

**“THE CONCEPT OF THE ‘#METOO MOVEMENT’ HAS NO PLACE IN A  
CRIMINAL TRIAL”: RAPE MYTH ACCEPTANCE AND MORAL PANIC IN  
JUDICIAL DISCOURSE IN A POST-#METOO ERA**

**by**

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A thesis submitted in conformity with the requirements

for the degree of Bachelor of Arts

Department of Criminology and Criminal Justice

St. Thomas University

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**Entitled: “The Concept Of The ‘#MeToo Movement’ Has No Place In A Criminal  
Trial”: Rape Myth Acceptance And Moral Panic In Judicial Discourse In A Post-  
#MeToo Era**

and submitted in partial fulfillment of the requirements for the degree of

**BACHELOR OF ARTS IN CRIMINOLOGY AND CRIMINAL JUSTICE**

Complies with the regulations of the University and meets the accepted standards  
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## ABSTRACT

This study examines court cases after the #MeToo movement to analyze judicial discourse for rape myth acceptance and characteristics of moral panic. In an analysis done by Cotter and Rotenburg (2018) for Statistics Canada, the average daily number of police-reported sexual assaults increased 25% following the inceptive tweet from actress Alyssa Milano on October 15, 2017. One of the main successes attributed to the #MeToo movement was its ability to call out and confront rape culture. The current study analyzes criminal cases that mention #MeToo to determine whether indicators of rape culture were present in judicial discourse after the onset of the social movement. A search of the LexisNexis QuickLaw database yielded cases (n=16) between October 2017 and January 2021 that mentioned “#MeToo” and its associated movements. Cases were coded using McMahon and Farmer’s (2011) Illinois Rape Myth Acceptance Tool- Short Form (IRMA-SF), and Goode and Ben-Yehuda’s (1994) five indicators of moral panic. The study found indicators of both rape myth acceptance and moral panic in relation to the #MeToo movement and its perceived threat to due process rights. The rape myth “She Lied” appeared with the greatest frequency. These findings are interpreted using Dworkin’s theory of sexual subordination to suggest that rape culture persists in the legal discourse of the criminal justice system in the post-#MeToo era.

## ACKNOWLEDGEMENTS

I would like to begin by thanking all of the people who have been there for me and helped me fall in love with the discipline of criminology. From Professor Clifford in Introduction to Criminology, to Dr. Reid who gave me my first opportunity to experience the field through an internship, all the professors in the Department of Criminology and Criminal Justice have played a role in helping me discover my passion within the discipline.

To the honours crew, there is no one else in the world I would have chosen to experience the existential crisis of ‘what is criminology’ with every Wednesday. From our Snooty dates, to our whine and wine nights, you guys kept me sane during this unprecedented year, and I wish that one day we can get together in person to celebrate this amazing accomplishment. This year was like being on the titanic, but I am so glad that you guys were on the boat with me when we hit that iceberg. A special shoutout to Lauren, I can’t wait to take on Ottawa with you this upcoming year.

To my friends and family, this would not have been possible without you. First, to Hannah MacQuarrie and Maddie O’Connor, for being there whenever I needed a therapy session. Grace Baker, for always being there to laugh through the pain with me, and always being ready to take a Cody Ko break. To Melanie Laplante, for being my absolute rock this year, and always being down to take a road trip; you’re welcome for always keeping you on your toes while I’m driving.

To Justin, thanks for all the late-night dons runs and always keeping quarantine interesting. To Mom, thanks for all the homecooked meals throughout the years and pretending to understand what a thesis is. To Dad, thank you for not only being my biggest fan, but for sacrificing so much time helping me edit and make sense of concepts; this project truly would have never been finished without you.

To Heather MacDonald, for being my mom away from home. From making my stomach hurt from laughing every Monday morning, to editing every page of this thesis, your support this year has meant the world to me, and this thesis would be a mess without you.

A huge thank you to my second reader Dr. Claire Goggin, who has been my number one supporter through my degree at STU, no matter how crazy my ideas have been. From when this project was just a seed in pre-honors, you have never doubted my ability and I would never be the person who I am today without your influence. From arguing about who will win the noble prize between us, to our COVID calls about prisoner dating, and finally finishing this thesis; you have provided me with some of my best moments at STU, all while serving as an amazing mentor.

Last, but certainly not least, I would like to acknowledge my incredible supervisor Dr. Karla O’Regan. From day 1 in this project, you have never doubted that we would finish, and your reassurance through the year has truly kept me sane. Thank you for challenging me, laughing with me, and inspiring me to transform from a stats nerd, all the way to a radical feminist.

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## Introduction

October 2017 brought attention to many Hollywood celebrities who were using their power to facilitate sexual assaults, including producer Harvey Weinstein and actor Bill Cosby. These allegations led many women in the entertainment industry to social media platforms to speak out about their own stories of sexual violence. On October 15<sup>th</sup>, 2017, actress Alyssa Milano sent out a tweet<sup>1</sup> that read:

if you've been sexually harassed or assaulted write 'me too' as a reply to this tweet"; attached was a photo that said, "suggested by a friend: 'if all the women who have been sexually harassed or assaulted wrote 'me too' as a status, we might give people a sense of the magnitude of the problem' (Milano, 2017).

In the following days, the magnitude of the problem was made evident as millions of people began to tweet the suggested phrase to signify that they had also been victims of sexual assault. Four years later, the hashtag continues to be used when prominent members of society are accused of sexual assault and/or harassment. Most recently, #MeToo gained was seen once again in the media as women came forward with allegations against New York Governor Andrew Cuomo, suggesting that the movement has proved to be persistent (Smith, 2021).

The #MeToo movement has had varying responses among the public, as well as politicians and organizations worldwide. Notably, then President Donald Trump mocked the movement several times and referred to it as "a very scary time for young men in America,

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<sup>1</sup> A posting on the social networking service Twitter; must be under 280 characters.

where you can be guilty of something you may not be guilty of' during the nomination of Brett Kavanaugh to the Supreme Court, someone who was also publicly accused of sexual assault (Diamond, 2018). Contrarily, Justin Trudeau and other world leaders referred to the movement as 'eye opening' and expressed support for the women who were speaking out about their experience with sexual violence (Global News, 2017).

For many, this was the first time they understood the severity and widespread nature of sexual violence as they witnessed friends and family members speak out about their trauma. The extent of the problem was not surprising to those who worked in the criminal justice system. The Province of Ontario (2020) reports that 1 in 3 Canadian women will experience sexual violence in their life, while Statistics Canada reported that, in 2020, 1 in 10 women were sexually assaulted at Canadian post-secondary schools (Statistics Canada, 2020). Sexual assault has historically been the lowest reported crime; in 2014, only 5% of sexual assaults in Canada were reported to police (Allen, 2018). The power of the #MeToo movement was not only felt on social media, but also was seen in its impact on the criminal justice system:

the number of victims of police-reported sexual assault in Canada peaked in October, coinciding with the widespread #MeToo social media movement. The number of reports made in October and November of 2017 were higher than any other calendar month since comparable data became available in 2009. (Cotter & Rotenberg, 2018)

Due to its impact on both social perceptions of sexual violence, but also its impact on the criminal justice system, research on the #MeToo movement is a growing field in all social sciences, including criminology and criminal justice.

A fair amount of research has been done on the #MeToo movement, including its effects on and significance to feminist activism and theory. Research on the subject has also focused on the impact the movement has had on film production industries and workplace harassment. Additionally, research has been done to examine how the #MeToo movement was able to garner success using social media and their inclusion of intersectional<sup>2</sup> perspectives to represent the multi-faceted experiences of all women, no matter their race or sexual orientation. Gaps in the research exist regarding how the movement has truly affected the criminal justice system. Although some studies have found heightened levels of reported sexual assaults, the research has not examined how the movement was received by judiciaries in the criminal justice system. This is where the current study fits into the existing research literature.

### **1.1 Hypotheses**

The current project seeks to examine whether the #MeToo movement has reduced rape myth acceptance within court cases that specifically mention the movement. Furthermore, the notion of a moral panic around the movement will be explored in the same cases, to examine whether or not the #MeToo movement has created a moral panic. The current study uses a critical discourse analysis to examine these issues as the ways in which value-laden attitudes are expressed through text can be seen (Fairclough, 1995). With the

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<sup>2</sup> “Intersectionality” is a term coined by Kimberlé Crenshaw (1989) which identified how the interconnected nature of social classifications (such as race, class, and gender) work to create overlapping and interdependent systems of oppression and discrimination.

goal of the study in mind, the hypotheses will be outlined under context of rape myth acceptance and moral panic.

### *1.1.1. Rape Myth Acceptance*

The Illinois Rape Myth Acceptance (IRMA) Scale was developed to measure attitudes on prejudicial and promote stereotyped and false beliefs about sexual assaults, rapists, and rape victims (Burt, 1980; Payne et al, 1999). It has been used extensively by researchers to examine victim blaming attitudes in sexual assault cases. A shortened form of it was developed by McMahon and Farmer (2011) which identifies four subscales of rape myths, namely: She Asked for It, He Didn't Mean To, It Wasn't Really Rape, and She Lied. By using this scale, the present study was able to test the following hypotheses regarding the presence of RMA and victim blaming attitudes in the judicial discourse of cases that mention the #MeToo social movement:

- H<sub>1</sub> Indicators of RMA are present in judicial discourse post-#MeToo.
- H<sub>2</sub>: RM1 (She Asked for It) and RM4 (She Lied) are the most used rape myths found, consistent with the findings of Franiuk et al. (2008)

### *1.1.2. Moral Panic*

The concept of moral panic was first introduced by Stanley Cohen (1972) and has been frequently used when looking at subcultures and their perceived threat to societal values and interests. Moral panic research has been applied to a number of social movements, including #MeToo (Matthews, 2019). The current study used the five indicators of moral panic, outlined by Goode and Ben Yehuda (1994), namely: Concern, Hostility, Consensus, Disproportionality and Volatility. These factors were used to test the following hypotheses

about the presence of moral panic indicators in the judicial discourse of cases that mention #MeToo:

- H<sub>3</sub>: Moral Panic indicators will be present in criminal cases that mention the #MeToo movement.
- H<sub>4</sub>: Women who used the #MeToo movement to discuss their experiences with rape will be identified as Cohens (1972) ‘folk devils’.

## **1.2 Chapter outline**

This thesis consists of seven chapters, including this introductory chapter. It is followed by a review of the literature and the key research which informed the current study. The theoretical framework will be outlined in the third chapter. It examines the use of radical feminist and moral panic theories in analyses of the #MeToo movement and the criminal justice system’s response to it. This includes a summary of Dworkin’s (1989) theory of sexual subordination. In the fourth chapter, the methodology used to conduct the study is outlined, including a description of how data was retrieved, and the scales used to code the data.

The fifth chapter reports on the findings of the study and the sixth includes a discussion of these findings through a feminist and moral panic theoretical lens. The conclusion of the thesis, found in the seventh chapter, provides a summary of the present study, as well as a discussion of its strengths and limitations, as well as suggestions for future research in the area.

## **1.3 A note on gender-based language**

It is important to note that throughout the current study, gender-based language was used to refer to the accused as male and the victim as female. This was done for multiple



reasons. Firstly, RMA scales used in the study employ this gender-based language, so the current study follows the pattern of research in the area. Second, victims of sexual assault have historically been majority female, while perpetrators of sexual assault have been majority male. In 2014, 94% of sexual assaults were committed by a male perpetrator, while 87% of all victims of the assaults identified as female (Allen, 2018). This translates to the current study, as all victims of the cases examined identified as female and all accused were referred to using male pronouns. This study, however, acknowledges that the problem of sexual assault transcends gender. The Province of Ontario reports that 1 in 8 Canadian men will experience sexual violence in their lifetime (Province of Ontario, 2020).

This study will also use the words ‘sexual assault’ and ‘rape’ interchangeably as this is done in most of the research in this area (Gotell, 2008; Long, 2017). Finally, the ‘me too’ hashtag and the ‘I believe you’ hashtag were often used interchangeably in the present study as the latter was a political slogan that arose out of the #MeToo movement, thus representing the same movement. The phrase ‘I believe you’ gained popularity in 2018 through the Brett Kavanaugh nominations, and was a way for women who have not experienced sexual violence to express allyship with those who have. When placed together, the ‘Me Too’ movement and the ‘I believe you’ hashtag culminate to represent a movement in which victims of sexual violence can be heard and believed by each other and allies.

## Literature Review

The subsequent literature review will contextualize the #MeToo movement within sexual assault law, rape culture, and secondary victimization in the Canadian criminal justice context. The #MeToo movement had several implications in Canada, including a recorded rise in the historically low reporting rates of sexual assault (Cotter and Rotenberg, 2018). Moreover, the movement highlighted problems in the criminal justice system with respect to victim experiences, including the high unfounded rates for sexual assault reports among Canadian police services, first highlighted by Robyn Doolittle's investigative report for the *Globe & Mail* in February 2017. These issues are discussed in the following sections, including a review of past studies that have examined rape myth acceptance and judicial discourse so as to put the current study in this research context.

### 2.1 #MeToo

The #MeToo movement dates back to 2006 when Tarana Burke began an online movement for survivors of sexual assault with a “vision to bring resources, support, and pathways to healing where none existed before” (Burke, 2017). This phrase inspired Burke as it reminded her of when she was a youth worker listening to a young girl speaking about her assault and the pain she felt when she said “me too” to the girl (Burke, 2017). Notwithstanding the movement's success in its first 11 years, the slogan ‘MeToo’ went viral in October 2017. During this period, dozens of women stepped forward into the media spotlight to bring accusations of sexual assault against Harvey Weinstein, who was then a world-renowned film producer. Many people took to social media to express their anger and thoughts on the case, including actress Alyssa Milano who tweeted on October 15, 2017: “If you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet” (Milano,

2017). In a picture attached to the tweet, Milano states that this was to give people a sense of the magnitude of sexual assault and that it was not limited to actresses working with Harvey Weinstein. The impact of Milano's tweet was immediate. The phrase 'me too', which eventually became #MeToo, was used more than 500,000 times in the first 24 hours on Twitter and over 12 million times in the first hour on Facebook (France, 2017). The hashtag began trending on Twitter on October 24<sup>th</sup> (Mendes et al., 2018).

### *2.1.1. The Impact of the #MeToo movement*

The hashtag #MeToo became more than a place to relate to Milano; it became a hashtag under which women came together to share their experiences of sexual violence. The hashtag was eventually translated and used by people worldwide as they shared their experiences, notably in the Canadian context as the #MoiAussi hashtag that became popular in Quebec. Three days after the Tweet from Milano, Prime Minister Justin Trudeau referred to the movement as "awakening" (Global News, 2017). Moreover, in an analysis done by Cotter and Rotenburg for Statistics Canada in 2018, it was clear that the #MeToo movement would also have legal implications in Canada. The average number of police-reported sexual assaults increased from 59 per day before the #MeToo tweet to 74 per day following it (Cotter and Rotenburg, 2018). The 24% increase in police-reported sexual assaults nationwide (and a staggering 61% increase in Quebec) suggested that #MeToo might be more than a social media phenomenon but would also impact the criminal justice system. Notwithstanding these increased reporting rates, the conviction rates of sexual assaults remained stagnant at 20% in the year following the advent of the hashtag, pointing to a lack of response from the criminal justice system (Statistics Canada, 2020). This lack of response has yet to be studied.

Internationally, the #MeToo movement has seen many pillars of success. A *New York Times* article pointed to over 200 powerful men who were ‘brought down’ as a part of the movement (Carlsen et al., 2018), and the European Union held a #MeToo-inspired conference in which members told their own sexual violence stories (Schreuer, 2017). For many people, their use of the hashtag represented the first time they had spoken about their experience. This widespread response to #MeToo has been viewed as a success by feminist and social activists alike for its ability to bring together people from many different backgrounds to respond to sexual victimization in empowering ways (Kachen & Krishen, 2020). Notwithstanding the praise the movement received, it should be noted that not everyone feels that way, in particular, Trott (2020) has criticized the movement for lack of consideration of voices from women of color.

### *2.1.2. #MeToo in Academia*

Academically, #MeToo has been examined as an example of feminist influences in social media and its movements. Notably, scholars in this area have been particularly interested in its impact on including intersectional perspectives, as well as the motivations behind women posting their stories. Many feminist theorists have praised the #MeToo movement for taking form as a hashtag as it allows the issue to be discussed on an intersectional level and allows all people to be heard, no matter what skin colour or social class (Jackson, 2018).

Using social movement theory, Alaggia and Wang (2018) adopted a phenomenological perspective in examining the themes present under #MeToo. They found that the hashtag was precipitating disclosures of sexual assaults on social media in unique ways and that many people using the platforms were identifying internal barriers and mixed responses from peers

and professionals as reasons why they had never before come forward. Most importantly, they found that, although the movement has allowed women to feel comfortable disclosing their assaults, many barriers to reporting still exist within society (Alaggia & Wang, 2018).

Additionally, one of the #MeToo movement's main successes was its ability to "call out" or name rape culture, defined as a setting in which sexual violence is normalized and pervasive due to societal norms about gender and sexuality (McCray & Taylor, 2021).

Central to rape culture is the widespread acceptance of so-called "rape myths", (discussed in further detail below) which are prejudicial stereotypes and false beliefs about sexual assault and its victims (Burt, 1980; Christie, 1986). These myths work within rape culture to establish standards about the "ideal" or "typical" victim of sexual assault, i.e., one who is most readily believed and likely to obtain a criminal conviction (Larcombe, 2002). The effectiveness of #MeToo in critiquing rape culture and preventing the use of rape myths has yet to be fully researched – a gap that becomes even more crucial to examine as the reporting rates of sexual assault rise in the wake of #MeToo.

