

Appendix 1

The Review of the Investigation of Sexual Assaults – A Decade Later Toronto Police Service

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Auditor General's Office

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INTRODUCTION

A decade later – what has changed?

It has now been over 10 years since the City Auditor (now the Auditor General) was asked by City Council to initiate an audit regarding the “*handling of sexual assault cases by the Police.*” Much has changed over the past decade in the way the Toronto Police Service investigates reports of sexual assault.

The objective of this report is to provide an overview of the changes to the investigation of sexual assaults during the last 10 years. These changes are a result of the collective efforts of the Toronto Police Service, the Toronto Police Services Board, City Council, various community groups working with women who have been sexually assaulted, and last but not least, the woman known as Jane Doe.

At the time of the initial 1999 audit, an audit of sexual assault investigations had not been conducted anywhere in North America. There were no precedents to guide the audit and consequently, the audit and the resultant report were groundbreaking. The audit received significant media attention, an unprecedented level of interest expressed by the North American audit community as well as a number of police services in both the US and Canada including the Royal Canadian Mounted Police (RCMP).

However, while the audit generated much attention, the audit would have been of no benefit had its recommendations not been addressed. Jane Doe, in her book The Story of Jane Doe¹, expressed similar concerns. “*But unless they (Council) are invested in seeing their motion through to implementation, the social audit – so lovely to look at – is doomed to join other reports, decisions and inquest verdict on the shelves of police bureaucrats and politicians. Where it will collect dust. And we will be left with the impression of change.*”

On the contrary, our follow-up reviews of 2004 and 2010 clearly demonstrate a commitment by the Toronto Police Service to implement the audit recommendations.

THE ORIGINS OF THE JANE DOE AUDIT

The audit report in response to the request by City Council entitled “[Review of the Investigation of Sexual Assaults – Toronto Police Service](#)” was issued in October 1999. The circumstances leading to the decision by Council originated from the legal case of Jane Doe versus the Commissioner of Police of the then Municipality of Metropolitan Toronto.

¹ Jane Doe, The Story of Jane Doe, (Vintage Canada, 2004), 301

The audit which became known as the Jane Doe audit had its origin in the summer of 1986. In 1986, police knew that a rapist was at large in a downtown Toronto neighbourhood. While the then Metro Police were aware that there were many similarities in the mode of the attacks, and had concluded that in fact the crimes were those of a serial rapist, they made a deliberate decision to not warn women in the neighbourhood, nor to take any other steps to protect them.

In August of that year, Jane Doe (whose pseudonym used to protect her privacy became her public identity) was raped in her bedroom in the neighbourhood where the rapist was known to be active.

As a result of that rape, Jane Doe successfully sued the Board of Commissioners of Police of the then-Municipality of Metropolitan Toronto. Judgment in the case by Madam Justice Jean MacFarland of the Ontario Court of Justice was released on July 3, 1998.

Madam Justice MacFarland found that women in the area had not been warned of the rapist because police believed they would become “*hysterical*” and thus somehow jeopardize the police investigation. She further found that had Jane Doe been aware of the serial rapist in her neighbourhood, she would have taken steps to protect herself, and that those steps most probably would have prevented her from being raped.

“Although the police say they took the crime of sexual assault seriously in 1985-1986, I must conclude, on the evidence before me, that they did not,” Madam Justice MacFarland concluded, detailing many longstanding problems in the investigation of sexual assaults.

In particular, she accepted Jane Doe’s allegation that she and other women had been used as “*bait*” and that the police investigation in the case was motivated by “*serial rape mythology and discriminatory sexual stereotypes.*”

While the police in their defence attempted to show that steps had been taken to improve the identified problems within the service, Madam Justice MacFarland rejected this evidence and found that the status quo had remained. She said that the police had engaged in “*impression management*” to attempt to improve their public image, but that this effort did not represent an “*indication of any genuine commitment for change.*”

The judge found that the police investigation was “*irresponsible and grossly negligent*” and that the police had failed “*utterly*” in their duty to protect women.

In addition to finding the police liable for negligence, the judge also held that they had breached Sections 7 and 15 of the Canadian Charter of Rights and Freedoms. She held that, “*as a public institution with a crucial role to play in the protection of all members of society, the police must act without discrimination in carrying out its duties and responsibilities and must ensure that its actions do not deprive individuals of their rights to security.*” Women’s rights to equality and security had been violated, the judge held.

