerned even before implementation that some aspects of the legislation were seriously flawed. They were apprehensive about the abandonment of the name "rape," as well as the inclusion of the "honest but mistaken belief in consent" defence. Research in the United States (e.g., Feild and Bienen, 1980;

153-206) had already indicated that similar legislation in that country had not produced the results expected by Canadian reform advocates. U.S. research had shown that there had been no significant increase in the rates of arrest or conviction which could be attributed to changes in legislation.

Second, certain analysts (e.g., Chambliss, 1979; Chambliss and Seidman, 1982; Spitzer, 1975; and Young, 1979) of law reform efforts have argued that changes in the law produce *contradictory* results. On the one hand, for those who seek the reform measure, it may solidify certain changes which have already occurred in practice. But on the other hand, for those opposed to the change, it affords an opportunity to maintain a kind of status quo by giving the appearance without the reality of change.

Informed by these observations, I expected to find evidence that would justify the concerns of the critics of Canadian legislation. I also expected to find evidence that would indicate that any changes in police response or processing of complaints would reflect changes which were already occurring, as well as evidence that a kind of status quo would be maintained.

## Methodology

It had been intended that data would be gathered from the General Occurrence Reports (GORs) of the police departments of Halifax and Dartmouth, Nova Scotia.<sup>5</sup> While the number of cases each of these cities would yield would not be sufficient for a full investigation, it was believed that they would yield sufficient numbers for at least a preliminary investigation. Both departments were approached for permission to review all reported incidents of *rape* (including *attempted rape*), *indecent assault on female*, and *indecent assault on male* for at least the two years before (1981 and 1982) implementation of Bill C-127, as well as all *sexual assaults* for the two years after (1983 and 1984) implementation. It was hoped that having data for at least two years before and after implementation would provide sufficient data to allow "before" and "after" comparisons of the way the police processed certain types of complaints, especially those alleging penetration. Both departments were also asked for permission to interview police officers involved in investigating such complaints.

However, Dartmouth police would grant neither access to their GORs nor interviews with their officers, and Halifax police refused permission to interview police officers. This meant that only the GORs for Halifax could be used for data gathering purposes. The refusal of police to permit photocopying of the reports further complicated data gathering. The GORs had to be copied by hand in police offices. This resulted in considerably more time being consumed than had been allotted for data gathering. Consequently, only those reports filed in the years 1982 to 1984 inclusive were included in the data base.<sup>6</sup> While this clearly compromised the quality of the data base, it still allowed sufficient data for an exploratory study.

Because the current study relies heavily upon comparisons with the results of the Clark and Lewis (1977) study, it would seem appropriate to indicate major differences and similarities between the two. There are three major differences. First, the study locations—Toronto and Halifax—are quite different demographically, and this may account for some of the variances noted in the results. Second, the data for the Clark and Lewis study refers to events in 1970, while the data for this study refers to events occurring from 1982 to 1984 inclusive. This too could be expected to have an impact on the results. Third, Clark and Lewis limited their study to examination of only those cases processed as complaints of *rape*. All reports of *indecent assault* on both males and females, as well as all instances in which victims were under 14 were excluded. Also excluded were those

complaints which remained "open" in police files. For the current study, all complaints, of *rape*, *attempted rape*, and *indecent assault* (male and female), from 1982, as well as all complaints of *sexual assault* from 1983 and 1984, including those which remained open and those in which the victim was under 14, were included in the data base.

There are also two major similarities. First, because data for both was gathered from GORs both suffer certain problems with data quality. While the problem was more severe in Halifax than it was in Toronto, certain victim and/or offender characteristics are not always recorded in GORs. For example, in Halifax, there were several cases where the only age related data recorded were statements that the victim was "in her fifties." Similarly, in other cases, neither marital status nor occupation were recorded while, in a few instances, place of employment, but not occupation were recorded. Information concerning race was also frequently missing. Consequently, issues related to age, race, marital status and occupation could not be fully explored. Second, the police do not always provide explanations for their decisions. As noted by Clark and Lewis (1977: 32), this makes it difficult to interpret why certain complaints were concluded as they were. Indeed, at times it appears as though the official conclusions of Halifax police and certain of their comments in the reports were contradictory.