### *2.1.3. #MeToo: too far?*

Notwithstanding the success that many have attributed to #MeToo for confronting rape culture and bringing down problematic perpetrators, it has also received substantial critical feedback. In January 2018, a woman who identified under the pseudonym 'Grace', accused actor Aziz Ansari of sexual misconduct during a date (Hindes & Fileborn, 2020). Unlike the Bill Cosby and Harvey Weinstein allegations, there was significant discussion in the media about whether the encounter could be labelled non-consensual and it "became the flashpoint of discussions about #MeToo" (Davis, 2019). One reporter referred to the Ansari incident as a Rorschach test, where each person who looked at the facts of the encounter saw

something different. The author further explained that it represented a grey area in sexual violence that leads many to be confused about the behaviours that constitute sexual violence (Hamblin, 2018). Many people expressed that the Aziz Ansari case shows that the #MeToo movement is “a ‘moral panic’ wherein good and decent men are being punished for minor transgressions” (Hamblin, 2018). A poll done by NPR found that 1 in 4 Americans agreed with this notion (Smith, 2018). Even political leaders, such as then US President Donald Trump, voiced opposition to the movement, remarking that the #MeToo movement made it “a scary time for young men” (Diamond, 2018). Others have equated it with a witch hunt or “sex panic” (Franks, 2019).

#### 2.1.4. *#HimToo*

The critical reception to #MeToo also included the use of oppositional hashtags. #HimToo began to appear in social media circles in response to the #MeToo movement, claiming to represent men victimized from false accusations of sexual assault, many people used the hashtag to support the Supreme Court nominee Brett Kavanaugh (Boyle & Rathnayake, 2019). Although the hashtag represents more than one origin story<sup>3</sup>, one of the movements using this hashtag started a year after the #MeToo movement when a mother used Twitter to express concern that her son “won’t go on solo dates due to the current climate of false sexual accusations by radical feminists with an axe to grind”, using #HimToo to tag the tweet (Flynn, 2018). Although the tweet was quickly turned into a meme<sup>4</sup> by most,

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<sup>3</sup> For example, in India, #HimToo was actually a pro-feminist movement (Anitha, 2020)

<sup>4</sup> A meme is described by the Oxford English dictionary as “an element of a culture or system of behavior that may be considered to be passed from one individual to another by nongenetic means, especially imitation”.

and reputed by the son himself, the notion of radical feminists creating false sexual accusations was well received by many as they felt that the #MeToo movement was being unfair to men and was creating widespread bias towards men accused of sexual assault.

As will be seen during the discussion on unfounded rates, false accusations of sexual assault are very rare, yet the fear about becoming a victim of a false report allegation was a common reaction among men critical of the #MeToo movement. In a study done in 2019, 60% of males reported being ‘nervous’ when mentoring, socializing or having one-on-one meetings with women in the workplace as they feared being accused of sexual harassment (Bailey-Millado, 2019). The #HimToo hashtag provided a forum for these anxieties and was fueled by a number of mainstream news articles in *Forbes* and the *New York Times* that questioned whether the #MeToo movement had created so strong a bias against men that they might no longer be presumed innocent until proven guilty (Borysenko, 2020). Although the #HimToo movement did not garner the same level of support as #MeToo, the belief that men are being falsely accused of sexual assault and presumed guilty is one that both predates and succeeds #MeToo.

## **2.2 The History of Rape and Sexual Assault Law in Canada**

In 1982, the *Criminal Code of Canada* [hereinafter “*Criminal Code*”] renamed the offence of rape and indecent assault as “sexual assault”, as detailed in Bill C-127 (Randall, 2010). The purpose of this change in legislation was to emphasize the violent nature of the offence and broaden the category of what can be considered harmful sexual behaviour to include more than just forced vaginal intercourse by a penis (Bavelas, 2001). The change in

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legislation had two other goals: to allow for unwanted sexual touching or oral sex to be considered sexual assault; and to make the law gender neutral.

The resulting three-tiered sexual assault laws are found in sections 271, 272, and 273 of the *Criminal Code*. Level 1 (section 271) involves minor injuries or no injuries to the survivor. Level 2 (section 272) is an act with a weapon or where bodily harm is done to the victim. Most severe is aggravated sexual assault (section 273) which is any sexual assault that wounds, maims or endangers the life of the victim.

### 2.2.1. Rape Shield Provisions

Before 1992, section 276 of the *Criminal Code* prohibited cross examination of a complainant about their history of sexual activity to avoid victim-blaming. *R v Gayme* and *R v Seaboyer (1991)*<sup>5</sup> are cases that proved that this law violated the due process rights of the accused to a fair trial, as covered in Section 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* [hereinafter “*Charter*”]. The response to these cases by feminist groups was outrage and anger. They argued that the use of a victim’s past sexual behaviours would only amplify victim-blaming practices and rape myths in the courtroom. This concern was judicially recognized in the Supreme Court of Canada case, *R v Seaboyer (1991)*, in which Justice L’Heureux-Dubé remarked:

The woman who comes to the attention of the authorities has her victimization measured against the current rape mythologies, i.e. who she should be in order to be recognized as having been, in the eyes of the law, raped; who her attacker must be in order to be recognized, in the eyes of the law, as a potential rapist; and how injured she must be in

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<sup>5</sup> These cases were heard together at the Supreme Court of Canada



order to be believed. If her victimization does not fit the myths, it is unlikely that an arrest will be made or a conviction obtained. As prosecutors and police often suggest, in an attempt to excuse their application of stereotype, there is no point in directing cases toward the justice system if juries and judges will acquit on the basis of their stereotypical perceptions of the "supposed victim" and her "supposed" victimization. (*Seaboyer*, 1991, para: 648-649)

In response to concerns that this would result in an even lower reporting rate for sexual assaults, the federal government enacted Bill C-49, which embodied several cross-examination restrictions (Randall, 2011). Additionally, *R v O'Connor* (1995) furthered the limitation of using a complainant's personal records in defence of sexual assault cases, which led to the enacting of Bill C-46 which made complainant personal records ineligible as evidence in trial.

The amendments in both Bills C-49 and C-46 were regarded as significant for feminists as the legislative process had included consultation with people with experience in the social reality of sexual offences, including rape support workers and representatives of national women's organizations (Tang, 1998). The legislative amendment process led to the current provisions (referred to as "rape shield laws") in section 276(1):

**276 (1)** evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant

(a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or

(b) is less worthy of belief.

*R v Mills* (1999) was also a crucial case in confirming that the newly amended rape shield laws were constitutional. This became the last Supreme Court case in a series of trials in the late 20<sup>th</sup> century that became a success to feminist movements and victims, who were subsequently protected from being questioned about their past sexual history. As will be seen in the discussion of rape myths, rape shield laws are critical in limiting the amount of victim-blaming in court through cross-examination.

Due to the affirmative model of consent and rape shield laws in Canada, MacDonald (2020) argues that it is difficult to find any jurisdiction more protective of sexual assault complainants than Canada, although many feminist legal scholars argue the actual impact of these ground-breaking reforms has been negligible.

### 2.2.2. *Affirmative Model of Consent*

Canada is one of only a few countries that has adopted an affirmative consent model for sexual assault offences. Like any *Criminal Code* offence, a conviction of sexual assault must prove *actus reus* and *mens rea* components beyond a reasonable doubt. The *actus reus* of sexual assault is established by proving that (1) the act was forceful, (2) of a sexual nature, and (3) was not consensual, with the first two of these elements being objectively determined but the second (the absence of consent) being determined from the subjective viewpoint of the complainant (Ewanchuk, 1999). The *mens rea* of sexual assault is then the intention to touch while knowing of, or being willfully blind or reckless to, the victim's lack of consent. Within *mens rea*, the mistake of fact defence may be used to prove that the accused had an honest but mistaken belief that the complainant consented. This mistake must be reasonable and not be due to intoxication, recklessness, or wilful blindness (Esau, 1997). This requires

the accused to take reasonable steps in reaching the mistaken belief that the complainant expressed consent.

The legal definition of consent is found under section 273.1(1) of the *Criminal Code*, which defines it as “the voluntary agreement to engage in the sexual activity in question.” Before *Ewanchuk*, the complainant’s consent was sometimes held to have been implied, reinforcing the notion that the victim had to show signs of resistance to be able to claim it was rape (Craig, 2009). Affirmative consent is based on “the accused’s perception of the complainant’s words or actions and not on the accused’s perception as to the complainant’s desire for sexual assault” (Craig, 2009, p. 251). In short, consent cannot be inferred from passivity or silence on the part of the victim (Randall, 2011). This led many feminist scholars to describe the *Ewanchuk* case as having established “yes means yes”, rather than “no means no” (Gotell, 2008). The effect was to create a standard for sexual consent in Canadian criminal law that requires hearing the word “yes” and not the absence of the word “no” (*Ewanchuk*, 1999). Feminist legal scholars have also noted this as a success for survivors in the courtroom as it removes the stereotypical burden to prove that they resisted, and instead places the onus on the accused to prove that the victim said yes (Craig, 2009).

### 2.2.3. *Unfounded rates*

The prevalence of law enforcement’s unresponsiveness towards sexual assault victims was exposed in a 2017 investigative report by Robyn Doolittle on the unfounded statistics among Canada’s police services (Doolittle, 2017). Doolittle’s report, written for the *Globe and Mail*, found that one of every five sexual assault allegations in Canada was dismissed as baseless and labelled “unfounded.” With a national unfounded average of 19.39 percent, ranging from 2% in Winnipeg to 51% in Saint John, N.B., these rates are twice as

high as the unfounded rates for physical assault and significantly higher than those of any other type of violent crime. Doolittle stresses that these high rates of unfounded cases do not mean that all of those victims are lying, as it has been found in multiple studies that the false report rates for sexual assault are situated between 2-8% (Allen, 2018). This conflicting data between scientific false report statistics and the unfounded rates point to a significant reason why victims may not reach out to police: they are afraid they will be told their trauma did not happen.

Fortunately, Doolittle's report on the unfounded rates led to quick government response in Canada, months before the advent of the #MeToo movement. A subsequent report by Doolittle in December 2017 re-examined unfounded rates in Canada and found that her previous report had resulted in law enforcement agencies reviewing more than 37,000 cases and promising to re-evaluate their approach to sexual violence. In particular, given that Saint John was one of the Canadian cities with the highest unfounded rate, the local police force struck a task force to review sexual assault cases that had not initially resulted in a sexual assault charge (CBC, 2020). Doolittle's report demonstrates the need to develop anti-victim-blaming practices and safeguards at the criminal trial level.

#### *2.2.4. Report rates of sexual assault in Canada*

Canadian legal reform has had a good track record in terms of fostering upward trends in reporting levels among women who feel more comfortable turning to the criminal justice system for justice (Johnson, 2012). Soon after the implementation of new laws in both 1983 and 1993, the reporting rates for sexual assault rose rapidly, seeing their highest point in 1993 (i.e., 121 *per* 100,000) after legislation for rape shield provisions was first introduced. Notwithstanding these increases, feminist criminologists point out that sexual

assault continues to be the most under-reported and under-prosecuted offence in Canada. Johnson (2012) notes that sexual assault is also the most gender-based crime as, in 2007, 86% of victims of sexual assault were female while only 3% of females were charged with such an offence. While there has been significant progress shown through legislative changes, police report rates remained lower than 10% between 1993 and 2004 in all victimization surveys in Canada. Additionally, Johnson points to a troubling trend in 2007, where 98% of all sexual assault charges were categorized as Level 1, up from 88% seen in 1983. This points to more sexual assaults being viewed as insufficiently violent to warrant Level 2 or 3 charges, despite research that has found approximately 19% of sexual assault survivors characterize their assault as violent enough to be classified at a higher level (Johnson, 2012). The most recent Canadian statistics prior to the beginning of the #MeToo movement are from the victimization survey done in 2014 in which less than 5% of all self-reported sexual assaults were brought to the attention of the police in Canada (Allen, 2018). This report also noted that 45% of sexual assault victims stated that they did not want the “hassle of dealing with police”, and 43% did not consider their incident severe enough to warrant contacting police. Additionally, 40% of people who did not report the assault stated they did not believe the offender would have been adequately punished had they opted to pursue their case in the criminal justice system (Allen, 2018).

### **2.3 Rape Culture**

Rape culture is the name given to political and sociological settings in which rape is both normalized and expected. It is greatly informed by society's beliefs about gender and sexuality (McCray & Taylor, 2021). In her book on sexual assault “in the age of #MeToo”,

Doolittle stresses that rape myths and stereotypes of ideal victims are the oxygen that keeps rape culture alive (Doolittle, 2019).

### 2.3.1. Rape Myths

In their examination on rape mythology, Lonsway and Fitzgerald (1994) state that “rape myths are attitudes and generally false beliefs about rape that are widely and persistently held, and that serve to deny and justify male sexual aggression against women” (p.1). Rape myth acceptance (RMA) is a well-researched area within the sexual assault literature. Its research origins date to the beginning of the second wave of the feminist movement in the mid-1900’s. Martha Burt is thought to have developed the first attitudinal scale to measure a participant’s perception of sexual assault and its victims (1980). The scale was updated in 1999 by Payne et al., commonly referred to as the *Illinois Rape Myth Acceptance Scale* (IRMA). The IRMA is a 45-item scale with 7 subscales. It is “arguably the most reliable and psychometrically demonstrated rape myth scale to date” (McMahon & Farmer, 2011, p. 72 citing Payne, Lonsway, & Fitzgerald, 1999).

A short form of the IRMA scale (IRMA-SF) was tested by McMahon and Farmer (2011) in their study of RMA among undergraduate students at a large university in the northeastern United States ( $n = 951$ ). McMahon and Farmer reduced the IRMA’s 45 item scale to four subscales of assessment, each labelled for their corresponding rape myth (RM). These were: RM1 *She Asked For It*, RM2 *He Didn’t Mean To*, RM3 *It Wasn’t Really Rape*, and RM4 *She Lied*. Items in the RM1 (She Asked For It) subscale deal with victim-blaming, posing questions related to gender roles and sexual expectations (e.g. “if a girl initiates kissing or hooking up, she should not be surprised if a guy assumes she wants to have sex”). Items in the RM2 (He Didn’t Mean To) subscale pose questions related to biological

explanations of human behaviour and responsibility (e.g. “rape happens when a guy’s sex drive goes out of control”). The remaining subscales deal with overlapping issues related to consent, false allegations, and motives for fabrication (e.g. “girls who are caught cheating on their boyfriends sometimes claim it was rape” and “if a girl doesn’t say ‘no,’ she can’t claim rape”) (McMahon & Farmer, 2011). A copy of the IRMA-SF is available in Appendix A.

Researchers have used RMA scales in many fields to analyze topics related to sexual trauma. For example, Baugher et al. (2010) found a positive correlation between RMA scores and depression rates within a cohort of sexual trauma survivors. Similarly, Wilson et al. (2017) reported a positive correlation between RMA scores and levels of self-blaming and respondents’ labelling of their sexual assault as just “bad sex”.

Consequently, RMA scales have been used extensively to evaluate criminal justice system practitioners’ attitudes towards rape. Feldman-Summers and Palmer (1980) researched differences in attitudes between people working in the criminal justice system and a control population comprised of sexual assault advocates. The authors found that the criminal justice group scored much higher on any rape myth as compared with the advocates. This difference was strong enough for the author to conclude that rape myth acceptance in the criminal justice system is a significant factor in why victims often report experiences of revictimization when going through the system and eventual trial. Page (2010) also conducted a survey of RMA within a police officer cohort before and after the introduction of rape shield laws. Overall, the results of the study were consistent with the RMA rates of studies done before rape law reforms. That is, despite many changes in the legal definitions of rape and consent over the years, police officers’ rates of RMA remain unaffected.

Franiuk et al. (2008) highlighted the critical role RMA can have when present in sexual assault trials. In this study, judges were found to have frequently employed rape myths as a reason to administer less harsh punishments. Mock trial studies have also found a correlation between high rates of RMA rates of acquittal (Franiuk et al., 2019). Additionally, Franiuk and colleagues examined the use of RMA in media stories about the Kobe Bryant sexual assault case and found that there were, on average, 1.66 myth-endorsing statements per article (Franiuk et al., 2008). The same study found that 65% of the articles had at least one rape myth present, with *She's Lying* (researchers' version of RM4), and *She Wanted It* (version of RM1) presenting as the two most common rape myths present in the articles. Overall, this study found that exposure to rape myths reinforces people's prototypical representations of sexual assault, making them more likely to dismiss or discredit claims of sexual assault that do not fit these pre-existing definitions. Franiuk et. al (2008) analysis of media coverage of Kobe Bryant's trial, for example, suggests that the general population is not likely to believe that a woman would not want to be sexually involved with a celebrity.

RMA has also been found to play a crucial role in victim-blaming attitudes that can impact the outcome of criminal justice system actions. Sleath and Bull (2012) studied the effects of attitudinal differences between police officers with and without specialized rape training. The researchers found that RMA was a significant predictor of victim-blaming. For example, those police officers with higher scores on the RMA survey were more likely to blame the victim in sexual assault-based vignettes<sup>6</sup>. Conversely, RMA was not a significant

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<sup>6</sup> **Vignette studies** use short descriptions of situations or persons (**vignettes**) that are usually shown to respondents within surveys in order to elicit their judgments about these scenarios



predictor of perpetrator blaming in the same vignettes. Additionally, the study found no significant effect of specialized rape victim training regarding victim-blaming levels; in other words, those with or without the training showed the same number of victim-blaming attitudes. Moreover, the study found that among police officers who were not specially trained, the stranger rape perpetrator ( $M = 6.87$ ,  $SD = 0.25$ ) was blamed more than the acquaintance rape perpetrator ( $M = 6.53$ ,  $SD = 0.61$ ), meaning that police officers were more likely to believe a victim if they said they were raped by a stranger. This rape myth forms the foundation of a key characteristic of ideal victimization standards.