THE ORIGINAL 1999 REPORT

The report entitled “[Review of the Investigation of Sexual Assaults – Toronto Police Service](#)” was issued in October 1999 and contained 57 recommendations. The 1999 report indicated that the recommendations:

“can be summarized as being a requirement that the Toronto Police Service focus on the following issues:

- *a regular, structured, reporting process regarding the evaluation and putting into effect of the full number of recommendations in this report;*
- *an independent follow-up evaluation of the actions taken in regard to the recommendations in this report;*
- *a widening of the mandate of the Sexual Assault Squad, and a review of its staffing to meet that new mandate;*
- *a re-evaluation of current training practices, including the provision of mandatory and regular refresher courses;*
- *improvements to the current case management information systems;*
- *improved communications with women who have been sexually assaulted;*
- *continuity of service to women who have been sexually assaulted;*
- *a requirement to create formal written procedures, prepared with assistance from the overall community, in regard to the reporting of activities of sexual predators; and*
- *improved communications and relations both within the police service itself and with outside community agencies.”*

The 1999 report is available at http://www.toronto.ca/audit/reports1999_sub1.htm

Any audit, whether it be strictly financial or a prototype social audit such as the Jane Doe audit, cannot be beneficial if its recommendations are not acted upon. A follow-up review to evaluate the implementation of audit recommendations is therefore an essential step in any audit process.

With this in mind, one of the most important recommendations in the 1999 report was that:

“The City Auditor be requested to conduct a follow-up audit in regard to the status of the recommendations contained in this report, the timing of such audit to be consistent with the time frame outlined in the report of the Chief of Police. The City Auditor be required to report directly to the Toronto Police Services Board in regard to the results of the follow-up audit.”

In 2004, a follow-up review report on the 1999 audit recommendations was issued.

THE 2004 FOLLOW-UP REPORT

In 2004, the Auditor General issued a follow-up report entitled “[The Auditor General’s Follow-up Review on the October 1999 Report Entitled: Review of the Investigation of Sexual Assaults – Toronto Police Service.](#)” The follow-up review contained detailed commentary on the implementation status of each of the 1999 recommendations.

The objectives of the 2004 follow-up review were to determine the extent of the implementation of recommendations in the 1999 report and to recommend further action, if any, to be undertaken by the Toronto Police Service to achieve the substance of the 1999 recommendations.

The follow-up review was an independent evaluation and its conclusions were made based on a significant amount of objective analysis, review and evaluation by audit staff who were involved in the preparation of the original 1999 report. The 2004 review concluded that not all recommendations contained in the 1999 report had been implemented by the Toronto Police Service. The 2004 review contained 25 recommendations, many of them a repeat of the 1999 recommendations.

The 2004 follow-up review was critical of the Toronto Police Service in a number of areas and indicated that “*While certain recommendations from the original 1999 report have been implemented, it is apparent that there are others which have not been addressed or implemented satisfactorily. Of significant concern is the fact that even though specific recommendations have been addressed in directives issued by the Chief of Police, police officers, in certain cases are not complying with these directives.*”

THE 2010 FOLLOW-UP REPORT

The Auditor General was subsequently requested by the Toronto Police Services Board to undertake a further follow-up review of the 2004 recommendations. That review was completed in 2010 and its results are provided in a separate report dated April 9, 2010 entitled “The Auditor General’s Second Follow-up Review on the Police Investigation of Sexual Assaults.”

The scope of the 2010 review was to assess the implementation status of audit recommendations made by the Auditor General in the 2004 report. It did not address the recommendations made by the Sexual Assault Audit Steering Committee which was established in 2005. The mandate of the Steering Committee was to provide expertise to the Toronto Police Services Board and the Toronto Police Service in implementing recommendations contained in the Auditor General’s 2004 report.

While the 2010 follow-up report identifies a number of outstanding recommendations and areas of remaining work for the Police Service, it is equally important to acknowledge the many improvements made by the Police Service in the past decade.

It is also important to appreciate that even if each and every recommendation from both the 1999 and the 2004 reports had been implemented, the audit and follow-up reviews, much like any other audit, were designed to provide a “snapshot” of police activities and practices at one point in time. To ensure consistent and adequate police investigation of sexual assaults, the Police Service should make ongoing monitoring of police practices part and parcel of the Service’s priorities. Other efforts such as working closely with the community groups are also important for continuous improvement.

CHANGES TO SEXUAL ASSAULT INVESTIGATIVE PROCEDURES

A successful sexual assault investigation requires the collection of sufficient evidence to support the laying of a charge under the Criminal Code. This objective has to be balanced with an investigative process that minimizes any further trauma to women reporting a sexual assault.