## Processing "Rape" Complaints

The abolition of the need to prove penetration was expected by advocates of Bill C-127, to produce higher clearance rates,<sup>7</sup> or at least a reduction in the rate at which complaints were termed unfounded.<sup>8</sup> It was especially hoped<sup>9</sup> that, in those instances where penetration was alleged, there would be increased willingness to conclude complaints as founded. When compared to the results of the Clark and Lewis (1977: 34) study, in which it was observed that approximately 64 percent of all rape complaints in Toronto in 1970 were cleared unfounded, the results for similar complaints in Halifax after implementation of Bill C-127 seem to confirm the expectation. As shown in Table 1, Halifax police cleared a majority of complaints alleging penetration as *founded* in 1983 and 1984. In total, classified an average of 64 percent of these complaints as founded.

However, it could also be argued that what has been termed the anti-rape movement (see Kasinski, 1978) had begun to have an impact on the way police processed complaints even prior to 1983. After all, Table 1 shows that Halifax police had cleared 65 percent of complaints

Table 1  
Comparison of Rates at which Reported Incidents of Unconsented Intercourse are Concluded Founded or Unfounded, Halifax, 1982 to 1984

	1982	1983	1984
Founded	65%	58%	70%
Unfounded	15%	8%	0%

alleging penetration as founded in 1982. While it is not shown in Table 1, Halifax<sup>10</sup> police in 1980 (80%) and 1981 (58%) had concluded as founded significantly more rapes and attempted rapes than did Toronto police in 1970.

Further evidence that the decline in the rate at which sexual assaults were being cleared unfounded began prior to 1983 is found in Table 2. Even though the data in Table 2 does not allow for a distinction between *rape* and *attempted rape*, it is apparent that there has been a decline for all of Canada in the rate at which sexual assaults have been dismissed as unfounded. Careful scrutiny of the data shows that this reduction, especially from 1974 to 1982 may be attributed almost exclusively to a reduction in the rate at which complaints of rape and attempted rape were dismissed as unfounded. Significantly, the downward trend in the rate of unfounded cases seems to have accelerated more quickly after 1977.

But the Halifax data also indicates that some aspects of police behaviour were unaffected. Even though police had reduced the rate at which complaints were officially concluded unfounded, there are indications that their official conclusions are not what they truly believed. For example, Table 3 shows that many more complaints of sexual assault (all types) were believed to be unfounded than were officially concluded this way. While it is difficult, based upon the limited data, to offer a definitive statement, it appears as though there has been either no significant change or a slight increase in the rate at which complaints are effectively concluded unfounded.

All 29 cases shown in Table 3 as "effectively concluded unfounded," are cases where police comments clearly indicated that they believed the complaints to be unfounded, but they did not, for whatever reason, officially conclude them this way. For example, one investigator officially clears a complaint as *cleared otherwise* after writing that in his "...opinion the offence did not occur." Interestingly, this particular complaint is remarkably similar to another in which the victim offers essentially the same description of the offender, and of the circumstances of the attack. The second complaint was left "open" because no offender could be identified. There is no indication that the police believed it to be unfounded. In other instances, the suspicion is that the victim is covering up her own indiscretion. For example, one woman is said to be lying about being attacked in order to cover up the fact that she willingly went out and had sex with someone

Table 2  
Rates at which Reported Incidents of Rape, Indecent Assault on Male, Indecent Assault on Female and Sexual Assault were Concluded Unfounded, Canada 1974 to 1984

	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984
Rape and Attempted Rape	36%	35%	37%	37%	35%	32%	33%	29%	30%	-	-
Indecent Assault Female	9%	10%	9%	9%	9%	9%	9%	9%	9%	-	-
Indecent Assault Male	9%	8%	9%	7%	9%	7%	8%	8%	6%	-	-
Sexual Assault <sup>1</sup>	17%	17%	17%	17%	16%	16%	16%	14%	14%	14%	15%

<sup>1</sup> For the period 1974 to 1982 inclusive, these rapes are computed using rape and attempted rape, as well as both indecent assault categories. For 1983 and 1984 the rates include all incidents reported as sexual assault under Sections 246.1 (sexual assault), 246.2 (sexual assault with a weapon, causing bodily harm or threats to a third party) and 246.3 (aggravated sexual assault).

