

# CRIMINAL JUSTICE SYSTEM RESPONSES TO THE SEXUAL ASSAULT OF OLDER WOMEN

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**CANADIAN NETWORK** *for*  
*the* **PREVENTION** *of* **ELDER ABUSE**

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# YOUR PRESENTERS



## ISABEL GRANT

Professor Isabel Grant's main research interests lie in the areas of criminal law and violence against women.

She is particularly interested in the law and policy issues surrounding male intimate partner violence against women, sexual assault, homicide, and HIV non-disclosure. She is currently working on an SSHRC-funded project on sexual assault across the lifespan. She teaches in the areas of criminal law, sentencing, homicide and mental health law.

She also has worked on a number of Supreme Court of Canada interventions with [Women's Legal Education and Action Fund](#) and [CACL](#).

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# YOUR PRESENTERS



## JANINE BENEDET

Professor Benedet's areas of teaching expertise include criminal law, labour law, the law of sexual offences and legal ethics. Her current research focuses on sexual violence against women, including prostitution, pornography and sexual assault. She is currently researching the barriers to successful criminal justice system responses to sexual assault for women and girls across the lifespan, as well as the use of criminal law to target sex buying and pimping. She is an Associate Editor of the *Criminal Reports*.

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# INTRODUCTION

- ▶ A time of increased attention on the pervasiveness of sexual violence against women
- ▶ Critical evaluation of the criminal justice system's response to these cases
- ▶ We tend to think of sexual assault victims as younger women; yet sexual assault can occur across the lifespan

# OVERVIEW

- ▶ Summary of sexual assault law in Canada
- ▶ Challenges raised by the application of those laws to older women
- ▶ Social science evidence
- ▶ Case law study
- ▶ Analyzing the discrepancy and areas of future research

# WHY RESEARCH THIS TOPIC?

- ▶ Many years of research on sexual assault of women with mental disabilities
- ▶ Overlaps with older women
- ▶ Older women largely invisible in the literature
- ▶ Rape culture and #metoo focuses on younger women
- ▶ Sexual violence is cumulative across the lifespan



# INTERSECTIONAL AND GENDERED

- ▶ Older women are not a homogenous group
- ▶ Some have age-related mental disabilities such as dementia, most do not
- ▶ Some have physical disabilities
- ▶ Marginalization due to poverty, social isolation, language barriers
- ▶ May live independently or supported
- ▶ Sexual assault is a profoundly gendered crime

# WHO IS AN OLDER WOMAN?

- ▶ Choice of language is fraught
- ▶ “Old” is considered pejorative: chose the term “older” because it is comparative
- ▶ Chose a low cutoff of 50 because women are aged more quickly in this context
- ▶ Older women not seen as sexual persons
- ▶ Sexual assault is incorrectly understood as motivated by sexual attractiveness

# SEXUAL ASSAULT LAW IN CANADA

- ▶ A conviction for sexual assault requires proof beyond a reasonable doubt of:
  - ▶ Physical contact
  - ▶ Of a sexual nature
  - ▶ Without consent (C does not want the sexual touching to take place)
  - ▶ Knowledge C was not consenting (did not indicate a “yes”)

# CREDIBILITY AND REASONABLE DOUBT

- ▶ Most cases turn on the credibility of the complainant
- ▶ Burden is on the Crown – not just a question of which story is preferred
- ▶ Attacks on complainant in cross-examination can invoke myths and stereotypes
- ▶ Judges reluctant to convict without corroboration even though this is not required

# SCOPE OF THE PROBLEM

- ▶ Almost no Canadian data – have to rely on US, UK and Australian studies
- ▶ Measure different things: emergency room visits, adult protection proceedings
- ▶ May be lumped in with other forms of elder abuse

# WHAT WE DO KNOW

- ▶ Sexual assault against older women in the home is often committed by family members and acquaintances
- ▶ Sexual assault in long-term care most often committed by staff or other residents
- ▶ 25%-35% of sex assaults take place in LTC, but less than 10% of 65+ adults live there
- ▶ Dementia increases risk

# CRIMINAL JUSTICE SYSTEM INVOLVEMENT

- ▶ Very few cases make it to trial
- ▶ Barriers at every stage of the process
  - ▶ Inability to report due to dementia
  - ▶ Incentive to deal with it internally
  - ▶ Family and system may want to avoid trauma
  - ▶ Process takes time
  - ▶ Afraid to report family members who are caregivers or who have dementia

# CASE LAW STUDY

- ▶ Looked at 20 years of Canadian case law
- ▶ Every case involving a complainant 50+ from 1995-2015 in all provinces/territories
- ▶ Does not capture cases in which no reasons produced; jury trials
- ▶ Supplemented by newspaper searches



# OUR FINDINGS

- ▶ 111 cases: 109 of the cases involved women complainants
- ▶ A total of 154 individual female complainants since some accused assaulted multiple victims
- ▶ All of the accused were men

