



Illegal police strip searches: a form of sexual assault?

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Introduction

In 2013, the prosecution of a police sergeant for sexual assault for his illegal strip search of Stacy Bonds failed (*R v Desjourdy, infra*). This research explores the legal and practical obstacles that arise for accused women in securing a sexual assault conviction against police officers who have performed illegal strip searches. Some key questions this research hopes to answer are: how have police forces responded to the Supreme Court of Canada's guidelines in *R v Golden, infra*, on when and how they may strip search women?; do recent Canadian criminal cases reflect any patterns of police conduct or judicial characterization of the impact of strip searches on women?; are any other remedies available to women through federal or provincial human rights tribunals? The research will critically analyze the current and past issues surrounding illegal police strip searches of females in order to identify where and how changes need to be made to facilitate understanding and preventing sexual assault, including in police conduct.

Methodology

- Step 1: Exploring police websites to see which forces make their procedures for searches of the person available to the public
- Step 2: Comparing police guidelines to those in *R v Golden, infra*
- Step 3: Researching Canadian criminal jurisprudence from 2002-present on strip searches of women
- Step 4: Researching decisions of Canadian human rights tribunals from 2002-present involving strip searches of women
- Step 5: Analyzing data for patterns in police conduct and in judicial characterization of the impact of strip searches upon women