Source: Statistics Canada. Crime and Traffic Enforcement Statistics: Bulletin No. 85-205 (Ottawa: Ministry of Supply and Services; 1974 to 1983) Table 2-2.

Statistics Canada Canadian Crime Statistics: Bulletin No. 85-205 (Ottawa: Ministry of Supply and Services) 1984.

after finding out that her husband was having an affair. Similarly, a teenage girl is said to be lying in order to avoid punishment for arriving home later than her probation order allowed. It is also clear that investigation of these 29 cases ceased at the point where the investigating officer effectively concluded the complaint as unfounded.

Certain other evidence would also seem to indicate that despite the changes in law, little had changed in the way police perceive and respond to complaints of sexual assault. This problem arises because Bill C-127 did not define sexual assault, thereby leaving it up to the police and the courts to work out a definition. As Feild and Bienen (1980) noted with respect to similar changes in the United States, there is a tendency in these situations for the police, courts, etc., to define events using the conceptions and definitions which had been in effect prior to the changes in the law. If this is the case in Canada, it would mean that police can be expected to make decisions based upon the old definitions of rape, attempted rape, and indecent assault.

Judging from the results obtained from Halifax, the same pattern appears to be occurring in Canada. Of the 176 sexual assaults reported to Halifax police in 1983 and 1984, 49 were initially labeled as "indecent assault on a male" or "female," or as "rape" or "attempted rape." One officer even writes in his report that he believes a particular offence is "...more an 'indecent assault' than a sexual assault." To add to the confusion, some complaints are given names which combine old and new labels. In 1983 and 1984, a total of 15 complaints are labeled as "*sexual assault on a female*" or "*sexual assault on a male*," thereby combining the old indecent assault on male or female labels with the new sexual assault labels. In these cases, the officers were clearly trying to make a distinction, contrary to what had been the intent of the act, between what they see as the more serious cases of *rape* and the less serious cases of *sexual assault* (formerly indecent assault).

Further, there were some reported incidents which Halifax police treated as either common assault or as no infraction of the law because no touching which they believed to be "sexual" touching was involved. For example, in one incident, a woman and her young daughter (age 4) were "bumped" by an unknown man while they were standing in line at the grocery check out. In the process, the mother was touched on the buttocks, while the daughter was touched in the area of the chest, buttocks and genitals. The complaint was officially concluded as "cleared otherwise" after the police informed the woman of the results of their investigation, and she apparently agreed that no further action was necessary. The police

Table 3  
Numbers of Complaints from Female Victims  
Concluded Unfounded, or Effectively  
Concluded Unfounded, Halifax 1982 to 1984

	1982 <sup>1</sup>	1983 <sup>2</sup>	1984 <sup>2</sup>
Officially Unfounded	4	2	1
Cleared Otherwise but believed Unfounded	4	6	10
Left Open but believed Unfounded	3	3	3
Total Unfounded and believed to be Unfounded	11	11	14

<sup>1</sup> Includes incidents of rape, attempted rape and indecent assault.

<sup>2</sup> Includes incidents of sexual assault, sexual assault with a weapon, and aggravated sexual assault.

report, however, contains some troublesome comments. After interviewing witnesses who said that the man had a habit of making such "friendly gestures," and after consulting with "the crown" who suggested possible charges of common assault for the unwanted touching of the mother and sexual assault for touching the little girl, the police report concluded that, since the man had intended his actions as "friendly gestures" there had been "no intent" to commit a sexual assault. Consequently, they did not believe it was not necessary to lay a charge of any kind. Interestingly, other incidents where female victims were touched on the rear, breasts or genitals were treated as legitimate complaints of sexual assault. The important point here is that some incidents of unconsented touching were not treated as *sexual assault* in 1983 and 1984 even though similar touching was treated in 1982 as "indecent assault."<sup>11</sup>

Finally, while there were too few cases to warrant more detailed presentation, there was some indication that police were reluctant to proceed with complaints in which the victim may not be able to prove she was penetrated. Even though the law specifically states that corroboration of victim statements is not necessary,<sup>12</sup> and that penetration need not be proven to warrant a charge of sexual assault, Halifax police, perhaps aware that such complaints make poor court referrals, seemed reluctant to lay charges when allegations of penetration could not be corroborated. That is, in those instances where the "rape kit" examination could not prove that penetration had occurred, or where too much time had elapsed before the

incident was reported, the tendency was for no action to be taken. In some of these cases, the offender, or the victim (usually the latter) was asked to take a polygraph test.