The investigation of sexual assaults is governed by the Toronto Police Service Criminal Investigations Procedure 05-05, Sexual Assault, initially issued in 1998. The Procedure is issued by the Chief of Police to ensure “*an investigation is conducted in a timely and effective manner, balancing the needs of the victim with the requirements of the investigation.*”

Since 1999, police investigative procedures for sexual assault have been amended substantially to address recommendations from our 1999 and 2004 reviews. Many of these amendments are for the purpose of minimizing investigative impact on women reporting a sexual assault. A summary of the significant changes to the investigative procedures between 1999 and 2009 is provided in Table 1.

Table 1: Summary of changes to sexual assault investigative procedures

1999	2009
<ul style="list-style-type: none"> • Women were interviewed in detail by first-response officers who were not specifically trained in sexual assault investigations 	<ul style="list-style-type: none"> • First-response officers are directed to collect only basic information from women
<ul style="list-style-type: none"> • No specific information or guidance relating to the interviewing of women with special needs 	<ul style="list-style-type: none"> • Police Procedure contains specific information relating to provision of interpretation services
<ul style="list-style-type: none"> • Women were asked to provide lengthy and detailed statements soon after the incidents 	<ul style="list-style-type: none"> • Police Procedure contains provision for delaying the taking of detailed statements
<ul style="list-style-type: none"> • Women were not offered a choice with respect to the gender of the investigator conducting the interview 	<ul style="list-style-type: none"> • Where operationally possible, women are provided with an interviewer of the preferred gender
<ul style="list-style-type: none"> • Women might need to deal with different officers before and after the medical examination at the hospital 	<ul style="list-style-type: none"> • First-response officers are directed to remain at the hospital until completion of the medical examination
<ul style="list-style-type: none"> • Women were not regularly informed of the progress of the investigation 	<ul style="list-style-type: none"> • Police officers are required to maintain consistent and regular contact with women throughout the investigative and legal process
<ul style="list-style-type: none"> • Officers in charge did not always attend at the scene of a sexual assault 	<ul style="list-style-type: none"> • Supervisory officers are directed to attend at the scene, or document reason for non-attendance
<ul style="list-style-type: none"> • Investigations were not always conducted by investigators who had been trained in sexual assault investigations 	<ul style="list-style-type: none"> • All sexual assault investigations are required to be conducted by accredited sexual assault investigators
<ul style="list-style-type: none"> • First-response officers could determine a sexual assault complaint as “unfounded” 	<ul style="list-style-type: none"> • Classifying a complaint as “unfounded” should only be made by a sexual assault investigator

CHANGES TO THE SEX CRIMES UNIT

The Sex Crimes Unit within the Toronto Police Service is a specialized operation dedicated to the investigation of sexual assaults. As a result of our 1999 and 2004 reviews, a number of changes were made to the Unit including an expansion of its mandate, an extension of operating hours, and formalizing the recruitment of officers to the Unit. Table 2 below provides a summary of the changes to the Unit from 1999 to 2009.

Table 2: Summary of changes to the Sex Crimes Unit

1999	2009
<ul style="list-style-type: none"> Mandate of the former Sexual Assault Squad was restricted to sexual assaults where the offender was unknown to the woman and the assault involved penetration 	<ul style="list-style-type: none"> Mandate of the Sex Crimes Unit has been revised to use a risk assessment to determine sexual assaults that should be investigated by the Unit
<ul style="list-style-type: none"> The former Sexual Assault Squad was responsible for investigating about 4 per cent of the reported cases of sexual assault to the Service each year 	<ul style="list-style-type: none"> The revised mandate of the Sex Crimes Unit resulted in increasing its work to investigate about 8 per cent of reported cases of sexual assaults
<ul style="list-style-type: none"> The hours of operation of the former Sexual Assault Squad (8 a.m. to 4 p.m.) did not align with the period of time in which most sexual assaults took place (4 p.m. to 4 a.m.) 	<ul style="list-style-type: none"> The operating hours of the Sex Crimes Unit have been amended to provide full coverage from 7 a.m. to 12 p.m. (midnight)
<ul style="list-style-type: none"> The recruitment of officers to the former Sexual Assault Squad was conducted on an informal basis, primarily using an internal referral process 	<ul style="list-style-type: none"> Recruitment to the Sex Crimes Unit is restricted to officers with investigative experience and training and have demonstrated an aptitude for such work

CHANGES TO THE TRAINING OF SEXUAL ASSAULT INVESTIGATORS, ViCLAS SUBMISSIONS, AND PROVISION OF PUBLIC INFORMATION AND COMMUNITY WARNINGS

In addition to police investigative procedures, a successful sexual assault investigation is a result of many other factors. Our 1999 and 2004 reviews provided a number of recommendations relating to the training of sexual assault investigators, the timely submission of Violent Crime Linkage System (ViCLAS) reports, and provision of public information and community warnings. A large number of these recommendations have been addressed by the Toronto Police Service as of 2009.