# DISTRIBUTION BY VICTIM RESIDENCE

	Age of Complainant (N = 155)						Total
	50-59	60-69	70-79	80-89	90+	Age Unknown**	
Women living in the community	18	11	31	20	2	11	93
Women in acute care hospital	5	3	5	1	0	0	14
Women in supportive housing*	0	4	10	4	3	8	29
Women in long-term care facilities	0	1	3	4	1	9	18
<b>Total</b>	<b>23</b>	<b>19</b>	<b>49</b>	<b>29</b>	<b>6</b>	<b>28</b>	<b>154</b>

\*Includes retirement homes, seniors' apartments and, in one case, a convent

\*\*Included in the sample because of descriptors such as "elderly" used to describe the complainant

# WOMEN LIVING IN THE COMMUNITY

- ▶ Very different from the picture painted by the social science evidence
  - ▶ 75% of older women sexually assaulted by men they know
  - ▶ 60% in the case law involved sex assault by a stranger
  - ▶ Only 5% involved a family member (and only one spousal case)

# WOMEN LIVING IN CARE FACILITIES

- ▶ 17 of 18 women had cognitive impairments
- ▶ Assaults by staff or other residents
- ▶ Most cases reported by a third party like another staff member
- ▶ Male staff assaulted multiple complainants; claimed to be providing care
- ▶ Conviction rate high for staff; low for resident-on-resident assaults

# EXPLAINING THE DISCREPANCY

- ▶ Mirrors general sexual assault cases from 30+ years ago
- ▶ Feminist reformers had to work hard to make spousal and acquaintance rape visible
- ▶ Selectivity in cases means that consent is rarely alleged, sexual history and counselling records not used to discredit women
- ▶ High rates of conviction

# WHAT WE DO SEE IN THE CASE LAW

Example: *R. v. Brown* (2013)(ON)

- ▶ A staff member in a secure unit for residents with Alzheimer's disease
- ▶ Charged with sexually assaulting one resident by groping her buttocks, the other was naked on the toilet & accused's pants were around his ankles
- ▶ Claimed actions were in the course of care
- ▶ Acquitted on count 1 and convicted on count 2

# WHAT WE DO SEE IN THE CASE LAW

Example: *R. v. Dahlnas* (2004)(BC)

- ▶ Accused 38 years old with convictions for breaking and entering and domestic assaults
- ▶ Broke into home of 88 year old woman, forced intercourse vaginally and anally with a knife at her throat
- ▶ Smothered, robbed and threatened her if she reported
- ▶ Complainant could no longer live alone
- ▶ Accused sentenced to 18 years imprisonment

# WHAT WE RARELY SEE IN THE CASE LAW

Example: *R. v. Brian Byung Koo Lee* (2017)(BCPC)

- ▶ Complainant 97 years old, lived with family
- ▶ Complainant reported that a 61 year old neighbour kissed and groped her
- ▶ Accused said he did not touch her
- ▶ Judge did not know who to believe and acquitted



# WHAT WE RARELY SEE IN THE CASE LAW

Example: *R. v. Elmer Raycroft* (ON)(2015-2017)

Complainant, age 74 reported that her husband had sexually and physically assaulted her; met him at age 69 through online dating

Husband powerful and well-connected in the community; denied any assaults and claimed financial motive to lie

Trial judge unavailable by the time of sentencing

Sentencing judge declared a mistrial and acquitted

Acquitted again at the retrial

# CONCLUSIONS

- ▶ The criminal justice system does not address the most common forms of sexual assault against older women
  - ▶ Spousal sexual assault
  - ▶ Acquaintance sexual assault
  - ▶ Caregiver assaults where there are no witnesses
- ▶ Most sexual assaults do not involve additional injuries or witnesses

# AREAS IN NEED OF REFORM

Address barriers to reporting:

- ▶ Effect of cumulative abuse across the lifespan
- ▶ Dependence on abuser (or abuser requires care of victim)
- ▶ Institutional pressures

Address barriers to prosecution/conviction:

- ▶ Attack on credibility (ageism and sexism)
- ▶ Resources and supports
- ▶ Appropriate consequences for offender

# FUTURE RESEARCH

- ▶ Empirical measures of sexual abuse of older women in Canada
- ▶ Disaggregated from other forms of elder abuse
- ▶ Considering intersectional vulnerability and lifetime prevalence
- ▶ Regulatory and business environment for long-term care and homecare providers

# THANK YOU!

This webinar is part of CNPEA's project *Increasing Access to Justice for Older Adult Victims of Sexual Assault: A Capacity Building Approach*, funded by the [Justice Canada Victims Fund](#)

For more details, please [visit our project page](#) on cnpea.ca

We will soon reach out to you with a brief survey about this webinar. Please take a moment to fill it out, this will help us with our project evaluation and future webinars!

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