This raises a very important issue. Is it reasonable, if corroboration is not required, to routinely administer the standard medical tests for the purpose of gathering corroborative evidence to prove penetration? Bear in mind that most complaints alleging penetration result in neither the identification of an offender nor in charges being laid. Under such circumstances, use of the test could produce the same negative results obtained via the use of the old rule of *recent complaint*.<sup>13</sup> Designed as a test of consistency in the victims statements and actions, McTeer (1978), and others (Clark and Lewis, 1977; Jackman, 1982), argued that the recent complaint rule acted as a test of inconsistency. It became a method by which police and courts could dismiss charges if any inconsistency was found in the victim's statements. With respect to the routine administration of the "rape kit" test, it could be argued that failure of the test to verify the victim's complaint could be used as an indication that the victim is lying, or at least as a test of sufficient inconsistency to warrant either that no further action be taken. Certainly, in those instances where corroborative evidence is not at hand and Halifax police requested victims to take the polygraph test this criticism appears legitimate.

The clear implication here is that abolishing the need to prove penetration, coupled with abolition of the corroboration requirement does not necessarily produce the desired results. There will continue to be instances where the lack of proof, and the lack of corroborative evidence, will prevent a complaint being concluded with a charge.

### Processing of Complaints from "Open Territory Victims"

One of the major findings of the Clark and Lewis (1977) study was that certain women were less likely than others to have their rape complaints cleared founded by the police. Partly in response to this criticism of police processing of complaints, Bill C-127 introduced new restrictions on the introduction of "reputational" evidence. Section 244.7 expressly forbids the introduction of "...evidence of sexual reputation, whether general or specific...for the purpose of challenging or supporting the credibility of the complainant." Advocates of Bill C-127 suggested that this would reduce the potential for putting the victim on trial.

The law, however, is not without its contradictions as Section 246.6 allows for the introduction of evidence related to the complainants prior sexual activity. It allows

such evidence when (1) it involves evidence of prior sexual contact with the accused, (2) when it "...rebutts evidence of the complainant's sexual activity or absence thereof that was previously" introduced by the prosecution, (3) it is evidence aimed at establishing "...the identity of the person who had sexual contact with the complainant on the occasion set out in the charge," and (4) it is evidence of sexual activity between the victim and persons other than the accused which took place on the same occasion for which the accused is standing trial and "...it relates to the consent that the accused alleges he believed was given by the complainant." Critics (e.g., Ranson, 1982a; 1982b; Hinch, 1985) have argued that when these "restrictions" are coupled with Section 244.4, permitting the defence of "honest but mistaken belief in consent," the potential for putting the victim on trial remains high. Certainly, Clark and Lewis (1977: 76-94, 123ff) reported that complaints from women who do not conform to standard gender role stereotypes stood little chance of having their complaints concluded with a charge, or even being concluded founded. The question to be asked here is: What impact did Bill C-127 have upon police processing of sexual assaults from these victims?

As in the case of the impact of abolishing the penetration requirement, there would appear to be some evidence that there has been a reduction in the rate at which complaints from "open territory victims"<sup>14</sup> were concluded unfounded. Whereas Clark and Lewis (1977, 10-11) observed that approximately 97 percent of complaints of rape from open territory victims in Toronto were concluded unfounded, Table 4 shows that Halifax police in 1983 and 1984 effectively dismissed only one third of sexual assaults reported by these victims in this way. Thus, it would seem that the gap between the rate at which open territory victims and other female victims' complaints are effectively dismissed as unfounded is closing. Whereas they were almost five times as likely as other female victims to have their complaints termed unfounded in 1982, they were only approximately 2 or 3 times as likely to see this outcome in 1983 and 1984. Similarly, Table 5 reveals that there has been a reduction in the gap between the rates at which open territory victims and other female victims had their complaints officially concluded founded.