Among the various changes, notable improvements have been made in particular to the training of sexual assault investigators. The training has been enhanced from previously a five-day combined course to a ten-day stand alone course. As well the curriculum has been revised to increase its relevance to course attendees. Efforts have also been made to increase the involvement of community organizations in the delivery of the training.

A number of our audit recommendations related to the effective utilization of the ViCLAS. Operated by the RCMP, ViCLAS is a national computer database program designed to facilitate analysis and linkages of violent crimes. There are specific mandated time frames for the submission of ViCLAS reports. Since the release of our 2004 audit recommendations, the Toronto Police Service has improved compliance with ViCLAS submission timeframes and has introduced a monitoring process to ensure timely submission of reports to the Provincial ViCLAS Center for analysis.

In addition, the Toronto Police Service has improved its Web page to include more relevant information for women. The Service has also established procedures to ensure community warnings relating to a sexual assault contain appropriate language and a balanced volume of information. Table 3 provides a summary of the changes discussed above.

Table 3: Summary of changes to the training of sexual assault investigators, ViCLAS submissions, and provision of public information and community warnings

1999	2009
<ul style="list-style-type: none"> The sexual assault training course was structured as a 5-day combined course with the child abuse investigator training 	<ul style="list-style-type: none"> Sexual assault investigator training is a 10-day stand alone course
<ul style="list-style-type: none"> A considerable percentage of sexual assault reports were not submitted to the Provincial ViCLAS Centre within the prescribed time frame 	<ul style="list-style-type: none"> Compliance with ViCLAS reporting has improved substantially to nearly 99% in 2009
<ul style="list-style-type: none"> The Internet Web Page of the former Sexual Assault Squad contained limited information that was relevant to women who had been sexually assaulted 	<ul style="list-style-type: none"> The Internet Web Page of the Sex Crimes Unit has been enhanced to include more information relevant to women about sexual assault
<ul style="list-style-type: none"> No written protocol dictating the circumstances in which police should issue a community warning about a sexual predator 	<ul style="list-style-type: none"> A protocol for notifying the public is outlined in Procedure, Community Safety Notification, and the Public Information Unit coordinates the issuance of warnings to ensure appropriate release of information and language

DID THE AUDIT MAKE A DIFFERENCE?

As indicated in this report, the 1999 audit and the follow-up reviews facilitated changes to:

- Sexual assault investigative procedures
- The Sex Crimes Unit
- The training of sexual assault investigators, ViCLAS submissions, and provision of public information and community warnings

These changes have improved the way the Toronto Police Service investigates sexual assaults. More important is that many of these changes help minimize the investigative impact on women reporting a sexual assault. This is the primary goal of the initial 1999 audit. To this end, in my view, our audit work has helped make a significant difference.

Further, the attention given to sexual assault investigations has not been restricted to the Toronto Police Service. A number of other municipalities in North America have also reviewed the report. Finally, we are not aware of any other Police Service in North America that has devoted such a significant level of resources to the investigation of sexual assaults.

THE 1999 AUDIT AND THE 2004 AND 2010 FOLLOW-UP REVIEWS – OTHER BENEFITS AND IMPACTS

As previously indicated, ongoing concerns with the issue of many reports, requests and research studies particularly those advocating change, relate to the fact that reports generally are left to “*join other reports, decisions and inquest verdicts on the shelves of police bureaucrats and politicians. Where it will collect dust.*”²

This is certainly not the case with the 1999 report because the implementation of the report recommendations was assessed by a structured follow-up process. To date, two follow-up reviews were conducted in 2004 and 2010 respectively.

While one or two of the recommendations contained in the original 1999 report did not receive complete endorsement by certain members of the women’s community, even with the benefit of a decade or so of hindsight, the recommendations continue to be relevant.

In particular, there was a significant level of criticism directed to the 1999 recommendations pertaining to the use of ViCLAS. Such criticism seemed to be leveled at the detailed information required of the ViCLAS reporting process rather than the concept of ViCLAS as an effective investigative tool.

² Doe, 301.