Results

Noteworthy judicial commentary on the impact of strip searches on women

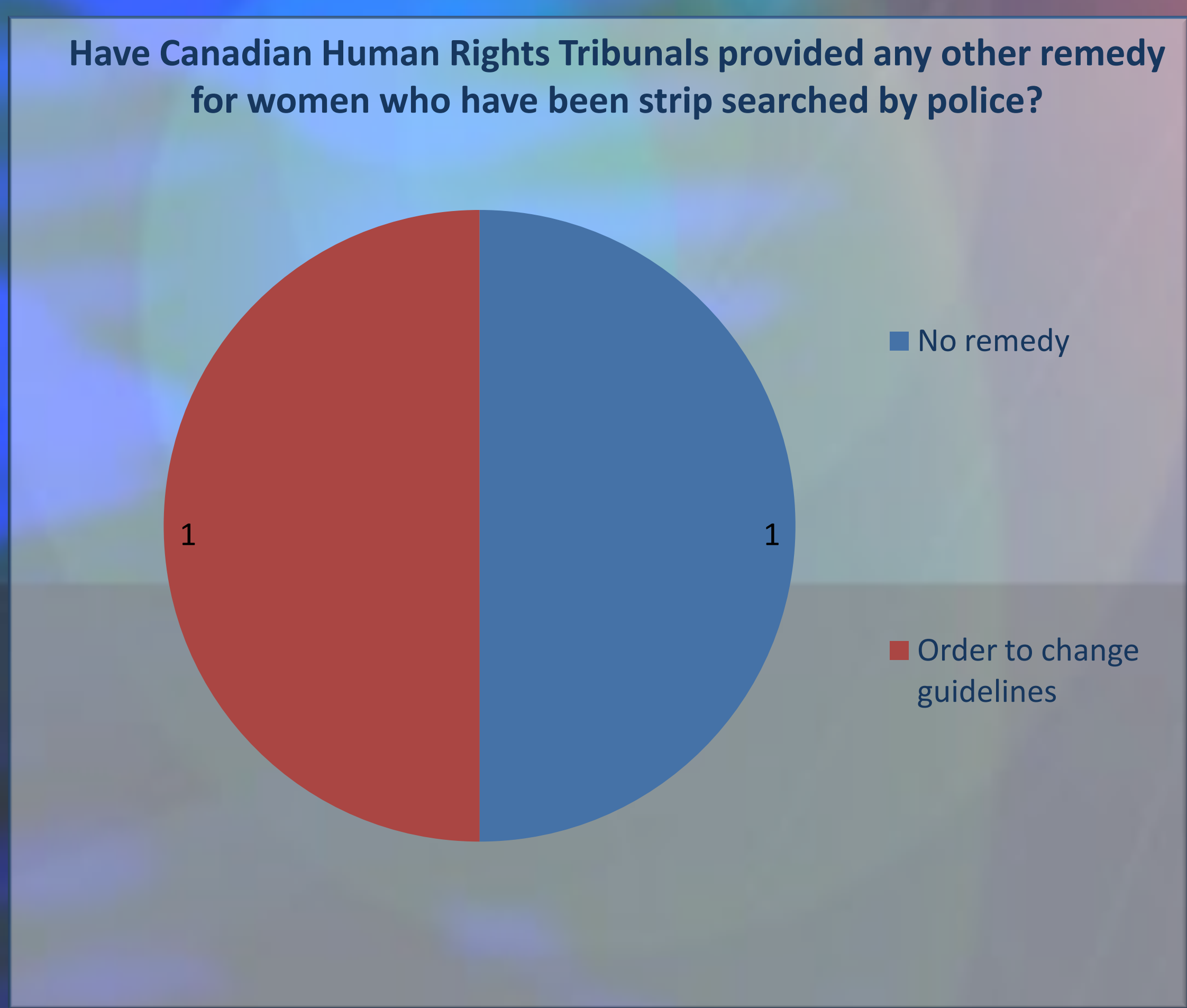
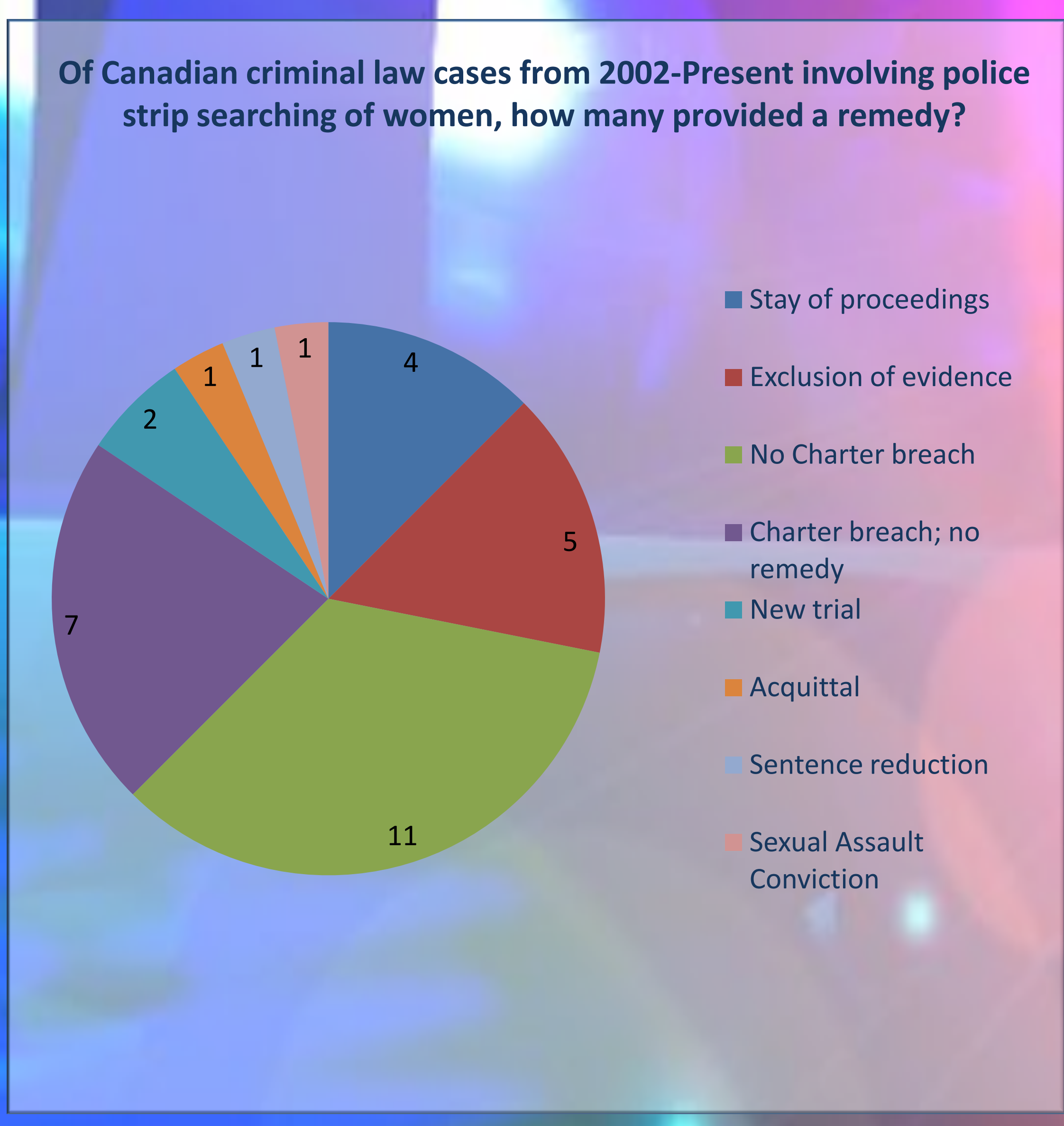
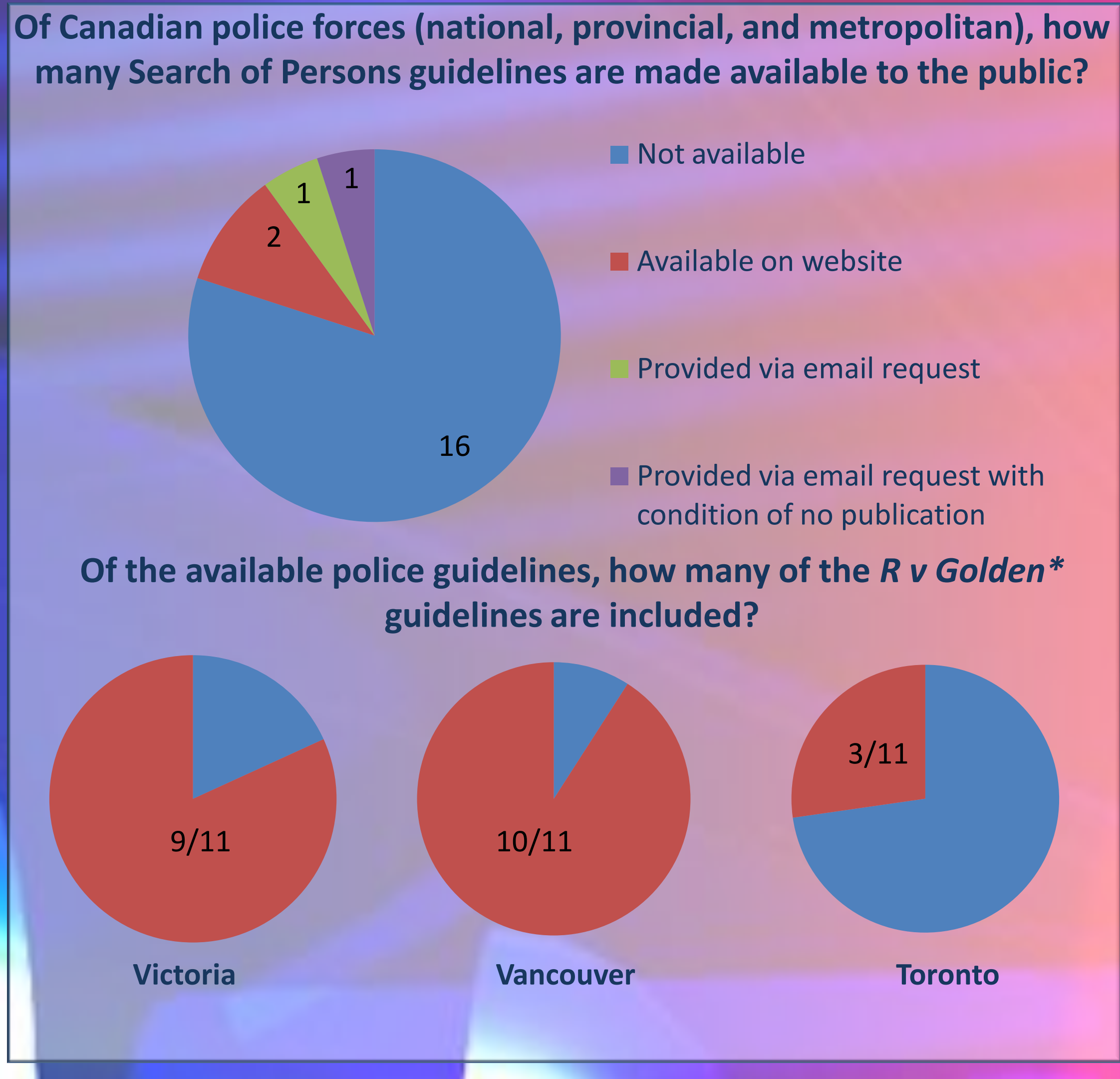
"The trial judge also did not consider the appropriateness of an unwritten police policy that leads to potentially differential treatment of female and male arrestees, with female arrestees wearing underwire bras being automatically and without exception subjected to a form of strip search." (*R v Lee, infra*, at para 46)