### *2.3.2 Ideal Victims*

Similar to rape myths, ideal victimization standards play a crucial role in establishing the ‘rules’ of rape, i.e., who can and cannot be considered a victim of sexual assault, and by whom they can be assaulted. In Randall’s (2010) account of the myth of ideal victims, she notes that “the ‘ideal victim’ myth often works to undermine the credibility of those women who are seen to deviate too far from stereotypical notions of ‘authentic’ victims, and from what are assumed to be ‘reasonable’ victim responses” to trauma (p. 398). The “ideal” victim is built upon society’s perception of what a victim of sexual assault looks like, and how she should and would act. Accordingly, an ideal victim would be attacked by a stranger and show visible signs that she fought back, such as torn clothing and bodily injuries. She would also report her assault to the police as soon as possible and would be incredibly distressed by the incident, yet able to recount it in clear and minute detail, repetitively and consistently.

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After noting how crucial it is for victims to represent an ideal stereotype, Randall (2010) examined instances where ideal victim standards can be seen in court proceedings. Most commonly, Randall found that women who are prostitutes and women who are married to the accused have the most trouble with ideal victimization standards as society believes that men's rights to women's bodies are assumed in these situations. Additionally, Page (2007) released a critical study attaching ideal victimization standards to RMA within a police officer population. This study found that even people who had respectable low RMA scores were often biased with respect to who could be considered a victim of sexual assault. Notably, 44% of the population said that they would be unlikely to believe a sex worker if they reported a sexual assault.

Although legislation in some countries has had some success in dismantling ideal victimization standards, Randall (2011) notes that the notion has persisted in judicial discourse in sexual assault cases as well as popular understandings and assumptions about sexual assault. This serves to limit the characteristics of those who can be considered "real" rape victims within society and in law.

## **2.4 Secondary Victimization in Trials**

Secondary victimization is characterized as feelings of powerlessness, shame, and guilt among rape victims that is magnified through interactions with community personnel (Madigan & Gamble, 1991). This has also been referred to in the literature as "the second rape" (Madigan and Gamble, 1991). As noted earlier within the context of police reporting rates, over 40% of sexual assault victims expressed a mistrust of the criminal justice system, including feeling as though their alleged perpetrators would not face adequate consequences (Allen, 2018). Although rape shield laws were enacted to minimize victims' experiences of

trauma, many aspects of the criminal court setting, including the practices of lawyers, the judiciary and juries, remain contributing factors to secondary victimization.

#### *2.4.1. “Whacking” in a trial as a source of secondary victimization*

Many scholars have remarked that the judicial system is where victims face the greatest risk of secondary victimization. The courtroom may be the first time since the attack that a victim will be in the same room as her rapist. This can result in the victim going into a state of shock, and prosecutors have often stated that this psychological impact is not one for which the victim can be adequately prepared (Madigan & Gamble, 1991). One of the most significant differences in a sexual assault case that can increase the chances of secondary victimization is that the victim and the offender are often the only two witnesses to the alleged incident. Routinely, the prosecution’s entire argument depends on the testimony from the victim. When the victim is placed on the witness stand, they have to recount their entire experience to a room full of people and then have the defence cross-examine them with the aim of discrediting their story so as to aid the accused. This harsh cross-examination is known as “whacking” the complainant and has been identified by many scholars as the most problematic aspect of the criminal justice system in terms of secondary victimization (Tanovich, 2015).

“Whacking” the complainant is described as a tactic used by defence lawyers to discredit the victim in sexual assault cases. This includes prolonged cross-examination that humiliates the victim and seeks to put the victim on trial, rather than the accused (Tanovich, 2015). Although rape shield laws prevent the defence from cross-examining the victim on her sexual history, a member of the Toronto criminal defence bar recently advised young defence counsel that they must continue to “kill the witness on the cross” in sexual assault cases in

order to defend their client successfully (Tanovich, 2015). This is often done by relying on rape myths and ideal victimization standards.

#### *2.4.2. Judicial Attitude impact on secondary victimization*

As the trier of fact, it is crucial that the judge remains unbiased when assessing the credibility of trial evidence and witnesses. Due to the power held by judges, anything they say is often held as a fact, and therefore, this can influence how a victim perceives her own experience (Craig, 2018). If a judge tells a woman that it was her fault that she was raped, this can affect the trauma a woman may experience and make her question the validity of her own feelings (Madigan & Gamble, 1991). Due to the fact that a judge must assess how credible the victim is as a witness to her own crime, this can cause the judge to re-victimize her by comparing her to standards of ideal victimization.

Additionally, one of the judge's main roles is to ensure that neither counsel is admitting into the court record evidence that is based on rape myths and ideal victimization standards. They do so by intervening during cross examinations of the victim, or by disallowing evidence based on its attachment to rape myths. In an observational study done in the United Kingdom, Temkin et al. (2018) found that myth-based interventions by the judiciary were rare, meaning that in the majority of trials, defense counsel got away with whacking the complainant, and juries were hearing evidence informed by ideal victimization standards and rape myths.

Recently, there have been multiple cases in Canada that highlight RMA attitudes among the judiciary. Notably, Justice Robin Camp of the Provincial Court of Alberta, made headlines in 2017 after he told a victim of sexual assault that “pain and sex sometimes go together” and asked her “Why couldn’t you just keep your knees together?” (Woolley, 2017).

This case, along with the judicial discourse present in many other sexual assault cases in Canada, illustrates that victim-blaming in the court room is still a prevalent threat despite years of research that shows how detrimental it is to a victim's healing.

#### *2.4.3 Jury bias and secondary victimization*

Another place within the criminal justice process in which a woman may experience secondary victimization is through the outcome of the case, often decided in sexual assault cases by juries. A study done by Orth (2002) found that trial outcome was the variable that had the highest cause for secondary victimization in a cohort of 137 cases. For many victims, a not guilty verdict can result in victims feeling that their experiences are not validated. This can impact their self-esteem, their faith in a just world, and especially their trust in the legal system (Orth, 2002).

A study done by Leverick (2020) found overwhelming evidence that when jurors score high on RMA scales, they are more likely to reach a not-guilty verdict at the conclusion of the trial. One of the most prevalent ways in which biased jury members are screened out is through jury selection, during which the accused may bring an application under section 638(1) of the *Criminal Code* for a challenge for cause. If granted, the accused may 'challenge' each juror with a question about their ability to judge the case impartially and then dismiss prospective jurors based on their beliefs or past experiences which may prevent them from hearing the case without bias. Although a challenge for cause is predominantly used in cases dealing with race and religion, a challenge for cause application may be used for any issue that a victim or accused feels will affect the outcome of their trial. This was seen in the current study in cases where the accused felt that the #MeToo movement had caused widespread bias towards men accused of sexual assault.

## 2.5 Research on RMA and Judicial Attitudes

Studies have been done to assess the impact of the legislative changes described above on judicial discourse within the criminal justice system. This section examines some of this research that has tried to quantify the feminist legal reform's effect on judicial attitudes.

### 2.5.1. *Language in decisions after the 1983 legislation changes*

As noted, sexual assault reporting rates rose rapidly after the implementation of legislation in 1983 to change the offence label of "rape" to "sexual assault." Although many feminists regarded these changes as a means of broadening the definition of sexual violence to include non-penetrative actions and place an emphasis on violence, Bavelas and Coates found in a 2001 study that the language around sexual assault in court continued to be erotic and non-violence based. The study examined 75 cases in British Columbia following the 1983 legislation change for judicial descriptions of sexual assault incidents in erotic (e.g., "he kissed her holding her tight") and physical language (e.g., "rubbed his penis on top of her stomach") rather than using violent terminology (e.g., forced his penis into her mouth). This demonstrates the prevalence of RMA and the difficulty in seeing these legislation changes translated into action within the criminal justice system.

### 2.5.2. *Rape shield laws*

Craig (2018) acknowledges the success of rape shield laws in protecting victims from an in-depth conversation about their sexual history. She also found evidence that secondary victimization on this front continues to occur, albeit in different ways. Craig references the (2009) case, *R v Wright* that sexual history continues to be used as evidence in court, as the

victim in the case in question had multiple sexts<sup>7</sup> between she and the accused used against her in court. Notwithstanding Craig's admiration of the rape shield laws, she cautions that improper recognition and use of these laws in court can also result in appeals and re-trials, (as was the outcome *Wright*) which can result in even further victimization of the victim.

Additionally, Temkin et al. (2018) found in an observational study that rape myths continued to be used in sexual assault trials in the United Kingdom after implementing similar rape shield provisions. After observing and transcribing seven criminal cases, the researchers found that rape myths were still highly prevalent in the cases, but the use of rape myths and sexual history depended on the relationship between the perpetrator and the victim. Similar to ideal victimization studies, Temkin found that the use of rape myths was more prevalent in trials where the victim knew the perpetrator. This highlights the need for judicial education and proper administration of rape shield laws to ensure that secondary victimization does not occur.

## **2.6 Conclusion**

According to most sexual assault survivors who gave narrative descriptions to Alaggia (2018), the legal system continues to fail them, despite legal reforms put in place to protect victims. Although the #MeToo movement has been credited as having the potential to do what no laws have been able to do; that is, remove rape culture from the courtroom, no studies have examined this effect. Although research has found an increase in Canada's sexual assault reporting rates since the advent of the #MeToo movement, the impact and role of #MeToo within the courtroom itself has not been studied. The current study will thus

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<sup>7</sup> Defined by Merriam-Webster as a sexually explicit message or image sent by cell phone

examine cases that contain specific mentions of #MeToo to assess the judicial language for the presence of RMA. The proceeding chapter will examine the context of this research within a feminist theoretical framework.



## **Theoretical Orientation**

### **3.1 Introduction**

This chapter outlines the study's theoretical orientations. First, radical feminist theory will be introduced to examine the source and form of women's subordinate social, political, and cultural status to men, focusing on Dworkin's (1985) four-part sexual subordination theory. Other central tenets of radical feminist thought will be examined, including the view of sexual assault as an act of power and the role of law in both neglecting and producing gender-based violence.

This chapter also explores the study's second theoretical lens, moral panic theory, examining its five central characteristics as identified by Goode and Ben-Yehuda (1994). The specific application of moral panic theory to the #MeToo movement and the social reactions it has garnered are also considered, particularly its role in threatening patriarchal norms.

### **3.2 Radical Feminist Theory**

Radical feminist theory is known for examining the invasive, destructive, and oppressive connotations of women's sexuality and existential connection to men (West, 1988). It contends that "making the personal political" is a critical step to ensuring that women's experiences are recognized as political issues. Within a patriarchal society, men do not experience the exploitation and objectification that women face daily. Notably, men have held positions of power in both social and political spheres that have allowed them to define legal norms and principles in accordance with male experiences, often serving to exclude those of women. Accordingly, patriarchy is manifest in virtually all social systems, including political institutions and law (Smart, 2002).

Feminists have noted several consequences of patriarchy, described by Walby (1990) as a "system of social structures in which men dominate, oppress and exploit women" (pp. 20). The main outcome of patriarchy is the exploitation of female sexuality and reproductive autonomy, to the benefit of men. Within this system, females are positioned as sexual objects used for male satisfaction. The normalization of patriarchal beliefs can be seen in the characterization of marriages as "traditional" when the woman's behaviours are controlled by her husband. These gender-based roles are often emphasized from birth and become entrenched in social practices, allowing the development of "norms" which favour the man providing for his family economically while the woman becomes a provider to the male through pleasure and sex, childrearing and taking care of household needs. According to Smith (1992), this has led to women being defined by their relevance to men and how their bodies may be used.

Radical feminist theory contends that the only way to restore female sexual autonomy is to dismantle the patriarchal society in which it operates. The role of women as objects for providing pleasure is normalized through daily practices and discourse, thus maintaining men's status as the dominant sex. Radical feminist theory suggests that personal narratives from those who have been victims of the harm done by gender inequality is one means of disrupting this trend (West, 1988). One of the most prominent issues that emerged from the #MeToo movement was how subordination is experienced in the criminal justice system among women who are victims of sexual violence.

### **3.3 Dworkin's sexual subordination**

In her seminal chapter on pornography, Andrea Dworkin (1989) identifies four ways in which women's subordination is expressed and reinforced through the "sexualization of

inequality”, namely: hierarchy, objectification, submission and violence. This four-part theory of subordination has been a tenet of radical feminist theory since the publication of Dworkin’s analysis, and praised for its ability to show how women are rendered subordinate to men through the power relations in a patriarchal society that enforce these entrenched dynamics. This is relevant to the current study as rape myths are one well-recognized way in which these patriarchal standards are used to subordinate women in sexual assault cases.

### *3.3.1 Hierarchy*

The systematic hierarchy of gender is a means by which the subordination of women is expressed. Social subordination requires “a group on top and a group on the bottom” and Dworkin argues that this hierarchy is experienced by women “both socially and sexually, privately and publicly” (Dworkin, 1989; p. 266). The view that men should feel superior to women is perpetuated along with the assumption that women should always be sexually available to men (Dworkin, 1989). This hierarchical relationship has been reinforced through popular culture (poignantly represented in pornography), where men use and exploit women's bodies for both pleasure and profit.

Women’s subordination is also expressed in dominant understandings of masculinity and femininity that position men as socially higher than women on the basis of a biological or physical advantage. While men are seen as physically tough and powerful, women are seen as weak, “dainty”, powerless, and in need of “saving” (by a man) (Dworkin, 1989). This is addressed in the RM2 (He Didn’t Mean To) subscale of the IRMA-SF (see Appendix A) that attributes male sexual violence to biological origins, contending that men cannot always control their sexual urges, resulting in the “unintended” sexual assault. Similarly, when a woman refuses a man’s sexual advance, she is defying her submissive position, which, in

turn, is used to discredit her femininity (Gavey, 2014). For example, it is not seen as feminine when a woman says no to her husband when he asks for sex. These stereotypical beliefs both depend on and reinforce the hierarchical position that men have over women within a patriarchal system. These hierarchical relations have allowed for the widespread objectification of women, a second component of Dworkin's four-part theory of sexual subordination.

### *3.3.2 Objectification*

Objectification is the term used to describe when a living being is depersonalized through the process of being cast as an object or commodity – something which can be owned or bought (Dworkin, 1989). Women have been seen as objects that are meant to provide male pleasure, without an acknowledgement of their own emotions and desires. Dworkin argues that the objectification of women is most prevalent in depictions of pornography, making this issue even more common in society as, in a study by Pappas (2021), 25% of 18 – 25-year-olds identified pornography as their most helpful resource on information about sex.

The objectification technique lies at the root of a number of rape myths, many of which are used to blame the victim of sexual violence for having solicited the offence or failing to live up to the standard of the 'ideal victim'. Objectification in Dworkin's model notes that the only way a woman is *not* asking for a male to see her as a sexual object is if she wears modest clothes and avoids becoming intoxicated so as to take all precautions not to objectify herself. This is best seen in the RM1 (She Asked For It) subscale of the IRMA-SF (see Appendix A), well demonstrated by the socio-legal practice of blaming women for

‘risky’ behaviours (e.g. wearing revealing clothes or getting drunk) that position themselves as objects for men, thus making it ‘their fault’ for being sexually assaulted (Harding, 2015).

### *3.3.3 Submission*

Submission builds off the hierarchical relationship between genders and suggests that women are in a position of obedience to their superiors, i.e., men (Dworkin, 1989). At the heart of women’s submission is a lack of self-determination, because "there is no basis in equality for any such right to exist" (Dworkin, 1989; p. 266). Within sexual scripts, male dominance and female submission have become normalized, where the male is expected to coax or pursue a woman into submission. This has led many feminist scholars to highlight the social and legal confusion about the differences between consent offered under duress and freely given consent. This has led many feminist scholars such as West and MacKinnon to argue that it is impossible for women to consent “freely” given the current unequal power relations between men and women (Beres, 2007).

This element of submission is present in the RM3 (It Wasn’t Really Rape) subscale of the IRMA-SF as a woman’s submission is understood as consent, meaning a woman must resist or become physically violent in order for the man to stop his sexual pursuit. This is seen in a number of items in RM3 (It Wasn’t Really Rape), such as: “If a girl doesn’t physically fight back, you can’t really say it was rape” and “If a girl doesn’t say no, she can’t claim rape” (McMahon & Farmer, 2011). It has been widely noted by feminist scholars that a woman may say ‘yes’ to sexual activity due to submission, but that 'yes' does not necessarily mean that the woman wanted to engage in the act (Beres, 2007). The power relations and sexual scripts of a patriarchal society establish the expectation that women must be coaxed into sexual activity and be submissive to the needs and desires of others. Research has shown

that these social norms overshadow discussions of sexual consent in both judicial discourse and society (Sheehy, 2012).

### *3.3.4 Violence*

Dworkin's final component of sexual subordination is violence. Apart from direct forms of violence, Dworkin (1989) also suggests that subordination resulting from the other components (hierarchy, objectification and submission) creates a systemic violence, "endemic enough to be unremarkable and normative." Dworkin adds that this violence is also "usually taken as an implicit right of the one committing the violence" (p. 267). The use of force is a normal role for men in dominant sexual scripts, resulting in many instances of sexual violence and assault being labelled as 'just sex' or 'bad sex' (West, 1988). Notably, scholars such as Heath et al. (2011) and Wilson et al. (2017) have found problems in the study of sexual assault as many women do not recognize their incident as an assault and simply label it as bad sex. Radical feminist theory challenges "the equation of female submission with meaningful consent...tend[ing] to see a kind of continuum (rather than a bright dividing line) between rape and much 'normal' heterosexual activity" (Whisnant, 2017).

Research has also shown that this blurring of lines between 'bad sex' and 'sexual assault' can be found in judicial discourse in sexual assault cases (Bavelas & Coates, 2001). These authors found that judges more often used erotic or 'romantic' language (e.g. 'kissed', 'caressed') than violent language (e.g., 'forced her mouth on his', 'grabbed') to describe sexual assaults. This demonstrates that when sexual assault is labelled as an act motivated by desire, violent sex is normalized. A shift is needed in order to see sexual assault as an act motivated by control and power, rather than a normal act of sexual desire. Critical discourse

analysis becomes an important tool for examining these power relations and the way in which sexual subordination is produced and maintained through judicial language and institutions. This further subordinates women, negatively affecting their experience in the criminal justice as victims of sexual assault

### **3.5 Feminist Legal Theory**

Feminist legal theory contends that the law treats women in the same way that men treat women, which is as sexual objects (MacKinnon, 1983). Because laws have been developed from a standpoint that reinforces male-informed norms, they do not adequately address or understand the harms that women experience (Bender, 1988). Feminist legal theory posits modern jurisprudence as masculine, arguing that it serves to enforce and maintain values that subordinate the feminine. The dangers that surround women's lives are not reflected at any level of the law, or in other fields of legal doctrine (West, 1988).