However, it is also evident that fewer complaints from open territory victims were being concluded unfounded even prior to 1983. It is a long way from 97 percent in 1970 to 38 percent in 1982. This would seem to indicate that Bill C-127 had the result of accelerating changes which had already begun. Without more detailed information about the intervening years, and because there were gaps in the data recorded on the GORs, it is impossible to make any definitive statements. It cannot be ignored that, even

Table 4  
Comparison of Rates at which Complaints of Sexual Assault from "Open Territory Victims"<sup>1</sup> and other Female Victims were Effectively Dismissed as Unfounded, Halifax 1982 to 1984

	1982 <sup>2</sup>	1983	1984
Open Territory Victims	38%	33%	33%
Other Female Victims	8%	12%	16%

<sup>1</sup> Includes prostitutes, women on welfare, unemployed women, women said to be "drunk," "intoxicated," or "on drugs," and mental patients.

<sup>2</sup> Excluded from the total here is one complaint of indecent assault on a female which was missing from pile files during data gathering.

Table 5  
Comparison of Rates at which Complaints from "Open Territory Victims" and Other Female Victims were concluded Founded Halifax 1982 to 1984

	1982 <sup>1</sup>	1983	1984
Open Territory Victims	31%	33%	53%
Other Female Victims	74%	74%	66%

<sup>1</sup> One reported incident of indecent assault missing from police files during data gathering is not included for purposes of computing percentages.

though the gap is closing, open territory victims continue to be more likely than other female victims to have their complaints effectively dismissed as unfounded. In 1983 and 1984 combined, only one of 18 female victims said to be "drunk," "intoxicated" or "on drugs" had her complaint concluded with a charge, and only one of six prostitutes, or suspected prostitutes, had her complaint concluded with a charge.

To be fair, it must be acknowledged that many of the intoxicated women were said to be too drunk to give the police the kind of evidence they needed. Some could not describe their attackers. Others were not sure if they were

attacked. Thus, police reluctance and inability to lay charges may be understandable. It is hard to lay a charge if they cannot identify an offender, or if the victim is unable, or unwilling to say if she was attacked.

Nonetheless, it would appear to add insult to injury to note that two of these women were charged with violation of Section 185 of the Nova Scotia Liquor Control Act. That is, they were charged with being drunk in public. This compares with one incident in which a drunk offender grabbed a woman's breasts as she was exiting from a small truck and was charged with being drunk in public, but was not charged with either assault or sexual assault. The implication here is that being victimized while intoxicated, or behaviour while intoxicated, constitutes neither legal victimization nor violation of the law. Only the act of being intoxicated in a public place is illegal. Would this apply to bank robbery?

## Conclusion

As expected, certain concerns of some critics seem to have been justified. The change in legal name has not meant a clear change in the thinking of those who are to enforce the law. Also as expected, certain objectives of the reformists have been achieved, but so too has the status quo been maintained. To the extent that reformists sought a reduction in the rate at which complaints were being dismissed as unfounded, and to the extent that certain disreputable women have a better chance of having their complaints concluded founded, some change appears to have resulted. However, since these changes in law enforcement were evident prior to implementation of Bill C-127, it would seem that the changes are more consistent with the suggestion that they solidified changes which were already occurring. The fact that there is also evidence suggesting that there has been little change in the pattern by which police continue to make effective decisions, which conform to their decision making patterns prior to 1983, would also indicate that little has changed as a result of Bill C-127. This suggests that the anti-rape movement will be dissatisfied with the impact of Bill C-127 and will press for more changes. Similarly, it can be expected that the efforts of the reformists will meet with as much success as is evident as a result of implementation of Bill C-127.

## NOTES

1. All references to particular sections of the Criminal Code, R.S.C., 1970, Chapter C-34, are taken from the following sources: (1) References to particular sections of Bill C-127 are taken from the act as passed by the House of Commons, August 4, 1982 [They may also be found in *Snow's Annotated Criminal Code 1983: Annual Edition* (Toronto: Carswell Company Ltd.; 1983)]; (2) References to sections