"...it seems unlikely that the second strip search had a significant impact upon the applicant. By the time it occurred, she had already been through a lengthy ...bedpan vigil under the constant watch of two officers within very close proximity of her. On numerous occasions she was closely observed while lowering her pants and underwear and attempting to defecate. That process is undeniably far more embarrassing and invasive than a strip search...Therefore, while I do not question that any strip search can be degrading, its impact in this case is lessened when seen in the larger context." (*R v Ebanks, infra*, at para 53)

"A request of a female youth...to remove her brassiere, made by a male police officer, in the proximity of another male officer, is a situation ... [that is] frightening, humiliating, and threatening to the young person, likely to make that young person feel as if her bodily integrity is being violated." (*R v PFG, infra*, at para 41)

"The difficulty is that general 'one size fits all' policies or zero-tolerance policies are blunt instruments which can often cause other significant problems. These policies may, as in this case, lead to vulnerable persons experiencing legitimate feelings of violation at the hands of a powerful system that can seem to them to be unjust and bullying." (*R v PFG, infra*, at para 43)

Results



Conclusions

Despite the Supreme Court's clear instructions in *R v Golden, infra*, police guidelines for searches of the person do not necessarily meet all of the requirements for a legal strip search. Though *Golden* stated that strip searches may not be conducted as a matter of routine policy, a concerning number of police in cases involving strip searches justify these searches as part of a blanket policy. Although some judges have noted the serious impact of strip searches on women specifically, the vast majority provide little insight on the matter. Few judges consider the violation an accused may feel of her bodily and sexual integrity while being strip searched. As such, a huge legal obstacle remains for female accused who wish to secure sexual assault convictions against police officers who have illegally strip searched them. Human rights tribunals in recent Canadian history have seldom heard cases involving strip searches of women, so it does not currently appear to be a likely option for an accused to seek a remedy for an illegal strip search. The next steps in this research are to file Access to Information requests with police forces that do not make their search procedures available to the public, to explore the reasons why strip search cases have not often come before human rights tribunals, and to continue to analyze the patterns in police conduct and judicial characterization of the impact of strip searches on women.

References, acknowledgments, and contact info

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Cases Consulted: *R v Golden*, 2001 SCC 83; *Euteneier v Lee* (2003), 77 OR (3d) 621 (CA); *R v Douglas*, 2003 BCPC 392; *R v Raugust*, 2004 SKPC 71; *R v NC*, 2004 ONCJ 99; *Nagy v Canada*, 2005 ABQB 26; *R v Newby*, 2005 ONCJ 412; *R v PFG*, 2005 BCPC 187; *R v Schildt*, 2005 BCSC 1590; *R v Sepulveda*, 2005 BCPC 236; *R v Vandenbosch*, 2005 MBQB 83; *R v Ferguson* (2005), 126 CRR (2d) 356 (ON Sup Ct J); *R v Layton*, 2006 BCPC 655; *R v Payne*, 2006 NLTD 132; *Forrester v Peel (Regional Municipality) Police Services Board*, 2006 HRTO 13; *R v Depaape*, [2007] OJ No 3925 (QL) (Ct J); *R v Seki*, 2008 ONCJ 24; *R v Mahmood*, [2008] OJ No 4376 (QL) (Sup Ct J); *Rocha v Toronto Police Services Board*, [2008] OJ No 5539 (QL) (Sup Ct J (Sm Ct Ct)); *R v LLS*, 2009 ABCA 172; *Trang v Alberta (Edmonton Remand Centre)*, 2010 ABQB 6; *R v Bouchard*, 2011 ONCJ 610; *R v Darlington*, 2011 ONSC 2776; *R v Nagle*, 2011 BCPC 481; *R v Greenhalgh*, 2011 BCSC 511; *R v Ebanks*, 2012 ONSC 5002; *R v Jackman*, 2012 ONSC 3557; *R v Collins* (2012), 323 Nfld & PEIR 291 (Prov Ct); *R v Mok*, 2012 ONCJ 291; *R v Deschambault*, 2013 SKPC 112; *R v McKay*, 2013 ONCJ 298; *R v Lozano*, 2013 ONSC 1871; *R v Lee*, 2013 ONSC 1000; *R v Chasovskikh* (2013), 274 CRR (2d) 312 (ON Ct J); *Sherazee v Toronto (City) Police Services Board*, 2013 HRTO 1546; *R v Desjourdy*, 2013 ONCJ 170.