Bartlett (1990) highlights how the law's failure to consider experiences common to women has left women 'outside the law', where legislation and criminal offences does not seem to be meant to address male violence against them. This mistrust of the criminal justice system is evidenced in the low reporting rate for sexual assault. In a 2018 study, Allen reports that 45% of women who did not report their sexual assaults chose not to do so in order to avoid the hassle of dealing with the police, while 40% of women who did not report felt that the offender would not be punished.

The #MeToo movement has brought attention to the feminist premise that women's experiences have not been heard in the legislative reforms aimed at victims of sexual assault. The staggering number of women who opened up and told personal narratives about how they did not trust the criminal justice system exposed a gap between the perception of how

victims are treated by law and the lived reality of their experiences. Although the social response to these #MeToo confessions may have allowed some women to feel hope in the criminal justice system's capacity to help them, the #MeToo movement was also greeted with backlash from men who maintained the movement would increase the rate of false accusations of sexual assault, as seen in the #HimToo movement. This expanded to include men who felt that the #MeToo movement was so successful in critiquing the criminal justice system that it might result in a system that was biased against men. This response shares a number of characteristics with Stanley Cohen's (1972) concept of a "moral panic".

### **3.6 Moral Panic and the #MeToo movement**

Moral panic is a sociological theory developed by Stanley Cohen (1972) that refers to the reactions of media, public and official agencies to a phenomenon occurring within society. According to Cohen, moral panic happens in five key stages. First, something is defined as a *threat* to social norms. Second, the threat is depicted in a recognizable form by the *media*. In the third stage, the portrayal of the threat causes *public concern* which evokes (in the fourth stage) a *response from policy makers*. In the fifth and final stage, the moral panic results in *social change* within the community (1972). Notably, Cohen also refers to the people who create the initial threat as "folk devils". These groups are perceived as deviant and dangerous to the social norms and status quo. While Cohen contends that folk devils participate in the moral panic movement, he states that media is crucial to the labelling of the deviant group as it helps proliferate the message to a bigger audience and at a faster rate.

Goode and Ben-Yehuda (1994) adapted Cohen's theory to identify five indicators of moral panic: concern, hostility, consensus, disproportionality and volatility. Moral panics



begin with public concern about a deviant group or movement and a belief that it is likely to have a negative effect on societal norms. Often, hostility towards that group will then arise as an ‘us vs them’ narrative is created against the folk devils of the movement. This is followed by widespread agreement that the group or movement is an imminent threat to society, characterized as consensus. The final stages of moral panic develop when the actions taken against the group in question outweigh the actual threat posed by the group, constituting a disproportionate response. Lastly, a moral panic is considered volatile, as they tend to disappear quickly when the public interest moves on.

Garland’s (2008) revisiting of Cohen’s theory emphasized that moral panic must have qualities of disproportion, exaggeration, and anxiety, usually arising suddenly and dramatically. The statistics that #MeToo garnered on both Facebook and Twitter in the first hours following Milano’s initial tweet in October 2017 was not only sudden, but also dramatic due to the volume of people it touched in mere days. Parts of the public response to the movement, including backlash hashtags such as #HimToo, suggest that the #MeToo movement fits the Garland moral panic requirements of disproportionality and anxiety-provoking.

### **3.7 Conclusion**

Radical feminist theory provides a lens through which the subordination of women in a patriarchal society can be identified and critiqued. The current study employs Dworkin’s (1989) four-part theory of sexual subordination, using its components of hierarchy, objectification, submission and violence to assess the presence of rape myths in judicial discourse about the #MeToo movement. These theoretical concepts allow for an examination of sexual assault as an offence rooted in gender imbalances and sex-based subordination.

Stanley Cohen's (1972) theory of moral panic and Goode and Ben-Yehuda's (1994) five indicators of moral panic aid an analysis of the #MeToo movement given the widespread public response to it, and its perception as a threat to the aforementioned patriarchal norms that feminism examines. In the next chapter, the study's methodology will be outlined, demonstrating how these theoretical tenets informed the coding and analysis of judicial discourse about #MeToo.

## **Methodology**

### **4.1 Introduction**

The current study uses a qualitative-based analysis to analyze the presence of rape myth acceptance and moral panic in criminal court cases since the beginning of the #MeToo movement. A feminist critical discourse analysis was done using coding schemes developed from McMahon and Farmer's (2011) short form of the IRMA scale, Dworkin's (1985) four-part theory of sexual subordination; and Goode and Ben-Yehuda's (1994) five indicators of moral panic. The current chapter outlines the eligibility criteria for cases and the database used to collect case data. It also outlines the IRMA-SF and how the survey was transformed into a coding scheme to be used in the current study. The chapter also examines how moral panic was measured in the current study.

### **4.2 Dataset**

The present study uses criminal court cases as its basis for data analysis. The cases were retrieved from the online legal subscription database, *LexisNexis QuickLaw* (hereinafter "Quicklaw"), available through the University of New Brunswick Library, which describes the database as:

a Canadian online legal information system that provides full text of Canadian and foreign case law, federal and provincial legislation and regulations, case reports, digests, tribunal decisions, and statutes, as well as secondary materials such as law journals and newsletters. (University of New Brunswick Libraries).

Although QuickLaw offers access to cases within an online platform, one of the drawbacks to the database is that it only provides access to decisions that have been publicly reported by the court and selected for inclusion in the database by the publisher. While the database would certainly include cases that are significant in their legal ruling (e.g., the case sets a precedent for future decisions), it excludes unreported cases, including judgments delivered orally and jury verdicts.

The initial search parameters for cases were that they be (a) Canadian criminal cases; and (b) cases in which the #MeToo movement was mentioned. An initial search using ‘#MeToo’ was conducted in QuickLaw’s criminal law sub-directory, filtering the date for October 2017 (the month the #MeToo movement began) to December 2020. This search yielded 160 cases. These cases were assessed to ensure the mentions of ‘me too’ were in reference to the movement. This filtering resulted in 13 cases that met the study’s inclusion criteria. An additional search was conducted using the Boolean search terms: me /1 too /1 movement<sup>8</sup> (producing only 2 unique cases). Additional searches (using: “me too movement”, “times /1 up /1 movement” and “I believe her”) did not yield new results or any

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<sup>8</sup> These search parameters return cases featuring the word ‘me’ one word away from the word ‘too’ one word away from the word ‘movement’.

unique cases. The search phrase ‘I believe you’ resulted in the addition of another case to the study ( $n = 16$ ).

### 4.3 Discourse Analysis

Critical discourse analysis is the study of sociolinguistics and of how power and normative values are expressed through words, phrases, and linguistic devices (e.g., metaphor, analogy), more commonly referred to as ‘discourse’. Notably, Norman Fairclough (1984) identified three dimensions of critical discourse analysis: text, discursive, and social practice analysis. At its most basic level, text analysis is an examination of how words represent attitudes and how one’s ‘place’ or status in society can influence how words are interpreted. For example, how one speaks about victims of sexual assault represents where one stands on feminist ideals. The ways in which text contains value-laden attitudes is the focus of Fairclough’s second (‘discursive’) dimension of discourse analysis. At its center is an acknowledgement that discourse is never neutral. Finally, Fairclough’s third dimension, social practice analysis, inspects how societal norms are reinforced through talk, and the ways in which discourse communicates power.

The current study uses a feminist-based critical discourse analysis, which applies feminist theory to inform the aforementioned method by Fairclough. According to Lazar (2007):

The aim of feminist critical discourse studies, therefore, is to show the complex, subtle, and sometimes not so subtle, ways in which frequently taken-for-granted gendered assumptions and hegemonic power relations are discursively produced, sustained, negotiated, and challenged in different contexts and communities. (pp. 142)

Like any discourse analysis, feminist critical discourse analysis is concerned with what words are used, but also *how* they are used to construct social meaning (Schiffrin, Tannen, & Hamilton, 2003). In particular, a discourse analysis informed by feminist theory allows for an

examination of how chosen words and linguistic devices are used to reinforce and validate men's power and women's subordination.

#### *4.3.1 Coding Cycles*

NVivo qualitative data analysis software was used for data analysis. McNiff describes NVivo as a qualitative data analysis computer software program that helps qualitative researchers organize, analyze, and find insights in qualitative data such as interviews, journal articles, or in the current study, court cases (2016). Using Saldaña's (2009) multiple-cycle coding method, discourse analysis was done in three stages, using initial coding for first cycle coding, focused coding for second cycle coding, and thematic coding in the final cycle (see Appendix B). Initial coding is referred to as "breaking down qualitative data into discrete parts, closely examining them, and comparing them for similarities and differences" (Strauss & Corbin, 1998; p. 102). As a first cycle coding method, initial coding is an open-ended approach rooted in grounded theory, in which the researcher lets the analysis of data guide the research towards theories and hypotheses to examine in the second cycle of coding.

General demographics of cases were identified during the first cycle of coding, collecting the following information:

1. *Case Characteristics*: Type of case (e.g., appeal), year of decision, Court and jurisdiction (e.g., Saskatchewan Court of Queen's Bench), outcome (e.g., sentence, dismissal), length of decision (in paragraphs);
2. *Sample Characteristics*: gender of victim, gender of accused, name of judge, gender of judge; and
3. *Study Characteristics*: mention (explicit) of #MeToo movement, mention (explicit) of rape myths/stereotypes, (i.e., existence of or specifically named).

Second cycle coding was done using focused coding, a method of moving from first cycle codes into more ‘focused’ categories (Saldaña, 2009, p. 51-2). Focused coding was done in NVivo using ‘nodes’, which are collections of codes about a specific theme or relationship. After coding was finished, word frequency queries were conducted to demonstrate the most popular words in the excerpts found in coding of both moral panic and rape myth acceptance. These nodes or categories of codes were used to identify thematic discourses in the final coding cycle.

#### *4.3.2. Coding Schemes*

The study’s focused coding cycles were informed by three different scales or coding schemes: (a) McMahon and Farmer’s (2011) IRMA-SF and its four subscales of rape myths; (b) Dworkin’s (1985) four-part theory of sexual subordination; and (b) Goode and Ben-Yehuda’s (2009) five indicators of moral panic.

##### **IRMA-SF**

The current study uses a modified version of the IRMA-SF survey found in Appendix A. Survey items were transformed into statements that could be found in judicial discourse. Appendix C1 shows the process of converting the IRMA-SF into items which may be identified in case law. Coding was done using the four overarching Rape Myth Subscales: RM1 (She Asked For It), RM2 (He Didn’t Mean To), RM3 (It Wasn’t Really Rape) and RM4 (She Lied). RM1 (She Asked For It) was found in the current study when mention was made about the victim’s level of intoxication, or the judge made comments about how the victim was acting ‘risky’. Furthermore, RM2 (He Didn’t Mean To) was found in the current cases when there was judicial mention about the attractiveness of the victim or mention of how men cannot control sexual desire. RM3 (It Wasn’t Really Rape) was coded when there

was mention of physical force or lack of resistance on the part of victims. Additionally, mention of the touching not being of a sexual nature was added to the RM3 (It Wasn't Really Rape) category to investigate Bavelas and Coates' findings on whether discourses of violence are omitted in sexual assault cases (2001). Finally, the RM4 (She Lied) subscale was coded when the judge hypothesized reasons why a victim might fabricate a story of sexual assault. For further examples of how the rape myth subscales were coded, see Appendix C1.

### **Sexual Subordination**

As discussed in Chapter Three, Dworkin's (1985) theory of sexual subordination has four constituent parts, namely: (a) hierarchy; (b) objectification; (c) submission; and (d) violence. These were aligned with McMahon and Farmer's (2011) four subscales of rape myths, as seen in Table 1. The RM1 (She Asked For It) subscale measures the objectification of Dworkin's sexual subordination theory as it includes a number of items linked to women's behaviours as sexual objects. The RM2(He Didn't Mean To) subscale measures systemic hierarchy through its focus on biological determinism and 'natural' hierarchies that assign males the dominant role, which often includes an inability to control sexual desire. Submission in the sexual subordination theory is represented in the RM3(It Wasn't Really Rape) subscale as it includes a number of items related to signs of female resistance and the so-called "grey area" in which men claim to be uncertain about social cues and when to stop pursuing a woman sexually. Finally, the RM4 (She Lied) subscale contends that women lie about sexual assault, tying together moral panic theory which states that lying women are a threat to societal norms such as due process. These connections between the rape myth subscales and Dworkin's four components of sexual subordination are represented in Table 1.

**Table 1***IRMA-SF & Theory-Informed Coding Categories*

Rape Myth Subscale	Corresponding Theoretical Component
She Asked For It	Objectification
He Didn't Mean To	Hierarchy
It Wasn't Really Rape	Submission
She Lied	Moral Panic

**Moral Panic Measures**

Coding for moral panic was done using the five indicators identified by Goode and Ben-Yehuda (1997), namely: concern, hostility, consensus, disproportionality, and volatility. Concern is present when there is a belief that a group is likely to have a negative effect on societal norms. This was coded in cases when there was mention of the 'threat' or 'danger' of the #MeToo movement (e.g. its risk to the presumption of innocence). Next, hostility is a moral panic component that arises when an 'us vs them' narrative is used to identify and demonize the movement's folk devils. Hostility was identified in the current study when there was negative discourse about women who spoke out as a part of the movement. Consensus, as a component of moral panic, was coded in cases where widespread public acceptance of the view that #MeToo and the women who identified with it, pose an imminent threat to social and legal norms. Furthermore, disproportionality in the current study was coded when exaggerated or hyperbolic responses to the 'threat' of #MeToo were found in the discourse. Finally, volatility in the moral panic of the #MeToo movement referred to how



fast public interest moved on from the movement of sexual assault to other social issues.

More examples of when moral panic codes were applied can be found under Appendix C2.

#### **4.5 Conclusion**

This study used a feminist discourse analysis to analyze the extent to which RMA and indicators of moral panic are present in criminal court cases that make mention of the #MeToo movement. Cases found using the QuickLaw database were analyzed using moral panic and IRMA-SF coding parameters and a radical feminist lens informed by Dworkin's (1985) theory of sexual subordination. The next chapter will outline the key findings of the analysis.

## Findings

### 5.1 Introduction

The following chapter outlines the findings of the critical discourse analysis of the study's cases ( $n = 16$ ). Coding results will be outlined showing the prevalence of codes and how these codes presented within cases.

### 5.2 Case Characteristics

As noted in the previous chapter, cases were chosen based on having the terms '#MeToo' and 'I Believe You' present in the judicial discourse. Data selection produced 16 cases for analysis. The length of the cases varied, from 22 paragraphs to 497 paragraphs, with the average being 103 paragraphs. Of the cases, 50% ( $n = 8$ ) were challenge for cause cases (i.e., where the accused applies under s. 638 of the *Criminal Code* to challenge potential jurors for partiality). Furthermore, 37.5% of cases ( $n = 6$ ) were criminal case trial decisions, where the judge was determining guilt (or innocence). The remainder consisted of two *Charter* infringement challenges, where one case was arguing an infringement occurred during investigation, and the other accused issued a challenge after he was found guilty.

Notably, 93.75% of the cases ( $n = 15$ ) involved charges of sexual assault (i.e. section 271), while only one case did not involve sex-based crimes and was an appeal case on the charge of mischief (s. 430). A further breakdown of the offences at issue in the cases is provided in Appendix D. All of the accused in the cases identified as male and all of the victims identified as female, confirming the gender-based nature of sexual assault cases (Kimerling, 2002).

The majority (62.5%) of cases ( $n=10$ ) were heard by the Ontario Superior Court of Justice. While 25% of the cases ( $n=4$ ) occurred in Alberta<sup>9</sup>, the rest ( $n=2$ ) occurred in the Saskatchewan Court of Queen's bench. The majority of application-based<sup>10</sup> cases ( $n=6$ ) occurred in the year following the beginning of the #MeToo movement, and slowly declined to 0 cases in 2020. Case decisions in which the #MeToo movement was mentioned happened predominantly in 2020 ( $n=4$ ) while 2018 and 2019 saw only 1 case decision each.

When examining outcomes, 100% of the challenge for cause and appeal cases ( $n=10$ ) were dismissed. Of the trial decision transcripts, 66% ( $n=4$ ) of the cases ended in the accused being convicted on at least one of the charges, while the other 34% ( $n=2$ ) resulted in full acquittals.

### 5.3 Rape Myth Acceptance

Coding for the *Illinois Rape Myth Assessment – Short Form* (IRMA-SF) variables and Moral Panic indicators yielded a prevalence of 248 codes. While *Adamovsky* (2018) only identified one moral panic characteristic, *Lai* (2020) identified rape myths and moral panic 40 times, giving an average of 15.31 codes per case. Notably, codes for moral panic were disproportionately found in challenge for cause and appeal cases (100%), while rape myths were mostly found in trial decisions (98.7%). The #MeToo movement was mentioned 56 times through all 16 cases, giving an average of 3.5 mentions per case. Additionally, there was 8 cases that made explicit reference to rape myths and their influence on trials. These 8

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<sup>9</sup> 1 case at the provincial court level while the remaining 3 were Court of Queen's Bench

<sup>10</sup> These include challenge-for-cause cases and appeal cases.

cases also had rape myths present in the judicial discourse. For a breakdown, refer to Table 2.

The term ‘moral panic’ was not explicitly mentioned in any of the cases sampled.