In this context, the recommendations contained in the 1999 report pertaining to ViCLAS are difficult to refute, particularly in light of the comments made by the Honourable Mr. Justice Archie G. Campbell in his report relating to the Paul Bernardo investigation wherein he wrote, “*It is highly likely that Bernardo would have been apprehended much sooner had ViCLAS been in place at the time and fully operational through centrally mandated reporting requirements.*”

Consequently, we continue to hold the view that all recommendations relating to ViCLAS are important.

In this report, we have compared sexual assault investigative practices as they existed in 1999 to practices in 2009. Our analyses identified specific improvements which have occurred over the last decade. This is not to say however, that further improvements are not required. This likely will always be the case.

It is also important to recognize other impacts beyond those specific to the report recommendations which have occurred as a result of the audit. Certain of these may not be initially apparent but they nevertheless are noteworthy and have occurred since the initial 1998 request by City Council.

- The establishment of an audit reference group for the initial 1999 audit was a ground breaking concept which allowed the community to provide input to the process. The reference group consisted of women from agencies and services working with women who have been sexually assaulted as well as women from the Toronto Police Services Board. While the audit was an independent process and the sole responsibility of the Auditor General, suggestions and input from the reference group were considered throughout the process. The input of the community into the audit was somewhat unique and added significant value to the process.
- While there were certain parts of the 1999 report that the audit reference group did not completely support, the overall response to the report was generally favourable. In particular, Jane Doe in her publication The Story of Jane Doe acknowledged that “*the social audit is one of the most important parts of the story and the least told or understood.*”³
- Other police services have benefited from the 1999 audit report. For example, the Royal Canadian Mounted Police (RCMP) recognized the importance of the audit. The RCMP reported that “*I would like to thank you for providing the RCMP with a copy of the report which will serve as a guide for investigations and training.*”
- Many cities in the US have expressed interest in the report and in one case, an audit similar to the one conducted by the Auditor General has been issued. The City of Portland issued a report in 2007 entitled “[Sexual Assault Response and Investigation: Portland efforts fall short of a victim-centered approach.](#)” Ongoing dialogue took place between the Auditor General and the City of Portland auditor.

³ Doe, 295.

- The Toronto Police Services Board established a Sexual Assault Audit Steering Committee in February 2005. The purpose of the Committee was to provide expertise to the implementation of the recommendations contained in the 2004 follow-up report. The motion by the Toronto Police Services Board in setting up the Committee required the Board to “*ensure that the Steering Committee also includes at least three senior officers from the Service and an equal number of women from the anti-violence community with knowledge of the audit process.*”

The Committee met until May 2008, at which time the Chair of the Toronto Police Services Board advised the Board that the work of the Committee had concluded. As a result, the Committee was disbanded. However, at the same Board meeting, the women on the Committee representing the anti-violence community disagreed with the views of the Chair and in fact insisted that the work of the Committee had not concluded. Nevertheless, the Board supported the Chair and the work of the Committee was discontinued.

While there are varying views on the effectiveness of the Committee, in my view the work of the Committee was valuable and unquestionably has assisted in improving the way the Police Service investigates sexual assaults. The Committee provided specific suggestions for changes respecting:

- Sexual assault investigator training
- Warnings or community alerts delivered by the Police Service regarding sexual assaults
- The use of technology especially the Violent Crimes Linage Analysis (ViCLAS).
- At the May 2008 Toronto Police Services Board meeting, the Board approved the establishment of a Sexual Assault Advisory Committee. The purpose of the Committee as described in the terms of reference was to:
 - Promote a coordinated, improved and effective response to sexual assault investigations by maintaining linkages between justice partners, health care centres and community service agencies and advocacy groups to create a seamless response system.
 - Provide a forum for information sharing between members of the judicial system, health care centres, community based agencies and service providers with specific emphasis on improving police response to sexual assault investigations and improving the follow-up support for survivors of sexual assault.

The work of this Committee is ongoing.

CONCLUSION

The Jane Doe audit was a milestone in terms of a detailed, independent and critical assessment of the investigation of sexual assaults at the Toronto Police Service. While the assessment resulted in a significant number of recommendations, they are only one step in an ongoing process of continuous improvement.

It is imperative that the Toronto Police Services Board and the Toronto Police Service continue its focus in addressing the way in which the Police Service investigates reports of sexual assault. The ongoing and prior involvement of the community in assisting the Service in implementing audit recommendations should continue. The initial involvement of the community in the audit process itself resulted in a significant and groundbreaking report. Likewise, the ongoing involvement of the community in addressing the recommendations as well as their input in suggesting other improvements will place the Toronto Police Service at the leading edge of sexual assault investigations.