

INCREASING ACCESS TO JUSTICE FOR OLDER
VICTIMS OF SEXUAL ASSAULT

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RESEARCH SNAPSHOT #2

THE SEXUAL ASSAULT OF OLDER WOMEN: CRIMINAL JUSTICE
RESPONSES IN CANADA



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WHAT IS THIS RESEARCH ABOUT?

In their article, *The Sexual Assault of Older Women: Criminal Justice Responses in Canada*, Grant and Benedet (2016) examine sexual violence against older women in Canada. While what constitutes 'old age' is both gendered and socially constructed, the authors define it as age 50 years and older as this is the bottom cut-off point in the literature. Highlighting the gap in our knowledge on the incidence and nature of sexual assault among older women in Canada, authors emphasize the importance of studying the sexual assault of older women distinct from other forms of abuse and other age groups of victims. This is warranted because older victims face unique consequences following sexual assault.

WHAT DID THE RESEARCHERS DO?

By examining the previous two decades of Canadian case law (1995–2015), the authors assessed whether and how the criminal justice system responds to the sexual assault of older women. Anticipating under-reporting, researchers also included cases reported in news media during the same time frame. Findings were discussed in relation to the social science literature on sexual violence against older women.

WHAT DID THEY FIND?

Social science research suggests that older women are most likely to be sexually assaulted by someone they know (often a family member). Moreover, the literature reports that women in nursing homes have an elevated risk of sexual violence compared to those in care facilities. However, Canadian case law paints a very different picture of sexual assault among older women.

The authors reviewed over 3000 cases of sexual assault and found 111 cases involving older complainants. Only three cases included a male complainant and 109 cases included a total of 154 female older victims (one case involved a male and a female complainant). All 109 cases involving female complainants involved a male perpetrator. The high proportion of female victims and male perpetrators illustrates the gendered nature of sexual assault continuing throughout the life cycle. Most cases involved women living in the community, followed by cases of women living in some form of supportive housing including 18 women who were in long-term care facilities. Only five cases involving women in acute care hospital settings were identified.

1. Women living in the community

There were 81 cases of sexual assault involving 93 older women who lived in the community. Eighty percent of victims were sexually assaulted in their own homes, and the remaining assaults took place in public (e. g. when the victim was walking to the store). **Contrary to the literature, sexual assaults by strangers were the most common (60 %), followed by sexual assaults by neighbours, acquaintances, or friends (32 %), with only five percent of sexual assaults perpetrated by family members (1).** The nature of these assaults was particularly violent, often occurring during a robbery or home invasion, including resulting in the immediate death of eleven victims. Only one case noted the victim had cognitive impairments.

Compared to those who sexually assault younger women, perpetrators of sexual assault against community-residing older adults were charged with more serious sexual assault charges, handed more serious sentences, and were more frequently designated as dangerous offenders. Sentences ranged from 18 months of incarceration to life imprisonment, with 41 percent of cases resulting in sentences of ten years or more. In only one case was the perpetrator allowed to serve his sentence in the community. Stranger

(1)The relationship between perpetrator and victim was not clear in the remaining cases.

perpetrators were given substantially longer sentences than perpetrators who knew their victims, even where a similar degree of violence was involved. While the most substantial sentences were given to strangers in the context of violent home invasions, in cases where violence was not involved, sentences for stranger-perpetrated sexual assault averaged seven years, compared to an average sentence of three years for perpetrators who knew their victims.

In contrast to the literature that suggests older women who are assaulted in their homes are more likely to be sexually assaulted by someone they know, often a family member, only five cases involved family members as perpetrators of sexual assault against older women living in the community, with only one case involving a spouse, and no cases involving caregivers. **The authors concluded that the picture portrayed in the case law suggests that cases involving sexual assault by a family member or a caregiver are vastly under-reported for this group of women and they discuss potential barriers to reporting.** The surprisingly high proportion of stranger sexual assault resembles the picture we used to see for younger women a few decades ago. “Real sexual assaults” were limited to those involving strangers and a significant degree of violence. They urge more attention to the full scope of the problem of sexual assault against older women so that cases involving familial or caregiver sexual assaults against older women can be detected and addressed.