**Table 2**

*Rape myth reference and usage*

Case	Reference of Rape Myths	Rape Myths used in trial
R v Borne	1	0
R v CC	2	28
R v Fuhr	3	0
R v G.B	1	37
R v Lai	2	40
R v Rivera	1	5
R v Sleiman	1	2
R v Stanley	1	0

Of the total 248 excerpts identified for moral panic and rape myths, 61.7% ( $n = 153$ ) were coded for the presence of rape myths. Table 3 lays out a detailed account of what the 248 coded excerpts were identified under. The rape myth RM2 (He Didn’t Mean To) was found significantly less than any other rape myth, coded only 4 times and in only 1 case. RM4 (She Lied) made up 42.5% of the IRMA-SF codes, found 65 times across 7 cases. RM4 (She Lied) also represented 26.2% of the total indicators coded (i.e., IRMA-SF and moral panic). The myth of RM4 (She Lied) was present in all trial decisions as judges outlined motives to fabricate an allegation of assault. The RM4 (She Lied) subscale had a high frequency due to its use in *G.B.* (2020), in which the category was coded for over 30 times. This will be examined further in the Discussion chapter.

**Table 3***Coding frequency*

Codes	<i>F</i>	%
MP: Concern	29	11.7
MP: Consensus	32	12.9
MP: Disproportionality	15	6.0
MP: Hostility	5	2.0
MP: Volatility	14	5.6
IRMA-SF: He didn't mean to	4	1.6
IRMA-SF: It wasn't really rape	52	21.0
IRMA-SF: She asked for it	32	12.9
IRMA-SF: She lied	65	26.2

*Note.* *f* = frequency; % = percentage.

The subscale with the second highest coding frequency of the IRMA-SF was RM3 (It Wasn't Really Rape), used 52 times over 7 cases. The 7 cases that featured this code were the same 7 cases that also presented incidents of RM4. Table 4 demonstrates in what cases RMA was found. Furthermore, RM1 (She Asked For It) was found 32 times over the course of 5 cases. Both *C.C.* (2018) and *Holland* (2020) had the most codes for the RM1 (She Asked For It) scale, showing 8 codes in *CC* and 14 codes in *Holland*. Notably, *Holland* (2020) was found to be the only case presenting all subscales of RMA, as the case also showed 4 incidents of the RM2 (He Didn't Mean To). This was the only time the RM2 (He Didn't Mean To) subscale was found in the current study.

*Presence of Rape Myths*

	She asked for it	He didn't mean to	It wasn't really rape	She lied	Total
R v CC	8	0	13	7	28
<b>R v GB</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>35</b>	<b>37</b>
R v Holland	14	4	2	6	26
<b>R v Lai</b>	<b>6</b>	<b>0</b>	<b>24</b>	<b>10</b>	<b>40</b>
R v Rivera	1	0	3	1	5
R v RV	3	0	7	5	15
R v Sleiman	0	0	1	1	2

*Notes.* Bolded cases indicates that the accused was acquitted of all charges.

During rape myth coding, there was a clear relationship between outcome of cases and number of rape myths used. The 28.6% of cases that resulted in acquittals ( $n = 2$ ) presented an average of 38.5 incidents of rape myths, while the other 71.4% of cases that resulted in at least one conviction/dismissal of the application ( $n = 5$ ) had an average of 15.2 incidents of rape myths present.

#### 5.4 Moral Panic Codes

Moral Panic codes made up 38.3% of all codes ( $n = 95$ ) present in the data, as presented in Table 5. Of the study's 16 cases, moral panic indicators were found in 62.5% ( $n = 10$ ). Eight of these were challenge for cause applications and two were appeal cases. Cases ranged from having 1 code for moral panic (*Adamovsky*) to 16 codes for moral panic (*Audisho*), with an average of 9.5 codes per case. A breakdown of which cases presented which indicators of moral panic can be found in Table 5.

**Table 5***Moral Panic Coding*

	Concern	Consensus	Hostility	Disproportionality	Volatility	Total
R v Adamovsky	0	0	0	1	0	1
R v Audisho	7	4	0	2	3	16
R v Borne	1	4	1	1	1	8
R v Fuhr	2	6	0	1	2	11
R v McMillan	6	4	2	3	0	15
R v Shirvastava	5	4	0	1	2	12
R v Sleiman	3	3	2	1	0	9
R v Stanley	2	1	0	1	3	7
R v TJ	3	3	0	3	1	10
R v Way	0	3	0	1	2	6

*Consensus*, (a widespread acceptance that the group in question poses a real threat to society), was the most frequently found indicator of moral panic, identified 32 times over 9 cases. The average number of codes for this indicator was 3.56 codes per case. The moral panic indicator *Concern*, (a belief that the behaviour of the group or activity in question is likely to have a negative effect on society), was coded 29 times over 8 cases, with an average of 3.63 codes per case. It was most frequently associated (41.4% of all *Concern* codes) with mentions of the inherent “danger” or perception of the #MeToo movement creating bias in the minds of judicial decision-makers (most notably, juries).

The moral panic indicator of *Hostility* (defined as the identification of ‘folk devils’ –a group of people portrayed as outsiders and deviant) was found only 5 times over 3 cases.

Several folk devils were identified in the discourse, including the #MeToo movement, the criminal justice system, and feminism as a concept and ideology – all of which were identified as targets of hostility in coding. The moral panic indicator of *Disproportionality* was coded an average of 1.5 times per case, with a total of 15 codes over 10 cases. Although this was not as commonly found as the indicators of *Consensus* and *Concern*, *Disproportionality* was identified in every application-based case. Coding for explicit mentions of the #MeToo movement also found that it was used 87.5% of the time to argue the existence of bias or prejudice against the accused, while only 2 cases mentioned the movement as a catalyst for the complainant coming forward, showing a disproportionality in the number of cases opposing the movement versus the number of cases mentioning the movement positively.

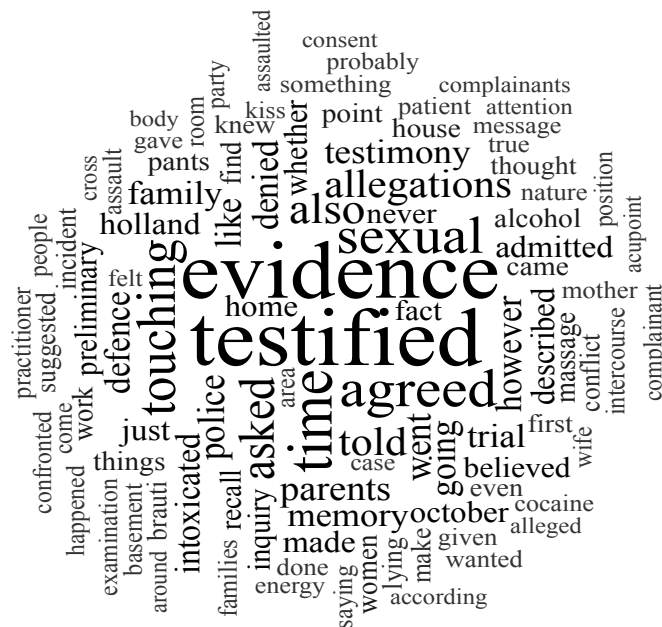
The moral panic indicator of *Volatility* (meaning that these social reactions tend to disappear as quickly as they appear) was found 14 times across 7 cases, with an average of 2 codes per case. There was also a quick decline in the number of challenge for cause cases between 2018 - 2020. In 2020, there were 0 challenge for cause and appeal cases that mentioned the #MeToo movements impact on jury bias, meaning that the moral panic of jury bias disappeared quickly within the courts. Overall, there were 95 instances of moral panic indicators, covering all five indicators of moral panic, in the judicial discourse about the #MeToo movement and its impact on jury bias.

## 5.5 Word Frequency Analysis

A word frequency calculation was done using NVivo 12 software that demonstrated the most frequent words in excerpts tagged in coding themes (or “nodes”) of RMA and moral panic. The results are represented in word cloud form in Figure 1. Although 93.8% of the



*Word Frequency of all coding excerpts*



Word frequency tables for rape myths and moral panic were also created, showing the most popular words in the segments of data that were coded under each indicator.

“Evidence” and “testified” continued to be the most common words under the theme of rape myths; as words like “alcohol”, “lying” and “touching” were also frequently mentioned.

These frequently used words represent three out of the four subscales of rape myths.

“Alcohol” was a word seen most commonly in the RM1 subscale of the IRMA-SF, while “touching” emphasizes the discourse most common in the RM3 subscale. Lastly, “lying” appears most prominently in the RM4 subscale. The RM2 subscale was not represented in these findings as its most popular word was “hot” which did not meet the criteria of being more than 4 letters to be added to the search query. Furthermore, “assault” was not present at all, while “sexual” was one of the most frequently found words in excerpts coded for RMA.

Moral panic word frequency tables show that “jurors”, “bias”, “movement”, “believe”, “accused” and “widespread” were commonly found in data coded for moral panic. Furthermore, both “#MeToo” and “#I Believe Her/You” were found to be used most often in moral panic coding excerpts. Interestingly, “Cosby” was also a frequently found word in moral panic coding, indicating a mention of the celebrities responsible for first bringing publicity to the #MeToo movement.

## **5.6 Conclusion**

The study’s findings provide evidence that rape myths persist in the judicial discourse of cases that directly reference recent feminist social movements. Moreover, these same cases also show evidence of moral panic. A clear distinction was made that showed that rape myths occurred in case decisions, while moral panic was identified in challenge for cause and appeal cases. Word frequency analyses provided results that are consistent with research on

RMA in the judicial discourse of sexual assault cases. The significance of these findings and their consistency with other feminist research in judicial discourse analysis is explored in the following chapter.

## **Discussion**

### **6.1 Introduction**

This chapter will discuss the study's major findings, including an examination of two categories of discourse that were found to be present in the judicial talk about #MeToo in the cases. These are discourses of power and fear. An analysis of these discourses within the context of previous research in the field helps to demonstrate the theoretical and practical significance of the current study.

### **6.2. Rape Myth Acceptance**

As mentioned in the previous chapter, rape myth acceptance was widely found in the current study, with judges in half of the cases (8 of 16) making explicit mention of rape myths and their impact on sexual assault trials. Appendix E shows coding examples for each subscale of the IMRA-SF. RM4 (She Lied) was the most commonly coded rape myth, found 65 times across 7 cases and, making up 42.5% of all IRMA-SF codes. Much of this is attributable to the *G.B.* (2020) case which included a lengthy discussion of possible reasons the victim might have had to fabricate the allegation of sexual assault (against her uncle). The judge outlined a number of possible motivations for a false accusation, including history of family conflict and as a way of preventing the accused from attending a funeral. This narrative of fabrication that underlies RM4 (She Lied) is explicit in the judicial discourse in *G.B.* (2020), positioned as a central issue in the case:

In my view, what is important to the issues I must decide is that in terms of **possible motive of M.T. to fabricate these allegations** is the fact that when she was a child, she was only aware that her mother was hurt sometimes because of the comments made by G.B. that she was overweight (para: 34).

The judge's discussion of the victim's possible "motives" for fabrication made up more than 10% of the total decision in *G.B.* (2020). This suggests that RM4 (She Lied) and the corresponding fear that women fabricate reports of sexual assault continue to occupy significant space in judicial discourse. Furthermore, the finding that RM4 (She Lied) was the most prevalent is consistent with a Franiuk et al. (2008) study, which found that She Lied was the most prevalent rape myth subscale used in journal articles about the Kobe Bryant sexual assault allegations.

The subscale with the second highest frequency was RM3 (It Wasn't Really Rape), found 52 times and in almost half the cases ( $n = 7$ ). Moreover, these were the same 7 cases that also presented with RM4 (She Lied). This is consistent with research findings which have examined how judicial talk in sexual assault cases minimizes the violent nature of the offence. Bavelas and Coates (2001) note that through the use of erotic discourse (e.g. "kissed") rather than violent descriptions of the accused's actions (e.g. "forced his mouth on hers"), an implication of mutuality is created, effectively "co-opt[ing] the complainant's consent" (p. 38). The same discursive turn was found in the current study, exemplified by the judge's description of the accused's actions in *R.V.* (2020):

The **touches** were very brief in nature, and in the course of **horseplay and tickle fights**. He admitted that he intentionally **squeezed AB's bum**. Admittedly this

included going under the covers and **rubbing or caressing her, but not in a sexual way. His intention, was entirely innocent.** (para: 75)

These discursive moves to omit the violence of the offence or downplay its sexual nature speak to the presence of RM3 (It Wasn't Really Rape). This is well evidenced in the *R. V.* (2020) excerpt above, where the touching of an 11-year-old girl was considered in a 'tickling and playful' way rather than in a violent or criminal context. Even when the complainant's consent is legally impossible (e.g., under the legal age), judicial discourse can construct a context of mutuality. RM3 (It Wasn't Really Rape), when used to minimize the violent nature of sexual assault, acts in collaboration with RM4 (She Lied) to discredit complainants in sexual assault cases.

Lastly, the case of *Holland* showed how rape myths can be used conjunctively as all four subscales of the IRMA-SF were coded for in the case. Notably, *Holland* was the only case where RM2 (He Didn't Mean To) was found as the accused "attempted to justify his actions to each complainant by describing her as 'hot'" (*Holland*, 2020, para: 74). In other words, *Holland* used all subscales of the IRMA-SF to attempt to justify his behavior while also simultaneously claiming the assault in question never happened in an attempt to prove his innocence.

### 6.3 Moral Panic

In addition to the presence of RMA, indicators of moral panic were also identified in the data, showing up in 62.5% of the cases ( $n = 10$ ). This suggests evidence not only of a moral panic, but of one specifically aimed at the #MeToo movement. This was seen in *Rivera* (2019) when the judge referenced both #MeToo and the accused's fear of it in the same sentence, noting: "[the accused] admitted to lying to the police saying that in those

months, there was a lot of **‘metoo’ material on the news and he was scared.**” (para: 11). The discursive association of fear with the #MeToo movement was also prevalent in the second most common indicator of moral panic, Concern. This was seen in *Holland* (2020) when the accused’s anxiety about #MeToo is named by the judge as: **“a concern about allegations of sexual assault being treated as presumptively true”** (para: 89). In the same sentence, the judge makes explicit mention of #MeToo, naming a book referenced in the accused’s submissions: “[the accused] referred to the recent book by Professor Alan Dershowitz entitled *Guilt by Accusation: The Challenge of Proving Innocence in the Age of #MeToo*” (*Holland*, 2020, para: 89). Additional examples of when characteristics of moral panic were found in the current study can be found in Appendix F.

Consensus was the most popular characteristic of moral panic found in the data. As seen in the word frequency image for moral panic, widespread and bias were two of the most common words found in coding excerpts for moral panic. Stanley Cohen stated in his theoretical breakdown of moral panic that the way officials *talk* about the moral panic threat is important in terms of how the moral panic is understood. These are what Cohen (2011) have described as “the hidden and not-so-hidden political agendas which lie behind the strategies and rhetoric of moral panics” (p. 237). In the present case, the way that judges discuss #MeToo is important for identifying these strategies. Note, for instance, the judicial description of the accused’s application in *Fuhr* (2018) which couches #MeToo within a discursive context of heavy historical and legal foundations:

he must persuade the Court to now find or presume that after **centuries of stereotypical thinking adverse to sexual assault complainants**, there is now a **realistic possibility of juror partiality** against those who are accused of having

committed sexual assault so as **to affect the outcome of this case**, and that some jurors may be **incapable of setting aside this bias, despite trial safeguards**, to render an impartial decision. (para: 29).

This excerpt from *Fuhr* (2018) demonstrates how the judicial talk about #MeToo in the study's cases engages in discourses of both power and fear. The *power* of the #MeToo movement is its ability to render jurors "incapable" and to foster "widespread bias". The *fear* of #MeToo is thus linked to these perceived threats, but as the following section notes, a radical feminist lens reveals an additional fear of #MeToo within the discourse; one of upsetting "centuries of stereotypical thinking".

## 6.4 Power

The first category of discourse identified in the study's findings is one of power. This included explicit uses of the word "power" in relation to the #MeToo movement, but also descriptions of its social and personal effects. Two power-related themes were identified in the discourse, namely: personal empowerment and social impact.

### 6.4.1. Personal Empowerment

A discourse of power was found in judicial references to #MeToo both explicitly and implicitly in the data. The role of #MeToo in providing victims with the motivation and strength to speak out about assaults after years of feeling silenced was noted as a form of personal power in two of the study's cases. In *G.B.* (2020), the discourse of empowerment is well exemplified in two excerpts where the judge references the victim's testimony:

The reference to the '**Me Too Movement**' meant that she was strong enough to **disclose** (para: 167).

[She] testified that she was also **very empowered by the ‘Me Too Movement’** and she had a lot of friends who were ‘coming out’ and saying, **‘me too’**. For the first time in her life she did not feel alone (para: 169).

It is clear from the words used by the judge that #MeToo is being associated with the victim’s personal feelings of empowerment. In the second excerpt, above (para: 169), this is enhanced by a discursive contrast with the victim’s feelings of isolation.

A discourse of personal empowerment was also present in judicial references to #MeToo and its impact on victim perceptions of the criminal justice system and reporting process. Victims were described as “explain[ing] that it was a combination of being **empowered** and having the support of her family around her that **she felt strong enough that she could go and report these allegations to the police**” (*G.B.*, 2020, para: 170). In some instances, this association of #MeToo with personal empowerment presented alongside implicit references to RM4 (She Lied). In *Lai* (2020), the connection between #MeToo and being believed is made through discursive repetition. The phrase “voices are being heard and people are listening” is used twice in relation to #MeToo:

She thought the timing of the article was perfect with what was going on in the United States with **the "me-too" movement**. Previously, **she thought that she would not be believed**. Even now she is not sure if justice will be served. She testified that now she thinks that **voices are being heard and people are listening** (para: 243)

It is clear in these excerpts that #MeToo is discursively linked to feelings of personal empowerment and perceptions of increased credibility among victims. Notable in these two cases is a judicial recognition that the victims brought forward their allegations to the



criminal justice system after several years of non-disclosure (30 years in *Lai* and 6 years in *G.B.*) due to the ‘power’ they received following the advent of #MeToo.