- of the Criminal Code as it existed prior to January 1983 are taken from *Martin's Annual Criminal Code: 1981* (Aurora: Canada Law Book Limited; 1981).
2. Abolition of the charge of *rape* (Section 143) was not the only change made at this time. The charges *attempt to commit rape* (Section 144), *indecent assault on female* (Section 149), *indecent assault on male* (Section 156) were also abolished.
  3. Bill C-127 actually created three sexual assault offenses: *Sexual Assault* (Section 246.1), *Sexual Assault with a weapon, threats to a third party or causing bodily harm* (Section 246.2); and *Aggravated Sexual Assault* (Section 246.3).
  4. Among the more important changes were the abolition of the need to prove penetration, the abolition of the *corroboration requirement* which meant removal of the discretionary powers of judges to caution juries against convicting in the absence of corroboration, and the termination of the exemption from prosecution for rape granted married men who raped their wives.
  5. These cities were selected because of their proximity to the researcher who, at the time, was employed in the Sociology and Anthropology Department at St. Francis Xavier University, Antigonish, Nova Scotia. Data gathering was completed in May and June 1985.
  6. There were 87 incidents reported in 1982 (29 rapes and attempted rapes, 49 indecent assaults on females, and 9 indecent assaults on males), 87 sexual assaults in 1983 (74 against females and 13 against males), and 89 sexual assaults (73 against females and 16 against males). It should be noted, however, that, when the data was being collected, one of the GORs (a complaint of indecent assault) reported in 1982 was missing from police files. The files also contained two obviously misfiled common assault reports.
  7. Complaints may be cleared either *unfounded* or *founded*. To be cleared founded a complaint must either lead to a *charge* or be *cleared otherwise*. To be cleared otherwise, the offender must be identified, there must be sufficient evidence to warrant a charge, and there must be some reason beyond police control which prevents a charge being laid such as the unwillingness of the victim to press charges, or the incarceration of the offender for another offence.
  8. Clark and Lewis (1977: 35-37) emphasized not only that more complaints should be cleared with a charge, but that fewer complaints should be concluded unfounded. Indeed, one of the major findings of their study had been the discovery that many complaints were being classified as unfounded for reasons which had little to do with the quality of the evidence indicating that the victim had been raped. Many complaints were classified as unfounded because the police believed (1) that the complaint would not lead to a conviction, (2) that the victim's "bad" reputation discredited the validity of the complaint, and (3) the victim refused to pursue the matter further after becoming "hostile" to the police.
  9. The Law Reform Commission of Canada (1978a; 1978b) made it clear in its statements that it believed that abolishing the penetration requirement would ease prosecution. Similar arguments were also offered by Clark and Lewis (1977).
  10. These figures were obtained from year end statistical reports made available by the City of Halifax Police Department. Unfortunately, these year end reports did not distinguish between rape and attempted rape.
  11. It should be noted that, in at least one 1984 court case, *R. vs. Chase*, in New Brunswick a judge has ruled that a complaint of sexual assault as it now exists in the criminal code must involve touching of the genitals. The court ruled that touching of the breasts in itself does not constitute a sexual assault. However, in at least two other court cases in 1984, courts in Ontario (*Gardynik vs. R.*), and the Northwest Territories (*R. vs. Ramos*) have given opposite rulings. They have ruled that it is only common sense that, given prevailing attitudes towards sexuality and women, touching of female breasts constitutes sexual assault. But given these contradictory rulings, it would seem that a uniform definition of sexual assault has yet to be determined.
  12. Prior to 1975 judges routinely cautioned juries against convicting on the basis of the uncorroborated evidence of the victim. This "corroboration requirement" was abolished in 1975 via the Criminal Law Amendment Act. At that time, judges had the discretionary power to caution (or not caution) a jury that it was unsafe to convict in the absence of corroboration. Bill C-127 disallowed even this cautionary statement. Judges are no longer permitted to caution a jury that it is unwise to convict in the absence of corroboration.
  13. The rule of recent complaint assumed that a rape victim would tell the first person she met after being raped, or at least would take the first opportunity to tell someone that she had been raped. If a woman did not take this opportunity, or if this first statement was inconsistent with subsequent statements it was possible for the complaint to be dismissed (see McTeer, 1978: 138-140).
  14. According to Clark and Lewis (1977: 123) "open territory women" include "...promiscuous' women, women who are 'idle,' 'unemployed' or 'on welfare,' living 'common law,' 'separated' or 'divorced.'... 'drug users,' 'alcoholics,' or 'incorrigible.'"

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