II. Women Living in Supported Settings

There were 23 cases of sexual assault involving 47 complainants who lived in various degrees of supportive care. On one side of the spectrum are women who lead relatively independent lives and reside in seniors’ apartments or other facilities that offer some support; and on the other side of the spectrum are women who reside in long-term residential care facilities (LTRC) and are more dependent.

a) Women Living in Seniors' Apartments or other Supported Housing

Nine cases of sexual assault of an older person in supportive housing were identified, with nine male perpetrators charged with sexually assaulting 29 women. Six cases involved stranger attacks, one involved an attack by a building worker, and in two cases, other residents were perpetrators. The cases, like those involving community-residing victims, involved high levels of violence. Most offenders were incarcerated (6/9), including one life sentence and one dangerous offender designation.

b) Women Living in Long-Term Residential Care

Fourteen cases involving eighteen complainants from long-term residential care (LTRC) facilities were identified. All but one of these victims suffered from a cognitive disability or dementia. Of the fourteen perpetrators, five were employees of the facility, four were other residents, two were volunteers at the facility (including a priest), two knew another resident, and one was a stranger. Witnesses were present in almost all these cases, providing descriptions of the event and the long-term impacts on the complainants.

In contrast to sexual assault among older women in the community and supportive housing, excessive violence was rare across cases in LTRC facilities. All cases involved the least serious charge of sexual assault (level 1). Four cases involved perpetrators who were also residents of the facility who were found unfit to stand trial because of dementia and one case resulted in an acquittal. Although level 1 sexual assault cases against older women in LTRC facilities resulted in less severe sentences than similar cases against older women in the community, cases against older women result in more significant sentences compared to level 1 sexual assaults against younger women.

The authors noted how difficult it is to identify these offences, particularly when committed by staff members, because where women are unable to give testimony about their assailants, charges are only possible where there was a witness to the sexual assault.

III. Women in Acute Care Hospital Settings

There were five cases involving fourteen older complainants in acute care hospitals. Four of these cases involved doctors or caregivers as perpetrators, and one involved another patient. However very little information was available and thus conclusions are quite limited.

WHAT YOU NEED TO KNOW

Sexual assault of older women is a problem that deserves and requires more attention. With Canada's aging population, it is likely that the occurrence of sexual assault among older persons will increase.

Analysis of two decades of Canadian case law suggests violent cases of strangers assaulting older women are most common, with limited instances of familial or spousal sexual violence, and only a few cases of caregiver sexual assault. Although in cases of caregiver or familial sexual assault adult protective measures may be enacted in lieu of criminal sanctions, these findings are at odds with the empirical research that suggests stranger sexual assaults account for a minority of cases. **This disconnect means the greatest barrier facing older victims of sexual violence may be in the detection, disclosure, and reporting of abuse.**

Criminal justice responses to sexual violence towards older women included the imposition of significant and severe sentences, especially for stranger perpetrators. Likely due to the violent nature and the lack of pre-existing relationships between victims and perpetrators, consent is rarely questioned, there was little to no reference to victims' past sexual history, or ways she could have mitigated or managed risk. Thus, at least for cases that make it through the criminal justice system, the sexual assault of older adults is taken seriously and punished accordingly.

HOW CAN YOU USE THIS RESEARCH?

Nursing Home/Care Home Administrators

When offenders are staff or caregivers, verifying the abuse occurred is difficult, especially when victims suffer from cognitive impairments.

Clear staffing protocols and clear standards for interactions between caregivers and patients are needed in order to minimize the risk of sexual abuse. A team approach should be established to monitor all clients/patients. Training should also be implemented to ensure staff know how to recognize and report the signs of abuse.

Anti-Violence Advocates

This research can be used to underscore the importance of ensuring public awareness of sexual assault among older women. It is crucial that women know their rights about not being abused, what constitutes abuse - especially in the context of spousal relationships or caregiver relationships and ensuring there are clear pathways for reporting abuse for older adults living in the community and in supportive housing. Early intervention for offenders is critical.

Many of the crimes committed by strangers against women in the community were young men who had committed other similar offences. Early interventions for these young men, including addressing the root causes of these types of assaults, are needed.

Government Organizations

The lack of cases involving familial (including spousal) and caregiver perpetrators underscores how these cases are not making it through the criminal justice system. Efforts should be made to assess where these cases are being diverted and why, with a focus on improving access to justice for older victims of sexual violence.

ARTICLE CITATION

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This is the second in a series of Research Snapshots produced for the project *Increasing Access to Justice for Older Adult Victims of Sexual Assault*

Each Snapshot features a relevant research study or resource from Canada or emerging topics that have been identified in other countries

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