This discursive move is consistent with recent social science statistics about the widespread effects of #MeToo. The hashtag, for instance, was used over 19 million times in one year (Brown, 2018). Furthermore, in a study by Alaggia (2018), female participants narratively expressed the view that for many of them, #MeToo had facilitated a social environment where they felt comfortable disclosing their assaults for the first time. This was also confirmed by Cotter and Rotenburg (2018) in a study for Statistics Canada in which a 24% increase in police-reported sexual assault nationwide was observed in the following month after the initial hashtag was used.

#### *6.4.2 Social Impact*

Similar to the empowerment narrative, judicial references to #MeToo were also made in relation to the social power or impact of the hashtag itself. In some instances, this discursive association was explicit, as in *T.J.*, where it is also linked to victim credibility: **“Me Too is the power of numbers across time: the difference between a single victim, whose lone account might not be believed, and the choruses of "Me Too" that make each individual's account that much more believable”** (para: 6).

Another place in which the power of the #MeToo movement is shown is in the words and verbs attached to the hashtag in judicial discourse. #MeToo was described with the word ‘movement’ in 87.5% of its appearances in the discourse. This discourse of power as a form of social momentum was also evident in descriptions of #MeToo as a “campaign” – something also done in *Fuhr* (2018) with reference to the associated hashtag #IBelieveYou: “The Applicant argues that there is a realistic possibility that prospective jurors may be

tainted by the **"#IBelieveYou"** campaign message to the effect that **sexual assault complainants are to be believed**" (para: 2). Apart from the judge labelling #IBelieveYou as a "campaign", a word often associated with politics, the power of the hashtag "IBelieveYou" is discursively linked to RM4 (She Lied). As the judge in *Fuhr* notes, it is a power to "taint" the validity of the legal process itself.

This power to 'taint' or poison the legal process serves as the source for much of the moral panic discourse in the cases. The verbs and words associated with #MeToo point to a concern with whether the movement had become *too* powerful. Judicial discourse about #MeToo in the cases point to its 'prevalence', its 'potential' and its 'impact' – all signifying a rhetorical link between #MeToo and social influence or effect. All three of these descriptors were used in *T.J.* alongside a reference to judicial recognition of this social power:

... courts from this country have recognized the prevalence of the **Me Too Movement**, and have **implicitly acknowledged its potential impact** on the impartiality of jurors" (*TJ*, 2018, para:8)

A discourse of power was also present in the verbs used to describe #MeToo, as seen in *Lai*, where the judge notes that the victim was:

being **inundated** on Facebook **by the "# me-too movement"** and about women being the subject of harassment and abuse... and her friend's postings which are **exploding about the "me-too movement"** (Lai, 2020, para: 91).

The judge's use of the verbs 'inundate' and 'explode' to describe the #MeToo movement showcase the power that is discursively associated with the hashtag on a social and political level.

## 6.5 Fear

The personal and political power that was associated with #MeToo in the cases coincided with a discourse of fear, used to identify #MeToo as both a personal and social threat. Narratives of a personal threat were seen in the challenge for cause cases (when the accused's fear of wrongful conviction was linked to #MeToo). Narratives of a social threat were seen in judicial discussions of due process.

### 6.5.5. *Personal Threat*

A challenge for cause application is made by an applicant when they allege a potential jury bias. Due to the current study having 8 challenge for cause cases, as well as 2 appeal cases in which the accused argued the #MeToo movement had caused them to be wrongfully convicted, discourses of fear were prominent in these cases. In *Audisho* (2019), the judge cites the accused's affidavit to provide a context of fear for his challenge for cause application, noting that its "essence" was the accused's feelings of personal threat: "**I am very concerned** I cannot receive a fair trial from [an] impartial and unbiased jury" (para:6). The fear of #MeToo is of its power to "taint" the law's objectivity. The judge in *McMillan* demonstrates this when he states that:

**the applicant is faced with the very real possibility** that when being judged by his peers, some of them, by virtue of the fact that they have **biases towards believing the complainant, may not be able to render an impartial decision.** (*McMillan*, 2019, para:9)

The 'threat' of #MeToo is made "very real" by noting its judicial and public recognition. An example of the public recognition can be found in *Shirvastava* when the judge notes:

"Combined with the publicity around many high-profile individuals accused of sexual

harassment or sexual assault in the last few years, **it is fair to say that our social consciousness has been prodded**” (Shirvastava, 2018, para: 11), this quote shows that the judge feels the power and threat from the movement and feels it has had an impact on social consciousness. Importantly, this fear of #MeToo is also associated with “biases towards believing the complainant” – an inverse form of RM4 (She Lied).

This narrative that men should be fearful of the #MeToo movement is consistent with some of the literature and media reporting about #MeToo. The (2019) book by Alan Dershowitz, *Guilt by Accusation: The Challenge of Proving Innocence in the Age of #MeToo*, was mentioned explicitly in Holland (2020, para: 89). Dershowitz argues that men should be fearful of being wrongfully convicted in the age of #MeToo based on his own experience where he claims he was wrongfully accused. Research has also shown that this fear is present in the public at large. In a 2018 poll, 82% of adults in the United States indicated they were concerned about the possibility of false accusations and wrongful convictions that men could face as a response to the movement (Piacenza, 2018). In the same year, American President Donald Trump referred to #MeToo as making it a “scary time for young men” (Diamond, 2018). These media narratives and judicial discourse join together to position #MeToo as a personal threat to men accused of sexual violence.

#### 6.5.6. *Social Threat*

A discourse of fear was also used in relation to #MeToo as a *social* threat, most notably as a threat to the fundamental due process rights within the Canadian criminal justice system. Due process rights include the legal requirement for those accused of a crime to have a fair investigation and trial before facing criminal conviction. The most notable due process rights are the accused person’s right to the presumption of innocence (entrenched in s. 11(d)

of the *Charter of Rights and Freedoms*) and the rule of law, i.e., the rule of law means that the law applies equally to everyone, no one is above the law. In some instances, violent language and imagery was used to position #MeToo as a threat to these fundamental principles of justice, as seen in *Borne*, when referencing an article by the National Post:

“This is where we are now. An **execution**, then no trial. Just an **execution**. **You can forget about process, due or otherwise**” (2018, para: 3). In the judge’s reference to the National Post, you can see the fear when they refer to the current social context around sexual assault as an “execution” rather than a trial. In the dramatic statement, #MeToo is opposed to not simply due process rights, but the legal system as a whole (“process, due or otherwise”). The same discourse of fear is present in *Fuhr*, where descriptions of the inefficiency of “trial safeguards” to protect the accused of bias work to establish the ‘threat’ of #MeToo as “realistic”:

there is now a **realistic possibility** of juror **partiality against those who are accused of having committed sexual assault** so as to affect the outcome of this case, and that some **jurors may be incapable of setting aside this bias, despite trial safeguards, to render an impartial decision** (Fuhr, 2018, para: 29).

This discourse sets the accused’s fear of #MeToo up as “realistic”. Furthermore, this narrative is seen in an appeal case of Adamovsky when he states: “the “Me Too” movement stretched to the extent that “**we must now believe all stories told by men that women told them to say**”(Adamovsky, 2018, para: 40). Altogether, the discourse of fear in the current study comes together to show the importance of rape myth acceptance in the criminal justice system and shows how rape myth acceptance can be seen discourses.

## 6.6 Sexual Subordination and Rape Culture

The study's method of coding for both RMA and moral panic demonstrated how these judicial discourses of power and fear take place within a context of rape culture. Implicit within fearful descriptions of #MeToo's "potential impact" and "widespread bias" is the belief that women lie about sexual assault, a quote from Christine Blatchford found in the case of *Borne* expresses this when she states: "that women are invariably truth tellers. This runs so contrary to common sense and my own experience - and to my own flawed nature - that I was gobsmacked" (*Borne*, 2018, para: 4). This was also seen as RM4 (She Lied) was the most prevalent rape myth found in the data. Without its implicit acceptance, the mobilizing power of #MeToo would be cause for celebration rather than fear or panic. Instead, judicial discourse in the study's cases include descriptions of women's stories of sexual violence as 'inundating' social media alongside the 'exploding' reporting rate among victims who have spent years suffering in silence. In an alternative frame, one in which survivors of sexual violence are believed, these same effects of #MeToo might be characterized as positive steps in the right direction.

This suggests that levels of RMA in cases that mention #MeToo may result in discourse that discredits not only the movement, but the women that the movement represents. Dworkin's theory of sexual subordination and its radical feminist framework is particularly helpful in demonstrating this point. The power of the #MeToo movement was constructed in the discourse in both a personal way (i.e., self-empowerment) and in a political way (i.e., social change). A similar approach is taken when examining the discourses associated with fear, where the threat or panic about #MeToo is represented on both individual (i.e., wrongful conviction of the accused) and social (i.e., violation of rule of

law) levels. Separating the personal from the political goes against the radical feminist framework, and thus shows the patriarchal ideals of the Canadian criminal justice system. Within a radical feminist frame, the personal *is* political and thus insisting on the separation of the two spheres is a key component to excluding women's experiences from social and political life.

Dworkin's concepts of hierarchy and submission can be seen in how women's voices were dismissed and made separate from fundamental legal principles such as due process within the judicial discourse of the cases. This was made explicit in the *Lai* case when the judge stated: "The concept of **the "# me-too movement"**, or the slogan "believe the victim", **have no place in a criminal trial**" (2020, para: 18). Here, the judge makes a clear separation between the #MeToo narratives of personal experience and the public legal principles of due process.

Dworkin's components of objectification and violence are also evident in judicial discourse about #MeToo. The role of women as 'invariably truth tellers' (*Borne*, para: 4) become a threat to the criminal justice system. Through discourses of fear, like the aforementioned excerpt from *Borne* that equated #MeToo with an execution without trial, the act of believing survivors is paired with the thought of death and violence. This shows the impact of RMA on how judges understand sexual violence and its victims, suggesting that theories of sexual subordination may continue to be useful in explaining the Canadian criminal justice system's response to #MeToo. The judicial discourse in the current study certainly suggests that rape culture has persisted in criminal law in the post-#MeToo era.

## 6.7 Conclusion

As noted in the current chapter, #MeToo has been successful in empowering women and challenging the hierarchy of sexual subordination in some forums. Evidence from this study does suggest, however, that rape culture persists in the judicial discourse of the Canadian criminal justice system. Through a lens informed by radical feminist thought and moral panic theory, the framing of #MeToo within discourses of fear and power serves to entrench RMA in the judicial talk of sexual assault cases. The implications of these findings are discussed in the following concluding chapter, alongside a reflection on the study's limitations and directions for future research in the area.



## Conclusion

### 7.1 Introduction

This study sought to investigate the presence of RMA in criminal justice system in a post-#MeToo era. Criminal court cases chosen for the analysis were coded cases for RMA and reviewed for indicators of moral panic. Using a dataset of 16 cases that made explicit mention of the #MeToo movement, the presence of RMA and a moral panic in relation to #MeToo and its effect on men's rights to due process in the criminal justice system was observed. The significance of these findings was then interpreted using a radical feminist framework informed by Andrea Dworkin's (1989) four-part theory of sexual subordination.

The analysis was preceded by a review of the research and literature on #MeToo, including the context of the hashtag as a social movement, as well as its impact on sexual assault reporting rates. A description of the current sexual assault legislation was also included as part of this literature review, as well as a discussion of the central characteristics of rape culture.

Chapter 3 outlined the project's theoretical orientation, reviewing the main tenets of Dworkin's radical feminist theory of sexual subordination and Goode and Goode and Ben-Yehuda (1994) revisiting of Cohen's theory of moral panic. The study's methodology was discussed in Chapter 4, including a review of the IRMA-SF subscales for measuring RMA and the five indicators of moral panic which were coded alongside Dworkin's four components of sexual subordination.

Chapter 5 and 6 were used to document the results of the current study. High rates of the RM4 (She Lied) subscale of the IRMA-SF and Consensus characteristic of moral panic led to the conclusion that the myth that victims lie about sexual assault has persisted in the

post-#MeToo period. Also examined was the language used by judges to discuss both sexual assault and the #MeToo movement. Findings were consistent with the existing literature on RMA and ultimately showed that the personal impacts of the #MeToo movement are being separated from the political justice systems, showing that the radical feminist thought of making the personal political continues to be excluded from judicial discourse.

The study began with four hypotheses, each of which can be revisited to reject or accept based on the findings. Firstly, H<sub>1</sub> stated that indicators of RMA are present in judicial discourse post-#MeToo; this hypothesis can be accepted due to the fact that 153 excerpts of judges using rape myths were found through coding. Second, H<sub>2</sub> assumed that the findings of the current study would be consistent with Franiuk et al. (2008) study in which RM1 (She Asked For It) and RM4 (She Lied) were the most used rape myths. Notwithstanding the fact that RM4 (She Lied) was found to be the most prevalent rape myth used, this hypothesis must be partially rejected as RM3 (It Wasn't Really Rape) was found more than RM1 (She Asked For It).

In the hypotheses surrounding moral panic, H<sub>3</sub> stated that moral panic indicators would be present in criminal cases that mentioned the #MeToo movement. As 95 excerpts of judicial discourse were found to show characteristics of moral panic, H<sub>3</sub> can be accepted. Finally, H<sub>4</sub> stated that women who used the #MeToo movement would be identified as 'folk devils' in Cohens (1972) moral panic theory. The hostility characteristic of moral panic that was coded for in cases showed that the hostility was aimed at women as members of the #MeToo movement, therefore accepting the final hypothesis.

## 7.2 Limitations

One limitation to the current study was inherent in the database used to collect cases. As mentioned in the Chapter 4, the *QuickLaw* database only contains reported cases and those which the publisher deemed important, popular, or of legal significance. This may have led to cases in Canada that mentioned the #MeToo movement being excluded from the current database as they were not considered noteworthy enough to publish. Challenge for cause cases and appeal cases have greater legal significance than regular criminal trial decisions, which may have skewed the case distribution to include more appeals and challenge for cause applications than criminal trial decisions. Furthermore, the current study's search terms only returned cases where #MeToo was included in *judicial* discourse, so there is a possibility that #MeToo might be mentioned by victims or the accused and recorded in a trial transcript, but not included as part of the judge's reasons.

Lastly, the impact that the COVID-19 pandemic had on the criminal justice system has not been researched and may have played a role as a limiting factor in the current study. This study notes a decline in cases in 2020 in which the movement was mentioned, and it is unclear if this was due to the volatile nature of the social movement, or if the pandemic created a halt in the system in which cases were not being heard.

## 7.3 Future Research

The current study identifies several areas where future research may be conducted. Firstly, evidence to support the findings of Bavelas and Coates (2001) about judicial language in sexual assault trials that minimizes the violent nature of the offence was found in the current study. A replication of their study, using additional sexual assault cases that

mention #MeToo, possibly at an international level, would be a useful means of furthering research in this area.

Another interesting area for further research would be to examine men's experiences with the #MeToo movement. As mentioned in this study's introductory chapter, a report from the Province of Ontario (2019) estimates that 1 in 8 men will experience sexual violence in their lifetime. Research about their experiences as victims is important. Examining whether men's experiences with #MeToo to speak out as victims was met with the same fear narrative that was present in the current research could help to assess the gendered nature of RMA and its impact on victim credibility and moral panic.

Finally, future research in this area could expand to include a survey that measures public perceptions of the #MeToo movement and whether levels of RMA in a given population (e.g., university students) have changed since the hashtag's inception in 2017. Moreover, a survey on how people perceived the movement, and how they feel it is impacting the due process rights and presumption of innocence of the accused would provide further information about whether the #MeToo movement can be accurately understood as a moral panic.

#### **7.4 Significance and Policy Recommendations**

The current study has significance for RMA research and studies about moral panics. More specifically, the current study contributes to a growing field of research on the #MeToo movement and its wider impact on the criminal justice system. The study began with four hypotheses, each of which find support in some of the study's analysis.

Radical feminist critiques of the criminal justice system have led to significant legal reforms. On September 25, 2020 a Bill was introduced in parliament which would amend the

*Judges Act* “to ensure judges hearing sexual assault matters will have the necessary training to fairly and properly decide matters, without the influence of myths and stereotypes” (Department of Justice, 2020). This amendment would require mandatory sexual assault sensitivity training before being appointed to provincial court positions. The proposed legislation would:

amend the *Judges Act* to require candidates seeking an appointment to a provincial superior court to agree to participate in training on matters related to sexual assault law and social context following their appointment. This would ensure that newly appointed judges participate in this important training. (Department of Justice, 2020).

Due to the ongoing victim blaming that is occurring after a social movement that attempted to call out rape culture, the current thesis concludes that this would be a good first step into creating a better environment for victims of sexual assault to navigate justice. It is crucial that judges begin to acknowledge the presence of rape culture within their courtrooms. The current study shows this importance due to the fact that the moral panic about the #MeToo movement would not exist without a criminal justice system entrenched in rape culture.

## References

- Alaggia, R., & Wang, S. (2020). "I never told anyone until the #metoo movement": what can we learn from sexual abuse and sexual assault disclosures made through social media? *Child Abuse & Neglect*, 103. 1-10  
<https://doi.org/10.1016/j.chiabu.2019.104312>
- Allen, M. (2018). Police-reported crime statistics in Canada, 2017. *Juristat*, 85-002-X.  
<https://doi.org/https://www150.statcan.gc.ca/n1/pub/85-002-x/2018001/article/54974-eng.htm#mi-rs>
- Bailey-Millado, R. (2019, May 18). Men are afraid to mentor women after #metoo and it hurts us all: study. *New York Post*. <https://nypost.com/2019/05/17/men-are-afraid-to-mentor-women-after-metoo-and-it-hurts-us-all-study/>
- Bartlett, K. T. (1990). Feminist legal methods. *Harvard Law Review*, 103(4), 829–829.
- Baughner, S., Elhai, J., Monroe, J., & Gray, M. (2010). Rape myth acceptance, sexual trauma history, and posttraumatic stress disorder. *Journal of Interpersonal Violence*, 25(11), 2036–2053.
- Bavelas, J., & Coates, L. (2001). Is it sex or assault? erotic versus violent language in sexual assault trial judgments. *Journal of Social Distress and the Homeless*, 10(1), 29–40.  
<https://doi.org/10.1023/A:1009477518196>
- Bender, L. (1988). A lawyer's primer on feminist theory and tort. *Journal of Legal Education*, 38(1/2), 3-37.
- Beres, M. A. (2007). 'Spontaneous' sexual consent: An analysis of sexual consent literature. *Feminism & Psychology*, 17(1), 93-108.

Borysenko, K. (2020, February 12). The dark side of #metoo: What happens when men are falsely accused. *Forbes*.

<https://www.forbes.com/sites/karlynborysenko/2020/02/12/the-dark-side-of-metoo-what-happens-when-men-are-falsely-accused/?sh=12ebe29c864d>

Boyle, K. & Rathnayake, C. (2019). #HimToo and the networking of misogyny in the age of #MeToo. *Feminist Media Studies*, 20(8), 1259-1277.

<https://doi.org/10.1080/14680777.2019.1661868>

Burke, T. (2020, July 16th). *Get to know us: History & inception*. Me Too. Retrieved

December 19, 2020, from <https://metoomvmt.org/get-to-know-us/history-inception/>

Burt, M. R. (1980). Cultural myths and supports for rape. *Journal Of Personality And Social Psychology*, 38(2), 217.

Campbell, R. (1998). The community response to rape: victims' experiences with the legal, medical, and mental health systems. *American Journal of Community*

*Psychology*, 26(3), 355–79. <https://doi.org/10.1023/A:1022155003633>

Carlsen, A., Salam, M., Miller, C., Lu, D., Ngu, A., Patel, J., & Wichter, Z. (2018, October 23rd). *#MeToo Brought Down 201 Powerful Men. Nearly Half of Their Replacements Are Women*. New York Times. Retrieved December 19, 2020, from

<https://www.nytimes.com/interactive/2018/10/23/us/metoo-replacements.html>

CBC News. (2020, August 30th). Kennebecasis regional police set up sexual assault review program | CBC News. Retrieved December 19th, 2020, from

<https://www.cbc.ca/news/canada/new-brunswick/kennebecasis-regional-police-sexual-assault-1.5702144>

- Cohen, S. (1972) Folk devils and moral panics: the creation of the mods and rockers. *Urban Life and Culture*, 2(3), 380–381. <https://doi.org/10.1177/089124167300200308>
- Cohen, S. (2011). Whose side were we on? The undeclared politics of moral panic theory. *Crime Media Culture*, 7(3), 237-243. <https://doi.org/10.1177/1741659011417603>
- Cotter, D., & Rotenberg, C. (2018). *Police-reported sexual assaults in Canada before and after #MeToo, 2016 and 2017*. Juristat: Statistics Canada, 2018001. <https://www150.statcan.gc.ca/n1/en/catalogue/85-002-X201800154979>
- Craig, E. (2009). Ten years after Ewanchuk the art of seduction is alive and well: An examination of the mistaken belief in consent defence. *Canadian Criminal Law Review*, 13(3). 247-269
- Craig, E. (2018). *Putting trials on trial: sexual assault and the failure of the legal profession*. McGill-Queen's University Press.
- Crenshaw, K. (1989). Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum*, 1989, 139-167.
- Criminal Code, R.S. c. C-46 (1985) Retrieved from <http://laws.justice.gc.ca/en/C-46/index.html>
- Criminal Code*, RSC (1985) c C-46
- Davis, A. (2019, June 23). The wild ride at babe.net: The Aziz Ansari controversy was just the beginning of the trouble for the website. *The Cut*. <https://www.thecut.com/2019/06/babe-net-aziz-ansari-date-rise-and-fall.html>
- Dershowitz, A., (2019) *Guilt by Accusation: The Challenge of Proving Innocence in the Age of #MeToo*. Skyhorse Publishing



- Department of Justice (2020, September 25). *Government of Canada reintroduces bill on continuing education for judges, enhancing sexual assault survivors' confidence in the criminal justice system*. [Press Release]. <https://www.canada.ca/en/departement-justice/news/2020/09/government-of-canada-reintroduces-bill-aimed-at-enhancing-public-and-sexual-assault-survivors-confidence-in-the-criminal-justice-system.html>
- Diamond, J. (2018, October 02). Trump says it's 'a very scary time for young men in America' - CNN POLITICS. Retrieved March 29, 2021, from <https://www.cnn.com/2018/10/02/politics/trump-scary-time-for-young-men-metoo/index.html>
- Doolittle, R. (2017, February 3). Unfounded: Why police dismiss 1 in 5 sexual assault claims as baseless. *The Globe and Mail*. <https://www.theglobeandmail.com/news/investigations/unfounded-sexual-assault-canada-main/article33891309/>
- Doolittle, R. (2019). *Had it coming: what's fair in the age of #metoo*. Allen Lane, an imprint of Penguin Canada.
- Dworkin, A. (1985). Against the male flood: Censorship, pornography, and equality. *Harv. Women's LJ*, 8, 1-30.
- Dworkin, A. (1989). *Letters from a war zone*. Brooklyn, NY: Lawrence Hill Books.
- Fairclough, N. (1995). *Critical discourse analysis: the critical study of language* (Ser. Language in social life series). Longman.
- Feldman-Summers, S., & Palmer, G. C. (1980). Rape as viewed by judges, prosecutors, and police officers. *Criminal Justice and Behavior*, 7(1), 19-40. <https://doi.org/10.1177/009385488000700103>

Flynn, M. (2019, March 29). 'This is MY son': Navy vet horrified as mom's tweet miscasts him as #HimToo poster boy - and goes viral. The Washington Post.

<https://www.washingtonpost.com/news/morning-mix/wp/2018/10/09/this-is-my-son-navy-vet-horrified-as-moms-tweet-miscasts-him-as-himtoo-poster-boy-and-goes-viral/>.

France, L. R. (2017, October 16). #MeToo: Social media flooded with personal stories of assault. CNN. <https://www.cnn.com/2017/10/15/entertainment/me-too-twitter-alyssa-milano/index.html>.

Franiuk, R., Luca, A., Robinson, S. (2019). The effects of victim and perpetrator characteristics on ratings of guilt in a sexual assault case. *Violence Against Women*, 26(5), 614-635. <https://doi.org/10.171/1770/717078708102112919884400439>

Franiuk, R., Seefeldt, J. L., Cephress, S. L., & Vandello, J. A. (2008). Prevalence and effects of rape myths in print journalism: The Kobe Bryant case. *Violence Against Women*, 14(3), 287-309.

Franks, M (2019) "Witch Hunts: Free Speech, #MeToo, and the Fear of Women's Words," *University of Chicago Legal Forum*, 2019 (5), 123- 146.

Garland, D. (2008). On the concept of moral panic. *Crime, Media, Culture: An International Journal*, 4(1), 9–30. <https://doi.org/10.1177/1741659007087270>

Gavey, N. (2014, October 14). This is what we mean by rape culture. [Web log post].

Retrieved from <http://www.sexualpoliticsnow.org.nz/this-is-what-we-mean-by-rape-culture/>

- Global News. (2017, October 19). *Trudeau calls #MeToo campaign, sex assault claims an 'awakening'*. [Video]. <https://globalnews.ca/video/3814083/trudeau-calls-metoo-campaign-sex-assault-claims-an-awakening>
- Goode, E., & Ben-Yehuda, N. (1994). Moral panics: Culture, politics, and social construction. *Annual review of sociology*, 20(1), 149-171.
- Gotell, L. (2008). Rethinking affirmative consent in Canadian sexual assault law: Neoliberal sexual subjects and risky women. *Akron L. Rev.*, 41, 865-898.
- Government of Canada, Department of Justice. (2020, September 25). *Government of Canada reintroduces bill on continuing education for judges, enhancing sexual assault survivors' confidence in the criminal justice system* [Press release]. Retrieved 2021, from <https://www.canada.ca/en/departement-justice/news/2020/09/government-of-canada-reintroduces-bill-aimed-at-enhancing-public-and-sexual-assault-survivors-confidence-in-the-criminal-justice-system.html>
- Government Of Canada, Officer of the Commissioner for Federal Judicial Affairs Canada. (2017, October 27). Judges Appointed between 2007 and 2017, by gender [Press release]. Retrieved from <https://www.fja.gc.ca/appointments-nominations/AppointedByGender-eng.html>
- Hamblin, J. (2018, January 17). This is not a sex panic. *The Atlantic*. <https://www.theatlantic.com/entertainment/archive/2018/01/this-is-not-a-sex-panic/550547/>
- Hamblin, J. (2018, January 18). This is not a sex panic. *The Atlantic*. <https://www.theatlantic.com/entertainment/archive/2018/01/this-is-not-a-sex-panic/550547/>

Hamilton, H. E., Schiffrin, D., & Tannen, D. (2003). *The handbook of discourse analysis*.

Malden, MA: Blackwell.

Harding, K. (2015). *Asking for It: The alarming rise of rape culture--and what we can do about it*. Hachette Book Group.

Hayes, R. M., Lorenz, K., & Bell, K. A. (2013). Victim blaming others: rape myth acceptance and the just world belief. *Feminist Criminology*, 8(3), 202–220. <https://doi.org/10.1177/1557085113484788>

Heath, N. M., Lynch, S. M., Fritch, A. M., Mcarthur, L. N., & Smith, S. L. (2011). Silent survivors: Rape myth acceptance in incarcerated women's narratives of disclosure and reporting of rape. *Psychology of Women Quarterly*, 35(4), 596–610. <https://doi.org/10.1177/0361684311407870>

Hindes, S. & Fileborn, B. (2020). “Girl power gone wrong”: #MeToo, Aziz Ansari, and media reporting of (grey area) sexual violence. *Feminist Media Studies*, 20(5), 639-656. <https://doi.org/10.1080/14680777.2019.1606843>

Jackson, S. (2018). Young feminists, feminism, and digital media. *Feminism & Psychology*, 28(1), 32-49.

Johnson, H. (2012). Limits of a criminal justice response: Trends in police and court processing of sexual assault. In Sheehy, E. A, *Sexual assault in Canada: law, legal practice, and women's activism*. University of Ottawa Press.

Kachen, A. & Krishen, A. (2020). #MeToo, #MeThree, #MeFour: Twitter as community building across academic and corporate institutions. *Psychology & Marketing*, 38(3), 455-469. <https://doi.org/10.1002/mar.21442>

- Kimerling, R., Rellini, A., Kelly, V., Judson, P. L., & Learman, L. A. (2002). Gender differences in victim and crime characteristics of sexual assaults. *Journal of Interpersonal Violence*, 17(5), 526-532.
- Larcombe, W. (2002). The 'ideal' victim v successful rape complainants: Not what you might expect. *Feminist Legal Studies*, 10, 131-148.  
<https://doi.org/10.1023/A:1016060424945>
- Lazar, M. M. (2007). Feminist critical discourse analysis: articulating a feminist discourse praxis. *Critical Discourse Studies*, 4(2), 141–164.  
<https://doi.org/10.1080/17405900701464816>
- Leverick, F. (2020). What do we know about rape myths and juror decision making? The *International Journal of Evidence & Proof*, 24(3), 255–279.  
<https://doi.org/10.1177/1365712720923157>
- Long, L. M. (2017). Rape victim advocates experiences with law enforcement in the emergency room. *Feminist Criminology*, 13(5), 498–515.  
<https://doi.org/10.1177/1557085116687033>
- Lonsway, K. & Fitzgerald, L. (1994). Rape myths in review. *Psychology of Women Quarterly*, 18(2), 133-164. <https://doi.org/10.1111/j.1471-6402.1994.tb00448.x>
- MacDonald, F., & Dobrowolsky, A. Z. (Eds.). (2020). *Turbulent times, transformational possibilities?: gender and politics today and tomorrow*. University of Toronto Press.
- MacKinnon, C. (1983). Feminism, Marxism, method, and the state: Toward feminist jurisprudence. *Signs*, 8(4), 635-658. Retrieved March 24, 2021, from <http://www.jstor.org/stable/3173687>

- Mackinnon, C. (1997). Rape: On coercion and consent. Writing on the body: Female embodiment and feminist theory, *Journal of Women in Culture and Society*, 8, 42-58.
- Madigan, L., & Gamble, N. C. (1991). *The second rape: society's continual betrayal of the victim*. Lexington Books.
- Matthews H. (2019) #MeToo as Sex Panic. In: Fileborn B., Loney-Howes R. (eds) *#MeToo and the Politics of Social Change*. 267-283. [https://doi.org/10.1007/978-3-030-15213-0\\_17](https://doi.org/10.1007/978-3-030-15213-0_17)
- McCray, K. & Taylor, E. (2021). “I learned that sports teaches rape culture”: Assessing sexual violence prevention education for intercollegiate athletes. *Journal of Intercollegiate Sport*, 14(1), 46-65. <https://doi.org/10.17161/jis.v14i1.13428>
- McMahon, S., & Farmer, L., (2011) An updated measure for assessing subtle rape myths, *Social Work Research*, 35(2), 71–81, <https://doi.org/10.1093/swr/35.2.71>
- McNiff, K. (2016, November 9). What is Qualitative Research? *QSR International*. <https://www.qsrinternational.com/nvivo-qualitative-data-analysis-software/resources/blog/what-is-qualitative-research>
- Mendes, K., Ringrose, J., & Keller, J. (2018). # MeToo and the promise and pitfalls of challenging rape culture through digital feminist activism. *European Journal of Women's Studies*, 25(2), 236-246.
- Milano, A. (2017, October 15th). If you’ve been sexually harassed or assaulted write ‘me too’ as a reply to this tweet [Tweet]. Retrieved from [https://twitter.com/Alyssa\\_Milano/status/919659438700670976](https://twitter.com/Alyssa_Milano/status/919659438700670976)
- Orth, U. (2002). Secondary victimization of crime victims by criminal proceedings. *Social Justice Research*, 15(4), 313-325.

- Page, A. D. (2007). Behind the blue line: Investigating police officers' attitudes toward rape. *Journal of Police and Criminal Psychology*, 22(1), 22–32.  
<https://doi.org/10.1007/s11896-007-9002-7>
- Page, A. D. (2010). True colors: Police officers and rape myth acceptance. *Feminist Criminology*, 5(4), 315–334. <https://doi.org/10.1177/1557085110384108>
- Pappas, S. (2021, January 26). *Porn is the top source of 'sex education' for young adults*. Live Science. Retrieved March 29, 2021, from  
<https://www.livescience.com/pornography-sex-education.html>
- Park, A. (2017, December 06th). *#MeToo reaches 85 countries with 1.7M tweets*. CBS News. Retrieved December 19th, 2020, from <https://www.cbsnews.com/news/metoo-reaches-85-countries-with-1-7-million-tweets/>
- Payne, D., Lonsway, K., & Fitzgerald, L. (1999). Rape myth acceptance: exploration of its structure and its measurement using the Illinois Rape Myth Acceptance scale. *Journal of Research in Personality*, 33(1), 27-68. <https://doi.org/10.1006/jrpe.1998.2238>
- Perreault, S. 2015. "Criminal victimization in Canada, 2014." Juristat. Statistics Canada Catalogue no. 85-002-X. <https://www150.statcan.gc.ca/n1/pub/85-002-x/2015001/article/14241-eng.htm>
- Piacenza, J. (2018, October 11). A year into #MeToo, Public worried about false allegations. *Morning Consult*. <https://morningconsult.com/2018/10/11/a-year-into-metoo-public-worried-about-false-allegations/>
- Province of Ontario. (2020, April 30). Sexual Violence. Retrieved March 29, 2021, from <https://www.ontario.ca/page/sexual-violence>
- R v. O'Connor*, [1995] 4 S.C.R. 411

*R. v. Esau*, [1997] 2 S.C.R. 777

*R. v. Ewanchuk*, [1999] 1 S.C.R. 330

*R. v. Mills*, [1999] 3 S.C.R. 668

*R. v. Seaboyer; R. v. Gayne*, [1991] 2 S.C.R. 577

Randall, M. (2010). Sexual assault law, credibility, and “ideal victims”: Consent, resistance, and victim blaming. *Canadian Journal of Women and the Law*, 22(2), 397-433.

Rich, K., & Seffrin, P. (2014). Birds of a feather or fish out of water? Policewomen taking rape reports. *Feminist Criminology*, 9(2), 137–

159. <https://doi.org/10.1177/1557085113510551>

Saldaña, J. (2009). *The coding manual for qualitative researchers*. Sage.

Schiffrin, D., Tannen, D., Hamilton, H. (2005). *The handbook of discourse analysis*. Oxford: Blackwell

Schreuer, M. (2017, October 25). A #MeToo moment for the European parliament. *New York Times*. <https://www.nytimes.com/2017/10/25/world/europe/european-parliament-weinstein-harassment.html>

Sheehy, E. (2012). *Sexual Assault in Canada*. University of Ottawa Press.

Sleath, E., & Bull, R. (2012). Comparing rape victim and perpetrator blaming in a police officer sample: differences between police officers with and without special training. *Criminal Justice and Behavior*, 39(5), 646–665.

<https://doi.org/10.1177/0093854811434696>

Smart, C. (1989). *Feminism and the power of law*. Routledge



- Smith, D. (2021, March 7). 'Set the standard': Cuomo allegations test Democrats' commitment to #MeToo. *The Guardian*. <https://www.theguardian.com/us-news/2021/mar/06/andrew-cuomo-allegation-democrats-metoo>
- Smith, D. E. (1992). Sociology from women's experience: A reaffirmation. *Sociological Theory*, 10(1), 88-98.
- Smith, T. (2018, October 31). On #MeToo, Americans more divided by party than gender. *NPR*. <https://www.npr.org/2018/10/31/662178315/on-metoo-americans-more-divided-by-party-than-gender>
- Spencer, D., Dodge, A., Ricciardelli, R., & Ballucci, D. (2018). "I Think It's Revictimizing Victims Almost Every Time": Police perceptions of criminal justice responses to sexual violence. *Critical Criminology*, 26(2), 189–209.  
<https://doi.org/10.1007/s10612-018-9390-2>
- Statistics Canada. (2020, September 4). One in ten women students sexually assaulted in a postsecondary setting. *The Daily*. <https://www150.statcan.gc.ca/n1/daily-quotidien/200914/dq200914a-eng.htm>
- Strauss, A., & Corbin, J. (1998). Basics of qualitative research: Techniques and procedures for developing grounded theory. Thousand Oaks, CA: Sage Publications, Inc.
- Tang, K. L. (1998). Rape law reform in Canada: The success and limits of legislation. *International Journal of Offender Therapy and Comparative Criminology*, 42(3), 258-270.
- Tanovich, D. M. (2013). Whack no more: Infusing equality into the ethics of defence lawyering in sexual assault cases. *Ottawa L. Rev.*, 45, 495.

Temkin, J., Gray, J., Barret, J. (2016). Different functions of rape myth use in court: Findings from a trial observation study. *Feminist Criminology* 13(2), 205-226.

<https://doi.org/10.1177/1557085116661627>

Trott, V. (2019). Networked feminism: counterpublics and the intersectional issues of #MeToo. *Feminist Media Studies*, 1-18.

<https://doi.org/10.1080/14680777.2020.1718176>

Tunney, C. (2020, February 4). Proposed bill on sexual assault awareness training for judges 'above politics,' Ambrose says. *CBC News*.

<https://www.cbc.ca/news/politics/ambrose-lametti-judge-awareness-training-1.5451117>

University of New Brunswick libraries. (n.d.). Retrieved March 22, 2021, from

<https://web.lib.unb.ca/eresources/index.php?id=471&sub=indexes>

Walby, Sylvia (1990) *Theorizing Patriarchy*. Oxford: Blackwell.

Walker, P. (2017, March 10). Judge who asked alleged rape victim why she didn't 'just keep knees together' resigns. Retrieved March 22, 2021, from

<https://www.independent.co.uk/news/world/americas/judge-robin-camp-canada-ask-rape-victim-keep-knees-together-calgary-resigns-alexander-wager-a7621881.html>

West, R. (1988). Jurisprudence and gender. *The University of Chicago Law Review*, 55(1), 1–72.

Whisnant, R. (2017, September 21). Feminist Perspectives on Rape. In E. N. Zalta (Ed) *The Stanford Encyclopedia of Philosophy*. Stanford University.

<https://plato.stanford.edu/archives/fall2017/entries/feminism-rape/>

- Wilson, L. C., Newins, A. R., & White, S. W. (2017). The impact of rape acknowledgment on survivor outcomes: The moderating effects of rape myth acceptance. *Journal of Clinical Psychology, 74*(6), 926–939. <https://doi.org/10.1002/jclp.22556>
- Woolley, A. (2017). The resignation of Robin Camp: Background and reflections from Canada. *Legal Ethics, 20*(1), 134-137.  
<https://doi.org/10.1080/1460728x.2017.1346550>

**Criminal Cases**

*R v Adamovsky*, [2018] OJ No 6390 (QL) (ONSC) 7232

*R v Audisho*, [2019] SJ No 433 (QL) (SKQB)

*R v Borne*, [2018] OJ No 7207 (QL) (ONSC)

*R v CC*, [2018] OJ No 1030 (QL) (ONSC)

*R v Fuhr*, [2018] AJ No 389 (QL) (ABQB)

*R v GB*, [2020] OJ No 4437 (QL) (ONSC)

*R v Holland*, [2020] OJ No 682 (QL) (ONSC)

*R v Lai*, [2020] OJ No 164 (QL) (ONSC)

*R v McMillan*, [2019] OJ No 6269 (QL) (ONSC)

*R v Rivera*, [2019] OJ No 3349 (QL) (ONSC)

*R v RV*, [2020] AJ No 827 (QL) (ABPC)

*R v Shirvastava*, [2018] AJ No 1589 (QL) (ABQB)

*R v Sleiman*, [2018] OJ No 5118 (QL) (ONSC)

*R v Stanley*, [2019] SJ No 425 (QL) (SKQB)

*R v TJ*, [2018] OJ No 5706 (QL) (ONSC)

*R v Way*, [2019] AJ No 635 (QL) (ABQB)

**APPENDIX A****Illinois Rape Myth Acceptance Survey – Short Form (IRMA-SF)**

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**She Asked For It (RM1)**

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1. If a girl is raped while she is drunk, she is at least somewhat responsible for letting things get out of hand
2. When girls go to parties wearing slutty clothes, they are asking for trouble
3. If a girl goes to a room alone with a guy at a party, it is her own fault if she is raped
4. If a girl acts like a slut, eventually she is going to get into trouble
5. When girls get raped, it's often because the way they said "no" was unclear
6. If a girl initiates kissing or hooking up, she should not be surprised if a guy assumes she wants to have sex

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**He Didn't Mean To (RM2)**

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7. When guys rape, it is usually because of their strong desire for sex
8. Guy don't usually intend to force sex on a girl, but sometimes they get too sexually carried away
9. Rape happens when a guy's sex drive goes out of control
10. If a guy is drunk, he may rape someone accidentally
11. It shouldn't be considered rape if a guy is drunk and didn't realize what he was doing
12. If both people are drunk, it can't be rape

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**It Wasn't Really Rape (RM3)**

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13. If a girl doesn't physically resist sex-even if protesting verbally- it can't be considered rape
14. If a girl doesn't physically fight back, you can't really say it was rape
15. A rape probably doesn't happen if a girl doesn't have any bruises or marks

- 16. If the accused “rapist” doesn’t have a weapon, you can’t really call it rape
- 17. If a girl doesn’t say “no”, she can’t claim rape

---

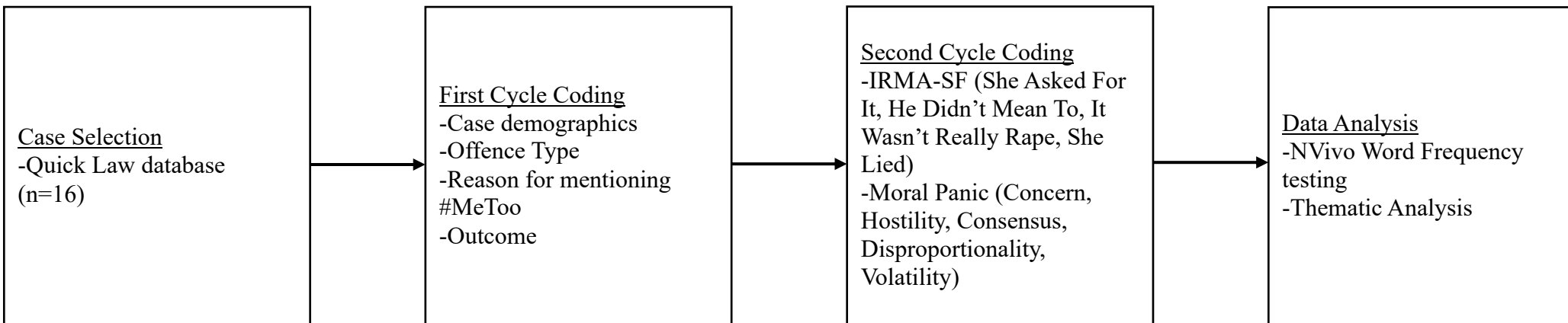
She Lied (RM4)

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- 18. A lot of times, girls who say they were raped agreed to have sex and then regret it
- 19. Rape accusations are often used as a way of getting back at guys
- 20. A lot of times, girls who say they were raped often led the guy on and then had regrets
- 21. A lot of times, girls who claim they were raped have emotional problems
- 22. Girls who are caught cheating on their boyfriends sometimes claim it was rape

## APPENDIX B

### Coding Process



## APPENDIX C

### Coding Schemes

Table C1		
<i>Rape Myth Acceptance Coding</i>		
Rape Myth Subscale	Survey Item	Coding Item
RM1 (She Asked For It)	If a girl is raped while she is drunk, she is at least somewhat responsible for letting things get out of hand	Mention of victim being drunk/on drugs
	When girls go to parties wearing slutty clothes, they are asking for trouble	Mention of victim wearing slutty clothes
	If a girl goes to a room alone with a guy at a party, it is her own fault if she is raped	Mention of victim meeting accused alone
	If a girl acts like a slut, eventually she is going to get into trouble	Mention of victim acting slutty
	When girls get raped, it's often because the way they said "no" was unclear	Mention of how victim did not say 'no'
	If a girl initiates kissing or hooking up, she should not be surprised if a guy assumes she wants to have sex	Mention of how victim was the one that initiated contact



RM2 (He Didn't Mean To)	When guys rape, it is usually because of their strong desire for sex	Mention of strong sexual desire in males
	Guy don't usually intend to force sex on a girl, but sometimes they get too sexually carried away	Mention of accused getting carried away; Mention of victim being too attractive
	Rape happens when a guy's sex drive goes out of control	Mention of accused's sex drive
	If a guy is drunk, he may rape someone accidentally	Mention of accused being drunk
	It shouldn't be considered rape if a guy is drunk and didn't realize what he was doing	Mention of accused not understanding rape while drunk
	If both people are drunk, it can't be rape	Mention of the intoxication levels of both parties
RM3 (It Wasn't Really Rape)	If a girl doesn't physically resist sex-even if protesting verbally- it can't be considered rape	Mention of victim not protesting verbally
	If a girl doesn't physically fight back, you can't really say it was rape	Mention of victim not physically fighting back
	A rape probably doesn't happen if a girl doesn't have any bruises or marks	Mention of victim injuries or lack thereof

	If the accused “rapist” doesn’t have a weapon, you can’t really call it rape	Mention of accused’s lack of weapon or physical force
	If a girl doesn’t say “no”, she can’t claim rape	Mention of a victim not verbally protesting
	N/A	Mention of the touching not being of sexual nature (e.g., it was medical)
RM4 (She Lied)	A lot of times, girls who say they were raped agreed to have sex and then regret it	Mention of victim having regret about having sex with accused
	Rape accusations are often used as a way of getting back at guys	Mention of why a victim would want revenge; Mention of motivation to fabricate
	A lot of times, girls who say they were raped often led the guy on and then had regrets	Mention of victim having regret
	A lot of times, girls who claim they were raped have emotional problems	Mention of victim having emotional problems
	Girls who are caught cheating on their boyfriends sometimes claim it was rape	Mention of victim being caught cheating

*Moral Panic Coding*

Characteristic	When it was coded
MP1 (Concern)	<ul style="list-style-type: none"> <li>• Mention of how popular the movement is</li> <li>• Mention of how movement is creating bias</li> <li>• Accused being scared of the movement</li> </ul>
MP2 (Consensus)	<ul style="list-style-type: none"> <li>• Language that shows no hesitation on whether #MeToo is creating bias</li> <li>• Using the term ‘widespread’ to describe the bias</li> <li>• Social science research is mentioned</li> </ul>
MP3 (Hostility)	<ul style="list-style-type: none"> <li>• Talking negatively about feminism</li> <li>• Talking negatively about the women who reported</li> <li>• Talking negatively about investigation</li> </ul>
MP4 (Disproportionality)	<ul style="list-style-type: none"> <li>• Non-sexual assault context around mention of how it may affect men</li> <li>• Extreme measures to ensure no bias</li> <li>• Mention of jurors having a bias that can’t be placed aside</li> </ul>
MP5 (Volatility)	<ul style="list-style-type: none"> <li>• Mention of how the movement was not impactful</li> <li>• #MeToo as only a twitter movement</li> <li>• Mention of how there is no bias</li> </ul>

## APPENDIX D

**Type of offence found in the current studies dataset**

Offence	Frequency	Percentage
246(b): Administering an overpowering drug to enable the commission of sexual assault	1	2.8%
265(1): Assault	1	2.8%
733.1: Breach of probation	1	2.8%
246(a): Choking with intent to enable indictable offence	2	5.6%
173(2): Exposing his genital organs to a person under 16 (Repealed)	1	2.8%
85 (1): Firearm offences	1	2.8%
272(1): Gang sexual assault	1	2.8%
178: Gross indecency (repealed)	1	2.8%
149 (1): Indecent assault	2	5.6%
430: Mischief	1	2.8%
271: Sexual assault	14	38.9%
151: Sexual interference	2	5.6%
152: Sexual touching of a person under 16	2	5.6%
279(2): Unlawful confinement	4	11.1%
264.1: Uttering threats	2	5.6%

*Note.* Frequency refers to the number of cases it was found in, not the amount of charges in total; this was done as some cases stated the charges, but not how many charges of each offence occurred.

## APPENDIX E

### Rape Myth Acceptance Examples

Table E1	
<i>RM1: She asked for it</i>	
victim engaged in risky behaviour	“she was initially attracted to C.C.'s lifestyle, which included a lot of "partying" and drugs and which she believed would be more exciting.” (C.C.)
Victim being drunk/on drugs	“They began most evenings by consuming alcohol and sometimes cocaine at their apartment” (C.C.)
Victim wearing seductive clothing	“S.J. changed into a bikini and got into one of the hot tubs...” (Holland)
Victim meeting accused alone	“he wanted to do it when the office was closed so the other patients did not know about it, she was not concerned about that.” (Lai)
Victim initiating contact	“she was the one to initiate contact with RV through tickle fights and playfighting.” (RV)

Table E2	
<i>RM2: He didn't mean to</i>	
Justification based on victim being too attractive to resist	“he attempted to justify his actions to each complainant by describing her as ‘hot.’” (Holland)

Table E3

*RM3: It wasn't really rape*

Past sexual history as consent	"any violence that occurred during it was part of a pattern of 'light rough sex' that the couple had a history of engaging in." (C.C.)
Behavior after sex as being too friendly	"she would not have written a [love] note of this nature if she had been sexually assaulted the previous day as she claimed." (C.C.)
Victim not fighting back	"She "froze" as this was unexpected." (Holland)
Touch was not sexual	"RV was adamant that when he touched her bottom it was not, in any way, in a sexual context. He grew up in a setting where bum touching was normal" (R.V.)
Touching as medical	"Mr. Hui agreed that there is an acupoint between a woman's breast; acupuncture there can be used as a treatment for stress. It is very "strong" to put a needle in that area." (Lai)

Table E4

*RM4: She lied*

Cheating as motivation to fabricate	"appears to be that it was C.C.'s infidelity at that party that led J.E. to make the false allegations against him." (C.C.)
Revenge as motivation to fabricate	"Mr. Brauti submitted that because of the conflict between the two families, M.T. fabricated these allegations when she first disclosed them to M.G.." (G.B.)

Dislike of accused	“Apparently when she saw his picture and N.B. told her that she was going to marry him she responded that she did not like him.” ( <i>G.B.</i> )
Victim as mentally unstable	“Mr. Walker submitted, G.B. demonstrated outright animus towards M.T. by saying she is crazy and calling her a ‘wacko’.” ( <i>G.B.</i> )
Can’t remember event because of alcohol	“both were so heavily intoxicated at the relevant time that their memories of what transpired, including their memories of the identity of the perpetrator, are unreliable” ( <i>Holland</i> )
Victim caught cheating	“that at the time she did feel as if she had cheated on her boyfriend” ( <i>Holland</i> )

## APPENDIX F

### Moral Panic Coding Examples

Table F1 <i>MP 1: CONCERN</i>	
Mention of how popular the movement is	“Me Too and #IBelieveHer are international phenomena, and both have a presence in Canada.” ( <i>McMillan</i> )
Mention of how #MeToo is creating bias	“the pre-trial publicity or media attention around the # believeher and other social media movements urging people to believe complainants of sexual assault.” ( <i>Shirvastava</i> )
Accused being scared of the movement	“there was a lot of "metoo" material on the news and he was scared.” ( <i>Rivera</i> )

Table F2 <i>MP 2: CONSENSUS</i>	
Language that shows no hesitation on whether #MeToo is creating bias	“the "#IBelieveYou" campaign has created biased attitudes in the Alberta public against those accused of sexual assault.” ( <i>Fuhr</i> )
Using the term ‘widespread’ to describe the bias	“#IBelieveYou campaign as evidence supporting a finding of widespread bias -- not against complainants, but against those accused of sexual assault.” ( <i>Fuhr</i> )
Social science research is mentioned	“social science research indicating a "generic prejudice" against the accused in sexual assault cases.” ( <i>McMillan</i> )



Table F3

*MP 3: HOSTILITY*

Talking negatively about feminism	“that for some "feminists", ‘commitment gives way to zealotry and dogma’.” ( <i>McMillan</i> )
Talking negatively about the women who reported	“It (the article), made another presumption too - that women are invariably truth tellers. This runs so contrary to common sense and my own experience - and to my own flawed nature - that I was gobsmacked.” ( <i>Borne</i> )
Talking negatively about investigation	to the point that the OPS went "above and beyond" in its attempt to promote T.P.'s narrative, particularly in areas where it was inconsistent” ( <i>Sleiman</i> )

Table F4

*MP 4: DISPROPORTIONALITY*

Non-sexual assault context around mention of how it may affect men	“the "Me Too" movement stretched to the extent that ‘we must now believe all stories told by men that women told them to say.’” [present in a mischief case] ( <i>Adamovsky</i> )
Extreme measures to ensure no bias	“In this appeal we are asked to find that charges of sexual assault ... entitle the accused to challenge prospective jurors for cause.” ( <i>Way</i> )
Mention of juries having a bias that can’t be placed aside	“that some jurors may be incapable of setting aside that bias” ( <i>Stanley</i> )

Table F5

*MP 5: VOLATILITY*

Mention of how the movement was not impactful	“The Me Too movement is a relatively new movement. In my view, the degree to which it has influenced society remains uncertain” ( <i>Stanley</i> )
#MeToo as only being a twitter movement, hasn’t reached courts	“there are many people who, believe it or not, do not subscribe to Twitter and who may have no knowledge of or interest in this social media discourse.” ( <i>Shirvastava</i> )
Mention of how there is no bias	“The evidence, though, does not establish a widespread bias in the community against men who are accused of having committed a criminal offence” ( <i>Audisho</i> )